

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2024/0282		
Responsible Officer:	Thomas Burns		
Land to be developed (Address):	Lot 252 DP 16212, 131 Gondola Road NORTH NARRABEEN NSW 2101		
Proposed Development:	Modification of Development Consent DA2020/0070 granted for Alterations and additions to a dwelling house ncluding a swimming pool		
Zoning:	R2 Low Density Residential		
Development Permissible:	Yes		
Existing Use Rights:	No		
Consent Authority:	Northern Beaches Council		
Land and Environment Court Action:	No		
Applicant:	Rapid Plans Pty Ltd		

Application Lodged:	13/06/2024			
Integrated Development:	No			
Designated Development:	No			
State Reporting Category:	Refer to Development Application			
Notified:	21/06/2024 to 05/07/2024			
Advertised:	Not Advertised			
Submissions Received:	0			
Clause 4.6 Variation:	Nil			
Recommendation:	Approval			

PROPOSED DEVELOPMENT IN DETAIL

Development Consent was granted on 9 March 2020 under Development Application DA2020/0070 for alterations and additions to a dwelling house including a swimming pool in the rear yard. The swimming pool was situated partially above-ground with a coping level of RL7.804m AHD. Minor ancillary works including external access stairs adjacent to the side boundaries were also approved under this consent.

This application has been made under section 4.55(2) of the EP&A Act seeking to modify the abovementioned development consent as follows:

• Reduce the height of the swimming pool coping from RL7.84m AHD to RL6.91m AHD (0.93m lower).



• Provision of a paved concourse around the western and southern elevations of the pool and a new retaining wall to support the land above the paved level.

To date, no construction works have commenced to the pool.

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 - 5.21 Flood planning Pittwater Local Environmental Plan 2014 - 7.2 Earthworks Pittwater 21 Development Control Plan - C1.6 Acoustic Privacy Pittwater 21 Development Control Plan - D11.7 Side and rear building line

SITE DESCRIPTION

Property Description:	Lot 252 DP 16212 , 131 Gondola Road NORTH NARRABEEN NSW 2101
Detailed Site Description:	The subject site consists of one (1) allotment located on the eastern side of Gondola Road. The site is regular in shape with a frontage of 12.19m along Gondola Road and a depth of 38.1m. The site has a surveyed area of 461.6m ² .
	The site is located within the R2 Low Density Residential zone and accommodates a 2 storey dwelling house with an attached garage. The site gradually slopes in the north-east direction with an approximate fall of 4.0m. The site has been heavily modified since its creation, as such there is no evidence of any endangered species.
	The site is partially flood affected.



Adjoining and surrounding development is characterised by low density living with detached 1-2 storey dwelling houses. In addition, Nareen Wetlands is north-east of the subject site on the opposite side of Gondola Road.

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:

- Development Application N0374/14 for the construction of a secondary dwelling was approved by Council on 18 December 2014. This consent was never activated.
- Development Application N0409/17 for the demolition of existing dwelling and construction of a new dwelling house was approved by Council on 3 January 2018. This dwelling house has been constructed.
- Development Application DA2020/0070 for alterations and additions to a dwelling house including a swimming pool was approved by Council on 9 March 2020.

APPLICATION HISTORY

A site inspection was carried out on 4 July 2024.

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 DA2020/0070, 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	 The consent authority can be satisfied that the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted under DA2020/0070 for the following reasons: The revised pool level and associated paved concourse is located below the natural contours of the site and will result in lesser amenity impacts to adjoining properties in terms 			
modified (if at all), and	 of visual privacy and noise when compared to the approved development as a result. The development remains alterations and additions to a dwelling house including a swimming pool. 			
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application DA2020/0070 did not require concurrence from the relevant Minister, public authority or approval body.			



Section 4.55 (2) - Other	Comments
Modifications	
(c) it has notified the	The application has been publicly exhibited in accordance with the
application in accordance with:	Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021, and the Northern
(i) the regulations, if the	Beaches Community Participation Plan.
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	
(d) it has considered any	No submissions were received in relation to this application.
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.	

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 (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	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning	None applicable.



Section 4.15 'Matters for	Comments
Consideration'	
agreement	
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 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.
	<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.
	<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.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social	 (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.
and economic impacts in the locality	(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.
	(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.
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	No submissions were received.
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 21/06/2024 to 05/07/2024 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 of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	The application is for modification to development consent DA2020/0070, to reduce the height of the pool out of the ground. The approved consent included landscape area adjacent to the pool along the southern boundary and to the eastern boundary and the modifi9cation introduces paving to the eastern boundary and part southern boundary adjacent to the pool. The landscape area calculation however remain unaltered from the approved plans to the modification plans. Should the Assessing Planning Officer raise no issues with the landscape area reduction, Landscape Referral raise no concerns.
NECC (Bushland and Biodiversity)	The proposed modification will not result in additional environmental impacts as changes are minor. There are therefore no objections from a biodiversity perspective.
NECC (Riparian Lands and Creeks)	Supported without conditions This application was assessed in consideration of: - Supplied plans and reports; - Coastal Management Act 2016; - State Environmental Planning Policy (Resilience and Hazards) 2021; - Relevant LEP and DCP clauses; and - Northern Beaches Council Water management for development policy. This proposal is supported without conditions as modifications are minor. Conditions of original DA still apply.

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 (Sustainable Buildings) 2022

A revised BASIX Certificate has been submitted for the modified swimming pool, which meets the requirements of SEPP (Sustainable Buildings) 2021. A condition is recommended to ensure that the swimming pool is constructed in accordance with this revised BASIX Certificate.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

The site is subject to Chapter 2 of the SEPP as the development will be carried out within the 'proximity area for coastal wetlands'. Accordingly, an assessment under Chapter 2 has been carried out as follows:

2.8 Development on land in proximity to coastal wetlands or littoral rainforest

- 1) Development consent must not be granted to development on land identified as "proximity area for coastal wetlands" or "proximity area for littoral rainforest" on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:
 - a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or
 - *b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.*

Comment:

The modifications to the approved swimming pool are minor in nature and will not result in adverse environmental impacts to the Nareen Wetlands which is located approximately 57m to the east of the swimming pool. The existing conditions of consent will mitigate any adverse impacts to the wetlands in terms of sediment dispersion into the wetlands.

Comment:

Division 5 General

2.12 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 modifications are minor in nature and will not cause increased risk of coastal hazards within the locality.

2.13 Development in coastal zone generally—coastal management programs to be considered

Development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal



management program that applies to the land.

Comment:

The development does not contravene any coastal management programs.

As such, it is considered that the application complies with the requirements of Chapter 2 of the State Environmental Planning Policy (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.

Pittwater Local Environmental Plan 2014

Is the development permissible?	Yes	
After consideration of the merits of the proposal, is the development consistent	t 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	1.2m	1.2m	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.10 Essential services	Yes

Detailed Assessment

5.21 Flood planning

The modified works are located outside of the flood affected portions of the site and therefore, will not alter flooding behavior and extent or create any off-site flooding impacts.

7.2 Earthworks



The modified development includes additional excavation and retaining walls to lower the levels of the swimming pool coping and to provide the concrete pool concourse around the swimming pool.

The modification application has been accompanied by an addendum to the approved Geotechnical Report, which states that the additional excavation works are acceptable and will pose a low risk to life and property. Council concurs with these findings and considers that no additional conditions or mitigation measures are required for the modified earthworks, noting that the impacts of earthworks are adequately addressed by the existing conditions of consent.

Pittwater 21 Development Control Plan

Built Form Control	Requirement	Approved	Proposed	Complies
Front building line	6.5m	pool >6.5m from front boundarymodified works in rear yard and over 6.5m from front boundary		Yes
Rear building line	6.5m	1.5m (swimming pool)	0.54m (edge of pool concourse paving)	No
Side building line	2.5m (south)	nil (access stairs)	nil (access stairs) 0.25m (edge of pool concourse paving)	No
	1m (north)	nil (access stairs)	nil (access stairs) - no further non-compliance	No further non- compliance
Building	3.5m (south)	Within Envelope	Within Envelope	Yes
envelope	3.5m (north)	Within Envelope	Within Envelope	Yes
Landscaped area	50%	51.27% (238.15sqm)	unaltered*	Yes

Built Form Controls

Notes:

1. Impervious areas 1m or less are included in landscaped area calculations under section D11.10 of the P21DCP. The new concrete paving concourse adjacent to the pool is not wider than 1m and therefore, is included as landscaped area.

2. Retaining walls are excluded from the minimum setback requirements under the P21DCP.

Clause Compliance Consistency with Aims/Objectives Requirements A1.7 Considerations before consent is granted Yes Yes Yes A4.11 North Narrabeen Locality Yes B3.11 Flood Prone Land Yes Yes B4.5 Landscape and Flora and Fauna Enhancement Category 3 Yes Yes Land B4.22 Preservation of Trees and Bushland Vegetation Yes Yes **B5.15 Stormwater** Yes Yes B8.1 Construction and Demolition - Excavation and Landfill Yes Yes **B8.3** Construction and Demolition - Waste Minimisation Yes Yes

Compliance Assessment



Clause	Compliance with Requirements	Consistency Aims/Objectives
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
D11.2 Scenic protection - General	Yes	Yes
D11.6 Front building line	Yes	Yes
D11.7 Side and rear building line	No	Yes
D11.9 Building envelope	Yes	Yes
D11.10 Landscaped Area - General	Yes	Yes
D11.12 Fences - General	Yes	Yes
D11.14 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes

Detailed Assessment

C1.6 Acoustic Privacy

The original development consent did not include an on-going condition to limit the noise emissions of the swimming pool plant equipment. As such, a suitable condition is recommended to ensure that the swimming pool filter plant equipment does not generate noise emissions that exceed 5dBA above background noise when measured from the nearest property boundary, as defined by the Protection of the Environments Operation Act 1997. This condition will ensure that the noise impacts created from the pool plant equipment are acceptable.

D11.7 Side and rear building line

Section D11.7 of the Pittwater 21 Development Control Plan (P21DCP) requires development to be setback 1m from one side boundary, 2.5m from the other and 6.5m from the rear boundary. The approved swimming pool included variations to the southern side setback requirement of 2.5m and the rear setback requirement of 6.5m. These non-compliances were supported on merit as the pool did not demonstrate inconsistency with the outcomes of section D11.7 of the P21DCP.

The modification application does not alter the footprint of the swimming pool; however, introduces a small, paved swimming pool concourse that will be setback 0.25m from the southern side boundary and 0.54m from the rear boundary. Therefore, the modified development does not comply with the prescribed requirements under section D11.7 of the P21DCP.

When considering the technical non-compliances on merit, it is noted that the swimming pool concourse is excavated below natural ground level and will not provide opportunities for direct overlooking into the private open space on the adjoining properties to the rear and south. The pool concourse area will also increase the usability of the pool, while not providing any substantial changes



in terms of noise impacts as the concourse area is only 1m in width and not conducive for large gatherings.

The new concourse area will also not necessitate the removal of any vegetation on the site or adjoining properties and will not significantly change the landscaping outcome for the site.

For the reasons outlined above, it is concluded that the modified development will remain consistent with the outcomes of section D11.7 of the P21DCP. Therefore, flexibility has been afforded to the numerical requirement of this control, consistent with section 4.15(3A)(b) of the EP&A Act.

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 inconsistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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;
- Pittwater Local Environment Plan;
- Pittwater Development Control Plan; and
- Codes and Policies of Council.

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

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

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



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

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2024/0282 for Modification of Development Consent DA2020/0070 granted for Alterations and additions to a dwelling house including a swimming pool on land at Lot 252 DP 16212,131 Gondola Road, NORTH NARRABEEN, subject to the conditions printed below:

Modification Summary

The development consent is modified as follows:

MODIFICATION SUMMARY TABLE

Application Number	Determination Date	Modification description
Mod2024/0282	The date of this notice of determination	 Add Condition 1A - Modification of Consent - Approved Plans and supporting Documentation Add Condition 24 - Noise Emissions from Plant Equipment

Modified conditions

A. Add Condition No.1A to read as follows:

1A. Modification of Consent - Approved Plans and supporting documentation

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		
DAMOD1008	N/A	Landscape Plan	Rapid Plans	10 May 2024		
DAMOD1009	N/A	Sediment & Erosion Plan	Rapid Plans	10 May 2024		
DAMOD2001	N/A	Ground Floor	Rapid Plans	10 May 2024		
DAMOD3000	N/A	Section 1	Rapid Plans	10 May 2024		
DAMOD3001	N/A	Section Pool	Rapid Plans	10 May 2024		



Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Geotechnical Report titled 'Section 4.55 Modification Letter'	AG 20035.01	AscentGeo	28 May 2024
BASIX Certificate	A1748558	Rapid Plans Pty Ltd	22 May 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. Add Condition 24 to read as follows:

24. Noise Emissions from Plant Equipment

All plant equipment must be installed and operated at times so as not to cause 'offensive noise'. It must be demonstrated that the noise level will not exceed 5dBA above background noise when measured from the nearest property boundary, as defined by the Protection of the Environments Operation Act 1997.

Reason: To ensure compliance with legislation and to protect the acoustic amenity of neighbouring properties.

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

Signed

Thomas Burns, Principal Planner

The application is determined on 09/07/2024, under the delegated authority of:





Steven Findlay, Manager Development Assessments