

**Four Towns
Planning**

Planning and property consultant

STATEMENT OF MODIFICATION

**Section 4.55 (1A) Modification
to DA2022/0246 - Demolition
works, subdivision of 4 lots into
2 lots and the construction of 1
dwelling on each lot including
swimming pools and landscape
works**

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This report has been prepared to support a Section 4.55 (1A) Modification Application under the *Environmental Planning and Assessment Act 1979*.

Report prepared by:

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Report prepared for:

Ella Miles

26 June 2024

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1. Introduction and Background Information

1.1 Introduction

This report has been prepared as supporting documentation for a Section 4.55 (1A) Modification to Development Application DA2022/0246 approved for demolition works, subdivision of 4 lots into 2 lots and the construction of 1 dwelling on each lot including swimming pools and landscape works at 120 Prince Alfred Road, Newport, been Lot 34 in Deposited Plan 13457, Lot 35 in Deposited Plan 13457, Lot B in Deposited Plan 391307, Lot 9 in Deposited Plan 752046 and Licence 190387.

This report has been prepared following instructions from the client Ella Miles. In preparing this application consideration has been given to the following:

- *Environmental Planning and Assessment Act, 1979* (as amended) (EP&A Act);
- Environmental Planning and Assessment Regulation 2021;
- Relevant State Environmental Planning Policies;
- Pittwater Local Environmental Plan 2014 (PLEP 2014);
- Pittwater Development Control Plan 21 (PDCP21);
- Architectural Plans prepared by ARCLAB Pty Ltd;
- BASIX Certificate prepared by Chapman Environmental Services.

This Statement of Environmental Effects describes the proposed development having particular regard to the provisions of Section 4.15 of the EP&A Act 1979 and examines any potential environmental impacts with regard to the relevant sections of the Act, State policies and requirements of Northern Beaches Council's PDCP.

The conclusions of the Statement of Modification are that the proposed amendments are permissible with development consent and are consistent with the relevant statutory planning instruments including Pittwater Local Environmental Plan 2014 and relevant planning policies of Pittwater Development Control Plan 21.

Accordingly, the application succeeds on its merits and should be approved by Council, as submitted.

1.2 Background Information

The site is currently under construction relating to the approval granted on 14 December 2022 for DA2022/0246 for demolition works, subdivision of 4 lots into 2 lots and the construction of 1 dwelling on each lot including swimming pools and landscape works.

The application relates to minor cosmetic changes which do not change the approved building footprint or building height.

2. Site Profile

2.1 Property Description

The subject allotment is described as 120 Prince Alfred Road, Newport, being:

- Lot 34 in Deposited Plan 13457
- Lot 35 in Deposited Plan 13457
- Lot B in Deposited Plan 391307
- Lot 9 in Deposited Plan 752046
- Licence 190387

The site is zoned C4 Environmental Living and W1 Natural Waterways under Pittwater Local Environmental Plan 2014. The site is not listed as a heritage item, nor is it located within a heritage conservation area.

2.2 Site and Locality Description

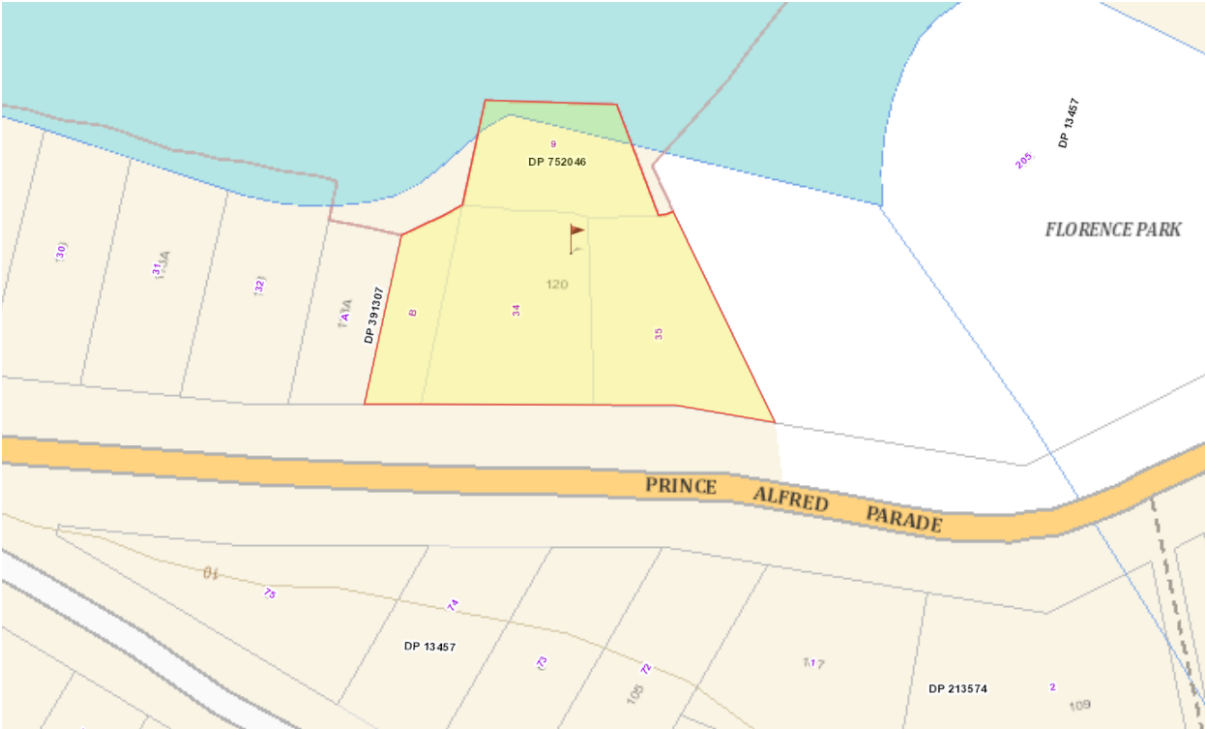
The site is located on the northern side of Prince Alfred Parade to the east of the intersection with Elvina Avenue. The site is irregular in shape with a 58.87m frontage to Prince Alfred Parade and a rear boundary to Salt Pan Cove. The property has vehicular access off Prince Alfred Parade. The existing property has a single storey dwelling house and detached garage with studio. The site also has a licence to boat shed on the eastern boundary. The locality maps below and on the following page show the location and area of the site:

Locality Maps



Source: NSW Land and Property Information 2021

Section 4.55 (1A) Modification



Source: NSW Land and Property Information 2021

3. Proposal

The proposed Section 4.55 (1A) Modification is in relation to Development Application DA2022/0246 approved for *demolition works, subdivision of 4 lots into 2 lots and the construction of 1 dwelling on each lot including swimming pools and landscape works.*

The proposed modification works include the following:

- MOD A – addition of spa within approved swimming pool footprint
- MOD B – kayak store and retaining wall amendment
- MOD C – increase to gym door
- MOD D – lift void deleted (ground floor)
- MOD E – raised garden bed removed to natural level
- MOD F – master ensuite layout amended
- MOD G – lift void deleted (first floor)
- MOD H – bathroom layout amendment
- MOD I – guest bed layout amendment
- MOD J – new skylights
- MOD K – window and door amendments
- MOD M – wall amendment between hall and dining
- MOD N – powder room layout amendment
- MOD O – Lift void deleted (all levels)
- MOD P – master ensuite layout amendment
- MOD Q – new skylights

Note – the proposed modifications are cosmetic and do not change the merit-based assessment granted under DA2022/0246. The proposed modification retains the approved building footprints and building heights, as approved under DA2022/0246.

**Refer to architectural plans prepared by ARCLAB Pty Ltd for a full description of all proposed modification works.*

Proposed Modification to Conditions of Consent DA2022/0246:**Condition 1****1. Approved Plans and Supporting Documentation**

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

*a) Approved Plans***To be deleted****~~Architectural Plans—Endorsed with Council's stamp~~**

Drawing No.	Dated	Prepared By
Driveway profile, DA01, revision D	11.11.2022	Corben Architects
Site plan, DA03, revision D	11.11.2022	Corben Architects
Ground level plan, DA05, revision D	11.11.2022	Corben Architects
First floor plan, DA06, revision D	11.11.2022	Corben Architects
Entry level plan, DA07, revision D	11.11.2022	Corben Architects
North and south elevations, DA08, revision D	11.11.2022	Corben Architects
Eastern elevations, DA09, revision D	11.11.2022	Corben Architects
Western elevations, DA10, revision D	11.11.2022	Corben Architects
Sections, DA11, revision D	11.11.2022	Corben Architects
Streetscape and materials/finishes schedule, DA12, revision D	11.11.2022	Corben Architects
Building envelope section, DA13, revision D	11.11.2022	Corben Architects
Erosion and sediment control plan, DA17, revision D	11.11.2022	Corben Architects

Proposed Modification:**Architectural Plans - Endorsed with Council's stamp**

Drawing No.	Dated	Prepared By
Site Plan, MOD101, Rev MOD A	14.06.2024	ARCLAB Pty Ltd
Ground Floor Level, MOD102, Rev MOD A	14.06.2024	ARCLAB Pty Ltd
First Floor Level, MOD103, Rev MOD A	14.06.2024	ARCLAB Pty Ltd
Entry Level, MOD104, Rev MOD A	14.06.2024	ARCLAB Pty Ltd
North South Elevation, MOD105, Rev MOD A	14.06.2024	ARCLAB Pty Ltd

Section 4.55 (1A) Modification

East Elevations, MOD106, Rev MOD A	14.06.2024	ARCLAB Pty Ltd
West Elevations, MOD107, Rev MOD A	14.06.2024	ARCLAB Pty Ltd
Sections, MOD108, Rev MOD A	14.06.2024	ARCLAB Pty Ltd
Sections Driveway, MOD109, Rev MOD A	14.06.2024	ARCLAB Pty Ltd
Sediment and Erosion, MOD113, Rev MOD A	14.06.2024	ARCLAB Pty Ltd
Window and Door Schedule P1, MOD102, Rev MOD A	14.06.2024	ARCLAB Pty Ltd
Window and Door Schedule P2, MOD102, Rev MOD A	14.06.2024	ARCLAB Pty Ltd
Window and Door Schedule P3, MOD102, Rev MOD A	14.06.2024	ARCLAB Pty Ltd
Window and Door Schedule P4, MOD102, Rev MOD A	14.06.2024	ARCLAB Pty Ltd

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Statement of Environmental Effects	11 February 2022	Four Towns Pty Ltd
Geotechnical Report Ref:J3814	12 November 2021	White Geotechnical Group
BASIX Certificate 1258806S (120A Prince Alfred Pde)	9 February 2022	Delisle Hunt Wood Pty Ltd
BASIX Certificate 1258883S (120 Prince Alfred Pde)	9 February 2022	Delisle Hunt Wood Pty Ltd
BASIX Certificate	26 June 2024	Chapman Environmental Services
BASIX Certificate	26 June 2024	Chapman Environmental Services
Arboricultural Impact Assessment	11 February 2022	Michael Shaw
Letter - Existing Crib Retaining Wall - 120 & 120a Prince Alfred Parade, Newport	13 September 2022	Taylor Consulting

4. Statutory Planning Controls

The proposal has been assessed in accordance with the following instruments and controls:

- *Environmental Planning and Assessment Act 1979*, and *Environmental Planning and Assessment Regulation 2021*;
- State Environmental Planning Policies;
- Pittwater Local Environmental Plan 2014; and
- Pittwater Development Control Plan 21.

4.1 *Environmental Planning and Assessment Act 1979* (EP&A Act 1979) and *Environmental Planning and Assessment Regulation 2021* (EP&A Regulation 2021)

The EP&A Act 1979 governs all environmental planning instruments within New South Wales. The proposal has been reviewed pursuant to the matters for consideration within Section 4.15 of the EP&A Act 1979.

The proposal is not Designated Development under Section 4.10 of the EP&A Act 1979 or Schedule 3 of the EPA Assessment Regulation 2021, therefore Northern Beaches Council is the Consent Authority. The proposal is Integrated Development under the EP&A Act 1979, Section 4.46 with concurrence granted by the Department of Planning and Environment - Water under DA2022/0246.

Statutory Provisions for Section 4.55 (1A) Modification

It is submitted that the proposed modification falls within the definition of a Section 4.55 Modification of Consents – generally, Clause (1A), being:

(1A) Modifications involving minimal environmental impact A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if—

- (a) it is satisfied that the proposed modification is of minimal environmental impact, and*
- (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (c) it has notified the application in accordance with—*
 - (i) the regulations, if the regulations so require, or*
 - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

Subsections (1), (2) and (5) do not apply to such a modification.

Source: EP&A Act 1979, Section 4.55

The proposed modification relates to minor cosmetic changes to the proposed development which include the addition of a spa within the approved swimming pool footprint, internal changes, window amendments and the addition of skylights. The proposed modification does not change the approved building footprint, nor does it change the approved building heights. It is my assessment that the amendments do not constitute a substantial change to the development as consented, or to such a degree that it would not be considered substantially the same development. The modifications as submitted, have been reviewed and it is concluded that these modifications are acceptable and do not result in any significant adverse impacts upon the amenity or privacy of the building, neighbourhood, nor significantly change the development as approved and notified to the public previously.

In support of this position, due consideration has been given to numerous decisions made by the NSW Land and Environment Court and by the NSW Court of Appeal involving applications made pursuant to Section 4.55 of the EP&A Act. In this regard, particular reference is made to the City of Sydney vs Ilenc Pty Ltd (1984) 3 NSWLR 414 and Moto Projects (No 2) Pty Ltd vs North Sydney Council (1999) 106 LGERA 298. In both these cases, it was established that the proposed modification would result in a building or development that would be “essentially or materially” the same as the currently approved development.

This position has been further reinforced by the Land and Environment Court of New South Wales, which has held that the question of substantially the same means ‘essentially or materially of having the same essence’ (Talbot J in Wolgon Action Group Incorporated versus Lithgow City Council in 2001 and Pearlman J in Schroders Australia Property Management Pty Ltd versus Shoalhaven City Council and Anor 1999).

A number of other cases have also been reviewed as part of the qualitative assessment of the application and it is submitted that the development the subject of this application is substantially the same as previously approved. The essential components of the principal end land use have not changed; the proposed modification relates to cosmetic changes for the approved dwellings which is consistent with changes during the design and construction phase of a project. The proposed modifications will not change the bulk and scale of the proposal with the intent of the building retained and consistent with the residential zoning.

It is therefore submitted that the following outcomes are relevant to this proposed modification:

- This application for modification of a development consent does not significantly alter the external appearance or built form of the subject premises to any degree that it would represent a building of a different urban design to the approved development.
- The built form outcome is relatively the same in terms of overall bulk, scale and appearance of the development that has been previously approved, noting that the approved building footprints and building heights are retained as approved.
- The amenity and streetscape outcomes of the original development consent are retained with no adverse impacts from the amendments in terms of amenity for privacy or visual impacts.
- The use of the land will remain for the purpose of a dwelling house (times two) and subdivision, as approved by Council.

The modification does not alter the merit-based assessment that generated the approval by Northern Beaches Council. The approval, if modified, will retain the essence of the original consent and is therefore considered to fall within the relevant tests for Section 4.55 of The Act. The application meets the requirements of a Section 4.55 (1A) Modification, and therefore the consent authority can consider and grant consent to the application on the basis that the development will remain substantially the same as that originally approved by Northern Beaches Council.

Environmental Planning and Assessment Regulation 2021

The following is an assessment under Clause 100 of the EPA Regulation 2021:

100 Content of modification application

(1) A modification application must contain the following information—

(a) the name and address of the applicant,

Mrs Ella Miles
120 Prince Alfert Parade, Newport

(b) a description of the development that will be carried out under the development consent,
Section 4.55 (1A) Modification to DA2022/0246 for demolition works, subdivision of 4 lots into 2 lots and the construction of 1 dwelling on each lot including swimming pools and landscape works

(c) the address and folio identifier of the land on which the development will be carried out,
120 Prince Alfred Road, Newport

- Lot 34 in Deposited Plan 13457
- Lot 35 in Deposited Plan 13457
- Lot B in Deposited Plan 391307
- Lot 9 in Deposited Plan 752046
- Licence 190387

(d) a description of the modification to the development consent, including the name, number and date of plans that have changed, to enable the consent authority to compare the development with the development originally approved,

Refer to page 7 Heading 3 'The Proposal' within this report.

(e) whether the modification is intended to—

- (i) merely correct a minor error, misdescription or miscalculation, or*
- (ii) have another effect specified in the modification application,*

The modification is submitted under Section 4.55 (1A) of the Act. The effects are addressed throughout this report.

(f) a description of the expected impacts of the modification,

The expected impacts of the modification are addressed throughout this report. In summary, the expected impacts are minor with the application retaining the essence of the approval granted under DA2022/0246.

(g) an undertaking that the modified development will remain substantially the same as the development originally approved,

Refer to pages 8 and 9 of this report which address the matters noting the development will remain substantially the same as the development originally approved under DA2022/0246. The proposed

modification retains the approved building footprints and building heights with the proposal for cosmetic changes with minimal impact to that approved.

(h) for a modification application that is accompanied by a biodiversity development assessment report—the biodiversity credits information,

Not applicable.

(i) if the applicant is not the owner of the land—a statement that the owner consents to the making of the modification application,

Noted and provided with application package.

(j) whether the modification application is being made to—

(i) the Court under the Act, section 4.55, or

(ii) the consent authority under the Act, section 4.56.

The application is made to the consent authority under Section 4.55 of the Act.

(2) Subsection (1)(i) does not apply if the consent of the owner is not required under section 98.

Noted.

(3) If a modification application under the Act, section 4.55(1A) or (2) relates to BASIX development, or BASIX optional development if the development application was accompanied by a BASIX certificate, the application must be accompanied by—

(a) the BASIX certificate, or

(b) a new BASIX certificate if the current BASIX certificate is no longer consistent with the development.

Complies – a revised BASIX Certificate is provided with the application.

(4) In this section—

biodiversity credits information, in relation to a modification application, means the reasonable steps taken to obtain the like-for-like biodiversity credits required to be retired under a biodiversity development assessment report if different biodiversity credits are proposed to be used as offsets in accordance with the variation rules under the [Biodiversity Conservation Act 2016](#).

Not applicable.

4.2 State Environmental Planning Policies (SEPPs)

SEPP (Transport and Infrastructure) 2021

It is submitted that the site does not fall under the provisions of SEPP (Transport and Infrastructure) 2021 and therefore no assessment is required.

SEPP (Sustainable Buildings) 2022

The proposed modification is supported by a revised BASIX certificate which confirms compliance with the relevant requirements for Water and Energy.

SEPP (Resilience and Hazard) 2021

Chapter 2 Coastal management

The aims of Chapter 2 of the SEPP (Resilience and Hazards) 2021 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 site is identified as a coastal environment area and coastal use area as per the maps above. The proposed modifications relate to cosmetic changes therefore, the proposal does not change the merit-based approval granted under DA2022/0246. On this basis, the approval was granted, and it was considered the proposed development would not have an adverse impact on the coastal environment or use of the area. Therefore, the proposal meets the relevant requirements under Chapter 2.

Chapter 4 Remediation of land

Chapter 4 of the SEPP (Resilience and Hazards) 2021 requires the consent authority to consider whether land is contaminated prior to granting of consent to the carrying out of any development on that land.

4.6 Contamination and remediation to be considered in determining development application

- (1) A consent authority must not consent to the carrying out of any development on land unless—
- (a) it has considered whether the land is contaminated, and
 - (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and
 - (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.
- (2) Before determining an application for consent to carry out development that would involve a change of use on any of the land specified in subsection (4), the consent authority must consider a report specifying the findings of a preliminary investigation of the land concerned carried out in accordance with the contaminated land planning guidelines.
- (3) The applicant for development consent must carry out the investigation required by subsection (2) and must provide a report on it to the consent authority. The consent authority may require the applicant to carry out, and provide a report on, a detailed investigation (as referred to in the contaminated land planning guidelines) if it considers that the findings of the preliminary investigation warrant such an investigation.
- (4) The land concerned is—
- (a) land that is within an investigation area,
 - (b) land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been, carried out,
 - (c) to the extent to which it is proposed to carry out development on it for residential, educational, recreational or child care purposes, or for the purposes of a hospital—land—
 - (i) in relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in Table 1 to the contaminated land planning guidelines has been carried out, and
 - (ii) on which it would have been lawful to carry out such development during any period in respect of which there is no knowledge (or incomplete knowledge).

It is submitted that the site has been used for the purpose of residential accommodation for decades. The builder/contractors should take all measures to ensure if contamination is found during construction that relevant procedures are followed to report and remove contaminated materials. As above, the site was approved under DA2022/0246, with the assessment and determination based on low risk for contamination and no further assessment required.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

State Environmental Planning Policy (Biodiversity and Conservation) 2021 relates to various rescinded SEPPs that related to the preservation of trees and vegetation, koala habitat and bushland in urban areas. The aims of this Policy are to protect the biodiversity values of trees and other vegetation, and to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation. The development remains consistent with the approval granted under DA2022/0246 with the landscape area retained as approved.

4.3 Pittwater Local Environmental Plan 2014 (PLEP2014)

The relevant matters to be considered under PLEP2014 are outlined below in the LEP summary compliance table.

Part 1: Preliminary		
Standard	Control	Comments
1.2 Aims of Plan	(a) to promote development in Pittwater that is economically, environmentally and socially sustainable, (b) to ensure development is consistent with the desired character of Pittwater's localities, (g) to protect and enhance Pittwater's natural environment and recreation areas, (h) to conserve Pittwater's European and Aboriginal heritage, (i) to minimise risks to the community in areas subject to environmental hazards including climate change, (j) to protect and promote the health and well-being of current and future residents of Pittwater.	The proposed modifications relate to cosmetic changes which do not change the merit-based assessment and approval granted under DA2022/0246. The modifications meet the relevant aims of PLEP2014.

Part 2 Permitted or prohibited development		
Standard	Control	Comments
2.5 Additional permitted uses for particular land	(1) Development on particular land that is described or referred to in Schedule 1 may be carried out— (a) with development consent, or (b) if the Schedule so provides—without development consent, in accordance with the conditions (if any) specified in that Schedule in relation to that development. (2) This clause has effect despite anything to the contrary in the Land Use Table or other provision of this Plan.	Not applicable – the site includes zone W1 Natural Waterways. The proposal does not include development for the purposes of new boat sheds, jetties or water recreation structures.
2.6 Subdivision—consent requirements	(1) Land to which this Plan applies may be subdivided, but only with development consent. Notes— 1 If a subdivision is specified as exempt development in an applicable environmental planning instrument, such as this Plan	Not applicable – no change to the approval granted under DA2022/0246.

	<p>or State Environmental Planning Policy (Exempt and Complying Development Codes) 2008, the Act enables it to be carried out without development consent.</p> <p>2 Part 6 of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 provides that the strata subdivision of a building in certain circumstances is complying development.</p> <p>(2) Development consent must not be granted for the subdivision of land on which a secondary dwelling is situated if the subdivision would result in the principal dwelling and the secondary dwelling being situated on separate lots, unless the resulting lots are not less than the minimum size shown on the Lot Size Map in relation to that land.</p> <p>Note—The definition of secondary dwelling in the Dictionary requires the dwelling to be on the same lot of land as the principal dwelling.</p>	
2.7 Demolition requires development consent	<p>The demolition of a building or work may be carried out only with development consent.</p> <p>Note— If the demolition of a building or work is identified in an applicable environmental planning instrument, such as this Plan or State Environmental Planning Policy (Exempt and Complying Development Codes) 2008, as exempt development, the Act enables it to be carried out without development consent.</p>	Not applicable – no change to the approval granted under DA2022/0246.

Part 4: Principal Development Standards			
Standard	Permitted	Proposed	Comments
4.1 Minimum subdivision lot size	700sqm	N# 120 - 800sqm and N# 120a - 831.6sqm	Not applicable – no change to the approval granted under DA2022/0246.
4.1AA Minimum subdivision lot size for community title schemes	N/A	N/A	N/A

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4.1B Minimum lot sizes for dual occupancies	N/A	N/A	N/A
4.2 Rural subdivision	N/A	N/A	N/A
4.2A Minimum subdivision lot size for strata plan schemes in certain rural, residential and environment protection zones	N/A	N/A	N/A
4.3 Height of buildings	8.5m	N/A	Not applicable – no change to the building heights granted under DA2022/0246.
4.4 Floor space ratio	N/A	N/A	N/A
4.5 Calculation of floor space ratio and site area	Noted	N/A	N/A
4.5A Density controls for certain residential accommodation	N/A	N/A	N/A
4.6 Exceptions to development standards	Noted	Yes	Not applicable – no change to the building heights granted under DA2022/0246.

Part 5: Miscellaneous Provisions	
Provisions	Comments
5.1 Relevant acquisition authority	N/A
5.1A Development on land intended to be acquired for a public purposes	N/A
5.2 Classification and reclassification of public land	N/A
5.3 Development near zone boundaries	N/A
5.4 Controls relating to miscellaneous permissible uses	N/A
5.5 (Repealed)	N/A
5.6 Architectural roof features	N/A
5.7 Development below mean high water mark	N/A
5.8 Conversion of fire alarms	N/A
5.9, 5.9AA (Repealed)	N/A
5.10 Heritage conservation	N/A
5.11 Bush fire hazard reduction	N/A
5.12 Infrastructure development and use of existing buildings of the Crown	N/A
5.13 Eco-tourist facilities	N/A

5.14 Siding Spring Observatory – maintaining dark sky	N/A
5.15 Defence communications facility	N/A
5.16 Subdivision of, or dwellings on, land in certain rural, residential or environmental protection zones	N/A
5.17 Artificial waterbodies in environmentally sensitive areas in areas of operation of irrigation corporations	N/A
5.18 Intensive livestock agriculture	N/A
5.19 Pond-based, tank-based and oyster aquaculture	N/A
5.20 Standards that cannot be used to refuse consent—playing and performing music	N/A
5.21 Flood planning	Not applicable – no change to the merit-based assessment of flooding under DA2022/0246.
5.22 Special flood considerations	N/A
5.23 Public bushland	N/A
5.24 Farm stay accommodation	N/A
5.25 Farm gate premises	N/A

Part 6: Urban Release Areas

Provisions	Comments
6.1 to 6.2	N/A – the site is not located within an urban release area.

Part 7: Relevant Additional Local Provisions

Provisions	Comments
7.1 Acid sulfate soils	Not applicable – no change to the approval granted under DA2022/0246.
7.2 Earthworks	Not applicable – no change to the approval granted under DA2022/0246.
7.3 (Repealed)	N/A
7.4 Floodplain risk management	Not applicable – no change to the approval granted under DA2022/0246.
7.5 Coastal risk planning	N/A – the proposal is not identified in the areas highlighted as coastal risk planning.
7.6 Biodiversity	N/A – the site is not located within the biodiversity map.
7.7 Geotechnical hazards	The site is identified within the geotechnical hazards map. A Geotechnical Investigation prepared by White Geotechnical Group was provided with the original application and maintains recommendations as approved.
7.8 Limited development on foreshore area	The site is identified with land within the foreshore area. The proposal has been designed to comply with Clause 7.8.

7.9 Residual lots	N/A
7.10 Essential service	The proposal provides relevant services as per Clause 7.10.
7.11 Converting serviced apartments to residential flat buildings	N/A
7.12 Location of sex service premises	N/A
7.13 Development on land at 6 Mitchell Road, Palm Beach	N/A

Relevant Schedules	
Schedule	Comments
Schedule 1 – Additional permitted uses	The foreshore area is identified as Area 23.
Schedule 2 – Exempt development	N/A
Schedule 3 – Complying development	N/A
Schedule 4 – Classification and reclassification of public land	N/A
Schedule 5 – Environmental heritage	N/A
Schedule 6 – Pond-based and tank-based aquaculture	N/A

4.4 Pittwater Development Control Plan (PDCP21)

In designing the built form, due consideration must be given to the respective sections and objectives of PDCP, in particular:

- Section B General Controls
- Section C Development Control Types
- Section D Locality Specific Development Controls

Key components of the DCP have been detailed below. The proposal is compliant with relevant provisions of PDCP21.

Key components of the DCP have been detailed in the table below.

Pittwater Development Control Plan		
	Requirement	Proposed
Building Envelope	Planes are to be projected at 45 degrees from a height of 3.5 metres above ground level (existing) at the side boundaries to the maximum building height Variations can be applied – refer to D10.11 Building Envelope	Not applicable – no change to building envelope approved under DA2022/0246.
Front Setback	6.5m or established building line, whichever is the greater	Not applicable – no change to front setbacks approved under DA2022/0246.
Side Setbacks	2.5m at least to one side; 1.0m for other side	Not applicable – no change to side setbacks approved under DA2022/0246.
Rear Setback	Foreshore building line applies	Not applicable – no change to rear setback approved under DA2022/0246.
Landscaping	Total landscaped area shall be 60% of the site area Variations can be applied – refer to D10.13 Landscaped Area - Environmentally Sensitive Land	Not applicable – no change to landscaping areas approved under DA2022/0246.
Private Open Space	Minimum 80sqm at ground level	Not applicable – no change to private open space areas approved under DA2022/0246.

Section A Shaping Development in Pittwater		
Control	Proposed	Compliance
A4.10 Newport Locality <i>Desired Character</i> <i>The Newport locality will remain primarily a low-density residential area with dwelling houses a</i>	The proposed modification relates to cosmetic amendments which have been strategically designed by the project architects	Yes

maximum of two storeys in any one place in a natural landscaped setting, integrated with the landform and landscape. Secondary Dwellings can be established in conjunction with another dwelling to encourage additional opportunities for more compact and affordable housing with minimal environmental impact in appropriate locations. Any dual occupancy dwellings will be located on the valley floor and lower slopes that have less tree canopy coverage, species and habitat diversity and fewer other constraints to development. Any medium density housing will be located within and around commercial centres, public transport and community facilities. Retail, community and recreational facilities will serve the community.

Future development is to be located so as to be supported by adequate infrastructure, including roads, water and sewerage facilities, and public transport.

Future development will maintain a building height limit below the tree canopy and minimise bulk and scale. Existing and new native vegetation, including canopy trees, will be integrated with the development. Contemporary buildings will utilise facade modulation and/or incorporate shade elements, such as pergolas, verandahs and the like. Building colours and materials will harmonise with the natural environment. Development on slopes will be stepped down or along the slope to integrate with the landform and landscape, and minimise site disturbance. Development will be designed to be safe from hazards.

A balance will be achieved between maintaining the landforms, landscapes and other features of the natural environment, and the development of land. As far as possible, the locally native tree canopy and vegetation will be retained and enhanced to assist development blending into the natural environment, to provide feed trees and undergrowth for koalas and other animals, and to enhance wildlife corridors.

Heritage items and conservation areas indicative of the Guringai Aboriginal people and of early settlement in the locality will be conserved.

and the client with a view to provide a contemporary building.

The proposal complies with the desired character of the Newport locality and therefore warrants approval as submitted.

<p><i>Vehicular, pedestrian and cycle access within and through the locality will be maintained and upgraded. The design and construction of roads will manage local traffic needs, minimise harm to people and fauna, and facilitate co-location of services and utilities.</i></p> <p><i>Newport's coastal setting is what contributes most to the distinctive character of the commercial centre. Responsive, energy efficient buildings will support and enhance this relaxed, beachfront character and its outdoor lifestyle, contributing to a unique sense of place. Contemporary design solutions within the commercial centre will respond to Newport's climate and setting, including providing shade and shelter to streets and entries, generous private outdoor spaces, openings that capture ocean breezes, and shade elements.</i></p>		
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Section C Development Type Controls

Control	Proposed	Compliance
<u>C1 Design Criteria for Residential Development</u>		
<p><i>C1.1 Landscaping</i> <i>Controls</i> <i>All canopy trees, and a majority (more than 50%) of other vegetation, shall be locally native species. Species selection and area of landscape to be locally native species is determined by extent of existing native vegetation and presence of an Endangered Ecological Community. Note if the land is within an Endangered Ecological Community there will be a Development Control specifically covering the requirements for Landscaping in an Endangered Ecological Community.</i></p> <p><i>In all development a range of low-lying shrubs, medium-high shrubs and canopy trees shall be retained or provided to soften the built form.</i></p> <p><i>At least 2 canopy trees in the front yard and 1 canopy tree in the rear yard are to be provided on site. Where there are existing canopy trees, but no natural tree regeneration, tree species are to be planted</i></p>	<p>Not applicable – no change to landscaping approved under DA2022/0246.</p>	<p>Yes</p>

to ensure that the canopy is retained over the long-term. Where there are no canopy trees the trees to be planted are to be of sufficient scale to immediately add to the tree canopy of Pittwater and soften the built form.

Each tree planted is to have a minimum area of 3 metres x 3 metres and a minimum 8m³ within this area to ensure growth is not restricted.

The following soil depths are required in order to be counted as landscaping:

- *300mm for lawn*
- *600mm for shrubs*
- *1metre for trees*

The front of buildings (between the front boundary and any built structures) shall be landscaped to screen those buildings from the street as follows:

- *A planter or landscaped area with minimum dimensions of 4m² for shop top housing developments,*
- *60% for a single dwelling house, secondary dwelling, rural workers' dwellings, or dual occupancy, and*
- *50% for all other forms of residential development.*

Screening shall be of vegetation (not built items), and shall be calculated when viewed directly onto the site.

In bushfire prone areas, species shall be appropriate to the bushfire hazard.

Landscaping shall not unreasonably obstruct driver and pedestrian visibility.

Development shall provide for the reasonable retention and protection of existing significant trees, especially near property boundaries, and retention of natural features such as rock outcrops.

Canopy trees are to be located a minimum of 5 metres from existing and proposed built structures, or minimum of 3 metres where pier and beam

<p><i>footings are used.</i></p> <p><i>Noxious and undesirable plants must be removed from the site</i></p>		
<p>C1.2 Safety and Security Controls <i>There are four Crime Prevention through Environmental Design (CPTED) principles that need to be used in the assessment of development applications to minimise the opportunity for crime they include the following.</i></p>	<p>The proposal has been designed to comply with the four principles of CPTED.</p>	<p>Yes</p>
<p>C1.3 View Sharing Controls <i>All new development is to be designed to achieve a reasonable sharing of views available from surrounding and nearby properties.</i></p> <p><i>The proposal must demonstrate that view sharing is achieved though the application of the Land and Environment Court's planning principles for view sharing.</i></p> <p><i>Where a view may be obstructed, built structures within the setback areas are to maximise visual access through the structure e.g. by the provision of an open structure or transparent building materials.</i></p> <p><i>Views are not to be obtained at the expense of native vegetation.</i></p>	<p>Not applicable – no changes to building height, footprint or envelope approved under DA2022/0246.</p>	<p>N/A</p>
<p>C1.4 Solar Access Controls <i>The main private open space of each dwelling and the main private open space of any adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st.</i></p> <p><i>Windows to the principal living area of the proposal, and windows to the principal living area of adjoining dwellings, are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st (that is, to at least 50% of the glazed area of those windows).</i></p> <p><i>Solar collectors for hot water or electricity shall receive at least 6 hours of sunshine between 8.00am</i></p>	<p>Not applicable – no changes to building height, footprint or envelope approved under DA2022/0246.</p>	<p>N/A</p>

<p><i>and 4.00pm during mid winter.</i></p> <p><i>Developments should maximise sunshine to clothes drying areas of the proposed development or adjoining dwellings.</i></p> <p><i>The proposal must demonstrate that appropriate solar access is achieved through the application of the Land and Environment Court planning principle for solar access.</i></p> <p><i>Variations</i> <i>General</i> <i>Where the following constraints apply to a site, reasonable solar access to the main private open space and to windows to the principal living area will be assessed on a merit basis:</i></p> <ul style="list-style-type: none"> <i>• where the orientation or shape of a lot precludes northerly orientation (20° west to 30° east of north),</i> <i>• where there is adverse slope or topography,</i> <i>• where there is existing vegetation, obstruction, development or fences that overshadow, or</i> <i>• where other controls have priority, e.g. heritage and landscaping considerations.</i> <p><i>Subject to a merit assessment, consent may be granted where a proposal does not comply with the standard, provided the resulting development is consistent with the general principles of the development control, the desired future character of the locality and any relevant State Environmental Planning Policy.</i></p>		
<p>C1.5 Visual Privacy <i>Controls</i> <i>Private open space areas including swimming pools and living rooms of proposed and any existing adjoining dwellings are to be protected from direct overlooking within 9 metres by building layout, landscaping, screening devices or greater spatial separation as shown in the diagram below (measured from a height of 1.7 metres above floor level).</i></p> <p><i>Elevated decks and pools, verandahs and balconies</i></p>	<p>The proposed modification includes minor changes to windows approved under DA2022/0246. In this regard all windows proposed for amendment have either been reduced in size or provided with screens. Therefore, the proposed modification will have no further impact to that</p>	<p>Yes</p>

<p><i>should incorporate privacy screens where necessary and should be located at the front or rear of the building.</i></p> <p><i>Direct views from an upper level dwelling shall be designed to prevent overlooking of more than 50% of the private open space of a lower level dwelling directly below.</i></p> <p><i>Direct views of private open space or any habitable room window within 9m can be restricted (see diagram below) by:</i></p> <ul style="list-style-type: none"> • <i>vegetation/landscaping</i> • <i>a window sill height 1.7 metres above floor level, or</i> • <i>offset windows</i> • <i>fixed translucent glazing in any part below 1.7 metres above floor level, or</i> • <i>solid translucent screens or perforated panels or trellises which have a maximum of 25% openings, and which are:</i> <ul style="list-style-type: none"> • <i>permanent and fixed;</i> • <i>made of durable materials; and</i> • <i>designed and painted or coloured to blend in with the dwelling.</i> 	<p>approved under DA2022/0246.</p>	
<p>C1.6 Acoustic Privacy</p> <p><i>Controls</i></p> <p><i>Noise-sensitive rooms, such as bedrooms, should be located away from noise sources, including main roads, parking areas, living areas and communal and private open space areas and the like.</i></p> <p><i>Walls and/or ceilings of dwellings that are attached to another dwelling/s shall have a noise transmission rating in accordance with Part F(5) of the Building Code of Australia. (Walls and ceilings of attached dwellings must also comply with the fire rating provisions of the Building Code of Australia).</i></p> <p><i>Noise generating plants including pool/spa motors, air conditioning units and the like shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.</i></p>	<p>The subject development will not impact the acoustic amenity of the occupants, nor will it impact the amenity of adjoining neighbours.</p> <p>Any noise generating plant requirements such as pool motors and air-conditioning units will be designed to not produce noise levels above 5dBA and will be strategically placed and screened/soundproofed if required.</p>	<p>Yes</p>

<p><i>Developments must comply in all respects with the Protection of the Environment Operations Act 1997, and other relevant legislation.</i></p>		
<p>C1.7 Private Open Space <i>Controls</i> <i>Private open space shall be provided as follows:-</i></p> <p><i><u>a) Dwelling houses, attached dwellings, semi-detached dwellings, and dual occupancies:-</u></i></p> <p><i>Minimum 80m² of private open space per dwelling at ground level, with no dimension less than 3 metres. No more than 75% of this private open space is to be provided in the front yard.</i></p> <p><i>Within the private open space area, a minimum principal area of 16m² with a minimum dimension of 4m and grade no steeper than 1 in 20 (5%).</i></p> <p><i>Dwellings are to be designed so that private open space is directly accessible from living areas enabling it to function as an extension of internal living areas.</i></p> <p><i>Private open space areas are to have good solar orientation (i.e. orientated to the north-east or north-west where possible). Where site or slope constraints limit optimisation of orientation, the private open space area must have access to some direct sunlight throughout the year (see Solar Access).</i></p> <p><i>Private open space should be located to the rear of the dwelling to maximise privacy for occupants.</i></p> <p><i>Where this open space needs to be provided to the front of the dwelling, the area should be screened from the street to ensure that the area is private.</i></p> <p><i>A balcony located above ground level, but which has access off living areas of dwellings, can be included as private open space. The dimensions should be sufficient so that the area can be usable for recreational purposes (i.e. a minimum width of 2.4m). First floor balconies along the side boundary must be designed to limit overlooking and maintain privacy of adjoining residential properties.</i></p>	<p>Not applicable – no change to private open space area approved under DA2022/0246.</p>	<p>N/A</p>

<p><i>Private open space areas should include provision of clothes drying facilities, screened from the street or a public place. Shared clothes drying facilities are acceptable.</i></p> <p><i>An accessible and usable area for composting facilities within the ground level private open space is required.</i></p>		
<p>C1.9 Adaptable Housing and Accessibility <i>Accessibility for all development</i></p> <p><i>Development shall include the design and construction of works in the public domain to ensure accessibility for the full frontage of the site to any public road and to ensure access to the site from the public domain.</i></p> <p><i>Development within areas subject to flooding must provide for access on land within private ownership. In this regard ramps must not encroach into the public domain.</i></p>	<p>Not applicable – no change to the merit-assessment approved under DA2022/0246.</p>	<p>N/A</p>
<p>C1.12 Waste and Recycling Facilities <i>Controls</i></p> <p><i>All development that is, or includes, demolition and/or construction, must comply with the appropriate sections of the Waste Management Guidelines and all relevant Development Applications must be accompanied by a Waste Management Plan</i></p>	<p>Not applicable – no change to the merit-assessment approved under DA2022/0246.</p>	<p>N/A</p>
<p>C1.13 Pollution Control <i>Controls</i></p> <p><i>Residential development must be designed, constructed, maintained and used in a proper and efficient manner to prevent air, water, noise and/or land pollution.</i></p> <p><i>Developments must comply in all respects with the Protection of the Environment Operations Act 1997, and other relevant legislation.</i></p>	<p>Not applicable – no change to the merit-assessment approved under DA2022/0246.</p>	<p>N/A</p>
<p>C1.14 Separately Accessible Structures <i>Controls</i></p>	<p>The proposal does not include separately accessible structures.</p>	<p>N/A</p>

<p><i>A separately accessible structure may be permitted for use as a studio, home office, workshop area, rumpus room and the like, provided that:</i></p> <ol style="list-style-type: none"> <i>i. it is ancillary to a dwelling;</i> <i>ii. it is not designed for separate habitation and does not contain any cooking facilities.</i> <p><i>Variations</i> <i>Where the purpose of the structure or its distance from the nearest bathroom facility dictates, bathroom/toilet facilities may be allowed.</i></p>		
<p>C1.17 Swimming Pool Safety <i>Controls</i> <i>Swimming pool fencing and warning notices (resuscitation chart) shall be manufactured, designed, constructed, located and maintained in accordance with the Swimming Pools Act 1992 and regulations. The fencing and warning notices (resuscitation chart) shall be permanent structures.</i></p>	<p>The swimming pools for both 120 and 120a Prince Alfred Parade have been designed to comply with relevant swimming pool legislation and will be registered as required before occupation.</p>	<p>Yes</p>
<p>C1.19 Incline Passenger Lifts and Stairways <i>Controls</i> <i>Incline passenger lifts and stairways shall:</i></p> <ol style="list-style-type: none"> <i>i. be designed and located so they do not involve excessive excavation, or the removal of natural rock or trees, and</i> <i>ii. be erected as near as possible to the ground level (existing) of the site, and shall not involve the erection of high piers or visible retaining structures, and</i> <i>iii. be located and designed to minimise the effects of noise from the motor and overlooking of adjoining dwellings, and</i> <i>iv. be painted to blend in with surrounding vegetation and screened by landscaping and</i> <i>v. be set back two (2) metres from the side boundary to the outer face of the carriage</i> <i>vi. be located wholly on private land, and</i> <i>vii. have a privacy screen where there is a direct view within 4.5m to a window of a habitable room of another dwelling.</i> <p><i>On steeply sloping existing lots, incline passenger lifts are preferred to driveways where the required driveway grade may be difficult to achieve and would have an adverse impact on the landform,</i></p>	<p>Not applicable – no change to the merit-assessment approved under DA2022/0246.</p>	<p>N/A</p>


<p><i>appearance, vegetation and species habitat. In such cases, a proposal will be subject to assessment based on merits, and should be no more than 1 metre above the existing ground level.</i></p> <p><i>Incline passenger lifts will not be accepted in lieu of vehicular access for new subdivisions.</i></p> <p><i>The noise level shall not exceed 60dB(A), when measured one metre from any adjoining premises.</i></p> <p><i>Variations</i> <i>Where an incline passenger lift is shared between lots, the 2m side boundary setback does not apply to those lots.</i></p>		
<p>C1.23 Eaves <i>Controls</i> <i>Dwellings shall incorporate eaves on all elevations. Eaves must be a minimum of 450mm in width, excluding any fascia/barge boards and gutters.</i></p>	<p>Not applicable – no change to the merit-assessment approved under DA2022/0246.</p>	<p>N/A</p>
<p>C1.24 Public Road Reserve - Landscaping and Infrastructure <i>Controls</i> <u><i>Landscaping General - All Development</i></u> <i>Landscaping within the public road reserve is to include street trees planted at 6m centres. Street trees are to be planted to encourage the free passage of pedestrians. Street trees should not interfere with existing powerlines. All existing trees over 3m in height and native vegetation within the road reserve areas are to be retained where practical. The existing trees are to be protected during the construction of works through temporary perimeter fencing that is 1.8m high. New tree plantings are to be a minimum 35 litre size with 1m x1m hole and backfilled with suitable planting medium. Trees are to be appropriately supported by two stakes (minimum 50mm x 50mm) with Hessian ties. To ensure a consistent streetscape the new tree plantings are to be the same as the existing adjacent street trees. Where appropriate, Council encourages the use of local endemic native species according to the list of</i></p>	<p>Not applicable – no change to the merit-assessment approved under DA2022/0246.</p>	<p>N/A</p>


<p><i>local native species in Pittwater.</i> <i>Grassed areas are to be turfed with Couch species (weed free) and even grade to a maximum 4% grade. All work is subject to a Section 139 approval from Council.</i></p> <p><u><i>Dwelling Houses, Secondary Dwellings and Dual Occupancy</i></u> <i>The location of new landscaping (street trees) is not to hinder the future construction of a 1.5m wide footpath in location to be nominated by Council and is subject to a Section 139 approval from Council.</i></p> <p><i>Variations</i> <i>Where the landscaping or infrastructure in the public road reserve currently exists, the requirements of this control in respect to the specific landscaping or infrastructure item need not apply.</i> <i>Where the landscaping or infrastructure in the public road is located in steep terrain the landscaping and infrastructure requirements will be considered on merit.</i></p> <p><i>The merit for deciduous trees will only be considered on the grounds of solar access.</i></p>		
<p>C1.25 Plant, Equipment Boxes and Lift Over-Run Controls <i>Where provided, plant and equipment boxes, air conditioning units and lift over-runs are to be integrated internally into the design fabric of the built form of the building. Council does not encourage air conditioning units on the roof of residential flat buildings and multi dwelling housing. The location of air conditioning units shall be indicated on development assessment plans for approval at the time of Development Application lodgement.</i></p> <p><i>Locate and design all noise generating equipment such as mechanical plant rooms, mechanical equipment, air conditioning units, mechanical ventilation from car parks, driveway entry shutters, garbage collection areas or similar to protect the acoustic privacy of workers, residents and neighbours.</i></p>	<p>Not applicable – no change to the merit-assessment approved under DA2022/0246.</p>	<p>N/A</p>


<p><i>Variations</i></p> <p><i>Subject to achievement of the outcomes of this control, consideration may be given to the location of plant, equipment boxes and lift over-runs on the roof a building where it can be shown that there will not be a non-compliance with Council's built form controls including building height and building envelope.</i></p> <p><i>Where located on the roof any plant, equipment boxes and lift over-runs are to be adequately screened from view from adjoining properties and the public domain.</i></p>		
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Section D Locality Specific Development Controls

Control	Proposed	Compliance
<u>D10 Newport Locality</u>		
<p>D10.1 Character as viewed from a public place</p> <p><i>Controls</i></p> <p><i>Buildings which front the street must have a street presence and incorporate design elements (such as roof forms, textures, materials, the arrangement of windows, modulation, spatial separation, landscaping etc) that are compatible with any design themes for the locality. Blank street frontage facades without windows shall not be permitted.</i></p> <p><i>Walls without articulation shall not have a length greater than 8 metres to any street frontage.</i></p> <p><i>Any building facade to a public place must incorporate at least two of the following design features:</i></p> <ol style="list-style-type: none"> <i>i. entry feature or portico;</i> <i>ii. awnings or other features over windows;</i> <i>iii. verandahs, balconies or window box treatment to any first floor element;</i> <i>iv. recessing or projecting architectural elements;</i> <i>v. open, deep verandahs; or</i> <i>vi. verandahs, pergolas or similar features above garage doors.</i> 	<p>The proposed dwellings have been designed with articulation, modulation and varying bulk and scale with the integration of new landscaping for the sites. The proposed modification relates to cosmetic changes which will be negligible to the streetscape, therefore not impacting the character as assessed and approved under DA2022/0246.</p>	<p>Yes</p>

<p><i>The bulk and scale of buildings must be minimised.</i></p> <p><i>Garages, carports and other parking structures including hardstand areas must not be the dominant site feature when viewed from a public place. Parking structures should be located behind the front building line, preferably set back further than the primary building, and be no greater in width than 50% of the lot frontage, or 7.5 metres, whichever is the lesser.</i></p> <p><i>Landscaping is to be integrated with the building design to screen the visual impact of the built form. In residential areas, buildings are to give the appearance of being secondary to landscaping and vegetation.</i></p> <p><i>Television antennas, satellite dishes and other telecommunications equipment must be minimised and screened as far as possible from public view.</i></p> <p><i>General service facilities must be located underground.</i></p> <p><i>Attempts should be made to conceal all electrical cabling and the like. No conduit or sanitary plumbing is allowed on facades of buildings visible from a public space.</i></p>		
<p>D10.3 Scenic protection - General <i>Controls</i> <i>Development shall minimise any visual impact on the natural environment when viewed from any waterway, road or public reserve.</i></p>	<p>The proposed modification relates to cosmetic changes which will be negligible to the streetscape, public reserve and waterway therefore not impacting that assessed and approved under DA2022/0246.</p>	<p>Yes</p>
<p>D10.4 Building colours and materials <i>Controls</i> <i>External colours and materials shall be dark and earthy tones as shown below:</i></p> 	<p>Not applicable – no change to colours and materials approved under DA2022/0246.</p>	<p>N/A</p>

<p><i>White, light coloured, red or orange roofs and walls are not permitted:</i></p> 		
<p>D10.7 Front building line <i>Controls</i> <i>The minimum front building line shall be in accordance with the following table:</i> <i>All other land zoned R2 Low Density Residential or E4 Environmental Living - 6.5 or established building line, whichever is the greater.</i></p> <p><i>Where the outcomes of this control are achieved, Council may accept variation to these building lines in the following circumstances:</i></p> <ul style="list-style-type: none"> • <i>considering established building lines;</i> • <i>degree of cut and fill;</i> • <i>retention of trees and vegetation;</i> • <i>where it is difficult to achieve acceptable levels for building;</i> • <i>for narrow or irregular shaped blocks;</i> • <i>where the topographic features of the site need to be preserved;</i> • <i>where the depth of a property is less than 20 metres.</i> 	<p>The proposed modification relates to cosmetic changes which do not change the front setback assessed and approved under DA2022/0246.</p>	<p>N/A</p>
<p>D10.8 Side and rear building line <i>Controls</i> <i>The minimum side and rear building line for built structures including pools and parking structures, other than driveways, fences and retaining walls, shall be in accordance with the following table:</i></p> <p><i>Land zoned R2 Low Density Residential or E4 Environmental Living</i> <i>2.5 to at least one side; 1.0 for other side</i> <i>6.5 (rear) unless Foreshore Building Line applies</i></p> <p><i>Variations</i> <i>For swimming pools and spas a 1 metre minimum setback from the boundary to the pool coping may be permitted subject to the following:</i></p>	<p>The proposed modification relates to cosmetic changes which do not change the side of rear setbacks assessed and approved under DA2022/0246.</p>	<p>N/A</p>

<ul style="list-style-type: none"> • <i>satisfactory landscaping within the setback from the pool or spa coping to the side or rear boundary, and</i> • <i>Council is satisfied that the adjoining properties will not be adversely affected, and</i> • <i>the pool or spa is not more than 1 metre above ground level (existing), and</i> • <i>that the outcomes of this clause are achieved without strict adherence to the standards, and</i> • <i>where the site constraints make strict adherence to the setback impractical, and</i> • <i>where strict compliance with these requirements will adversely impact on the views of adjoining residential properties.</i> 		
<p>D10.11 Building envelope Controls <i>Buildings are to be sited within the following envelope:</i></p>  <p><i>Development other than residential flat buildings and multi dwelling housing:</i></p> <p><i>Planes are to be projected at 45 degrees from a height of 3.5 metres above ground level (existing) at the side boundaries to the maximum building height (refer to Pittwater Local Environmental Plan 2014).</i></p> <p>Variations <i>Where the building footprint is situated on a slope over 16.7 degrees (ie; 30%), variation to this control will be considered on a merits basis.</i> <i>Eaves or shading devices that provide shade in summer and maximise sunlight in winter, shall be permitted to extend outside the building envelope.</i></p>	<p>The proposed modification relates to cosmetic changes which do not change the building envelopes assessed and approved under DA2022/0246.</p>	<p>N/A</p>
<p>D10.13 Landscaped Area - Environmentally Sensitive Land Controls</p>	<p>The proposed modification relates to cosmetic changes which do not change the</p>	<p>N/A</p>

<p><i>The total landscaped area on land zoned R2 Low Density Residential or E4 Environmental Living shall be 60% of the site area.</i></p> <p><i>The use of porous materials and finishes is encouraged where appropriate.</i></p> <p><i>Any alterations or additions to an existing dwelling shall provide a minimum 60% of the site area as landscaped area.</i></p> <p><i>Variations</i> <i>Provided the outcomes of this control are achieved, the following may be permitted on the landscaped proportion of the site:</i></p> <ol style="list-style-type: none"> <i>1. impervious areas less than 1 metre in width (e.g. pathways and the like);</i> <i>2. for single dwellings on land zoned R2 Low Density Residential or E4 Environmental Living, up to 6% of the total site area may be provided as impervious landscape treatments providing these areas are for outdoor recreational purposes only (e.g. roofed or unroofed pergolas, paved private open space, patios, pathways and uncovered decks no higher than 1 metre above ground level (existing)).</i> 	<p>landscape areas assessed and approved under DA2022/0246.</p>	
<p>D10.14 Fences - General Controls <u><i>a. Front fences and side fences (within the front building setback)</i></u></p> <p><i>Front fences and side fences (within the front building setback) shall:</i></p> <ul style="list-style-type: none"> <i>• not exceed a maximum height of 1 metre above existing ground level,</i> <i>• be compatible with the streetscape character, and</i> <i>• not obstruct views available from the road.</i> <p><i>Fences are to be constructed of open, see-through, dark-coloured materials.</i></p> <p><i>Landscaping is to screen the fence on the road side. Such landscaping is to be trimmed to ensure clear view of pedestrians and vehicles travelling along the roadway, for vehicles and pedestrians exiting the site.</i></p>	<p>N/A</p>	<p>N/A</p>

<p><i>Original stone fences or stone fence posts shall be conserved.</i></p> <p><i><u>b. Rear fences and side fences (to the front building line)</u></i></p> <p><i>Fencing is permitted along the rear and side boundaries (other than within the front building setback) to a maximum height of 1.8 metres.</i></p> <p><i><u>e. Fencing in Category 1 and 2 areas</u></i></p> <p><i>No front fences will be permitted.</i></p> <p><i>Vegetation is preferred to any fencing</i></p> <p><i>Side and rear fences where necessary are to be constructed of dark coloured materials and shall not obstruct the passage of wildlife and shall have opening(s) with minimum dimension of 150mm accessible to ground dwelling animals.</i></p> <p><i>Fencing required for the containment of companion animals should be minimised.</i></p>		
<p>D10.16 Construction, Retaining walls, terracing and undercroft areas</p> <p><i>Controls</i></p> <p><i>Lightweight construction and pier and beam footings should be used in environmentally sensitive areas.</i></p> <p><i>Retaining walls and terracing shall be kept to a minimum. Where retaining walls and terracing are visible from a public place, preference is given to the use of sandstone or sandstone like materials.</i></p> <p><i>In the provision of outdoor entertaining areas, preference is given to timber decks rather than cut/fill, retaining walls and/or terracing.</i></p> <p><i>Undercroft areas shall be limited to a maximum height of 3.5 metres. Adequate landscaping shall be provided to screen undercroft areas.</i></p>	<p>The proposed modification relates to cosmetic changes only.</p>	<p>N/A</p>
<p>D10.18 Scenic Protection Category One Areas</p> <p><i>Controls</i></p>	<p>The proposed modification relates to cosmetic changes which</p>	<p>Yes</p>

<p><i>Screen planting shall be located between structures and boundaries facing waterways.</i></p> <p><i>Canopy trees are required between dwellings and boundaries facing waterways and waterfront reserves.</i></p> <p><i>Development is to minimise the impact on existing significant vegetation.</i></p> <p><i>The applicant shall demonstrate the retention and regeneration of existing native vegetation outside of the immediate area required to carry out the development.</i></p> <p><i>The development is to incorporate measures for planting and maintenance of native vegetation within those areas which are already cleared, and which are not required to be cleared to allow for the development.</i></p> <p><i>The siting, building form, orientation and scale of the development shall not compromise the visual integrity of the site by removal of canopy trees along ridges and upper slopes.</i></p> <p><i>The development must incorporate the use of unobtrusive and non-reflective materials and the colours of exterior surfaces shall help blend structures into the natural environment.</i></p> <p><i>Applicants are to demonstrate that proposed colours and materials will be dark and earthy.</i></p>	<p>will not have a visual impact on the natural environment when viewed from any waterway, road or public reserve.</p>	
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5. Matters for Consideration Pursuant to Section 4.15 of the Environmental Planning & Assessment Act 1979

The following matters are to be taken into consideration when assessing an application pursuant to Section 4.15 of the *Environmental Planning and Assessment Act 1979* (as amended). Guidelines (in *italic*) to help identify the issues to be considered have been prepared by the Department of Planning and Environment. The relevant issues are:

(a) The provisions of:

(i) The provision of any Environmental Planning Instrument

Comment: The proposal is permissible and consistent with the intent of the Pittwater Local Environmental Plan and Development Control Plan as they are reasonably applied to the proposed works given the constraints imposed by the site's location, topography and environmental constraints.

(ii) Any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and

Comment: Not applicable.

(iii) Any development control plan

Comment: The proposal has been reviewed and assessed under Pittwater Development Control Plan 21.

(iiia) Any Planning Agreement that has been entered into under section 7.4 or any draft planning agreement that a developer has offered to enter into under Section 7.4, and

Comment: Not applicable.

(iv) The Regulations (to the extent that they prescribe matters for the purposes of this paragraph), and

Comment: Not applicable.

(v) (repealed)

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

Context and Setting:

i. What is the relationship to the region and local context in terms of:

- *The scenic qualities and features of the landscape*
- *The character and amenity of the locality and streetscape*
- *The scale, bulk, height, mass, form, character, density and design of development in the locality*
- *The previous and existing land uses and activities in the locality*

Comment: The proposed modification is consistent with the design of dwelling houses in the immediate area. The resultant dwelling houses will be compatible with neighbouring developments with no adverse residential amenity impacts in terms of views, privacy and overshadowing.

ii. What are the potential impacts on adjacent properties in terms of:

- *Relationship and compatibility of adjacent land uses?*
- *sunlight access (overshadowing)*
- *visual and acoustic privacy*
- *views and vistas*
- *edge conditions such as boundary treatments and fencing*

Comment: These matters have been discussed in detail earlier in this report. The works have been designed such that potential impacts are minimal and within the scope of the built form controls.

Access, transport and traffic:

Would the development provide accessibility and transport management measures for vehicles, pedestrians, bicycles and the disabled within the development and locality, and what impacts would occur on:

- *Travel Demand*
- *dependency on motor vehicles*
- *traffic generation and the capacity of the local and arterial road network*
- *public transport availability and use (including freight rail where relevant)*
- *conflicts within and between transport modes*
- *Traffic management schemes*
- *Vehicular parking spaces*

Comment: The proposal includes access to both lots with provision for a double garage within the building footprint of each new dwelling. 120a Prince Alfred Parade also retains the existing crossover and will provide a turning bay for vehicles to enter and leave in a forward direction.

Public Domain

Comment: The proposed development will have no adverse impact on the public domain. A thorough analysis has been provided throughout this report and the skilfully designed dwellings have been maximised while ensuring no impact when viewed from the water, foreshore or streetscape of Prince Alfred Parade.

Utilities

Comment: Existing utility services will connect to service the dwellings.

Flora and Fauna

Comment: The proposal does not have an adverse impact to flora or fauna. The proposal will enhance the existing landscaping on the site.

Waste Collection

Comment: Normal domestic waste collection applies for residential dwelling with adequate bin storage provided for both lots.

Natural hazards

Comment: The site is located within a Geotechnical Risk Area, within the Estuarine Planning Level, and the Flood Planning map. The modification is for cosmetic changes only which do not change the merit-based assessment and approval granted under DA2022/0246.

Economic Impact in the locality

Comment: The proposed development will not have any significant impact on economic factors within the area notwithstanding that it will generate additional employment opportunities through the construction period with respect to the proposed works.

Site Design and Internal Design

i) Is the development design sensitive to environmental considerations and site attributes including:

- *size, shape and design of allotments*
- *The proportion of site covered by buildings*
- *the position of buildings*
- *the size (bulk, height, mass), form, appearance and design of buildings*
- *the amount, location, design, use and management of private and communal open space*
- *Landscaping*

Comment: These matters have been discussed in detail earlier in this report. The potential impacts are considered to be minimal and within the scope of the general principles, desired future character and built form controls.

ii) How would the development affect the health and safety of the occupants in terms of:

- *lighting, ventilation and insulation*
- *building fire risk – prevention and suppression*
- *building materials and finishes*
- *a common wall structure and design*
- *access and facilities for the disabled*
- *likely compliance with the Building Code of Australia*

Comment: The proposed development can comply with the provisions of the Building Code of Australia. The proposal complies with the relevant standards pertaining to health and safety and will not have any detrimental effect on the occupants.

Construction

i) What would be the impacts of construction activities in terms of:

- *The environmental planning issues listed above*
- *Site safety*

Comment: The proposal will employ normal site safety measures and procedures will ensure that no safety or environmental impacts will arise during construction.

(c) The suitability of the site for the development

- *Does the proposal fit in the locality*
- *Are the constraints posed by adjacent development prohibitive*

- *Would development lead to unmanageable transport demands and are there adequate transport facilities in the area*
- *Are utilities and services available to the site adequate for the development*
- *Are the site attributes conducive to development*

Comment: The site is located in an established residential area. The adjacent development does not impose any unusual or impossible development constraints. The proposed development will not cause unmanageable levels of transport demand with the use as a dwelling house for both lots.

(d) Any submissions received in accordance with this act or regulations

Comment: No submissions are available at this time.

(e) The public interest

Comment: The proposed works are permissible and consistent with the intent of PLEP2014 and PDGP21 controls as they are reasonably applied to the proposed demolition of existing dwelling house, subdivision into (2) Torrens Title lots and the construction of a new dwelling house on each new lot including a swimming pool and associated landscaping works. Development would not be contrary to the public interest.

In our opinion, the development satisfies the planning regime applicable to development on this particular site having regards to the considerations arising from its context.

The proposal is acceptable when assessed against the heads of consideration pursuant to Section 4.15 of the *Environmental Planning and Assessment Act, 1979* (as amended), and is appropriate for the granting of consent and accordingly, is in the public interest.

6. Summary and Conclusion

The proposed Section 4.55 (1A) Modification to Development Application DA2022/0246 approved for demolition works, subdivision of 4 lots into 2 lots and the construction of 1 dwelling on each lot including swimming pools and landscape works at 120 Prince Alfred Road, Newport, been Lot 34 in Deposited Plan 13457, Lot 35 in Deposited Plan 13457, Lot B in Deposited Plan 391307, Lot 9 in Deposited Plan 752046 and Licence 190387, is permissible and consistent with the intent of the built form controls as they are reasonably applied to the proposed works. It is considered that the proposal is appropriate on merit and is worthy of the granting of development consent for the following reasons:

- The merits of the application have been assessed in accordance with the provisions of the relevant requirements of PLEP 2014 and the provisions of Section 4.15 of the *Environmental Planning and Assessment Act 1979* (as amended). There is no evidence that the impacts of the development would warrant amendment to the subject proposal or justify refusal. Where a variation is proposed, adequate documentation has been provided to support the application.
- The proposal has been assessed under Section 4.55 (1A) with the proposal meeting the requirements of substantially the same development with minimal environmental impacts.

Accordingly, the proposal for a Section 4.55 (1A) Modification to Development Application DA2022/0246 approved for demolition works, subdivision of 4 lots into 2 lots and the construction of 1 dwelling on each lot including swimming pools and landscape works at 120 Prince Alfred Road, Newport, is acceptable from environmental, social, and planning perspectives and approval should therefore be granted by Northern Beaches Council.