

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2022/0156
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Responsible Officer:	Dean Pattalis
Land to be developed (Address):	Lot 1 DP 22450, 77 Foamcrest Avenue NEWPORT NSW 2106 Lot 2 DP 22450, 75 Foamcrest Avenue NEWPORT NSW 2106
Proposed Development:	Modification of Development Consent DA2020/1695 granted for Construction of a Residential Flat Building
Zoning:	R3 Medium Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Project Venture Development NO 4 Pty Ltd
Applicant:	Project Venture Development NO 4 Pty Ltd

Application Lodged:	06/05/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	21/06/2022 to 05/07/2022
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

The application proposes to modify the consent under DA2020/1695 for the construction of a residential flat building.

The modification works consist of:

- Relocation of proposed OSD tank to under the driveway
- The location of the originally approved OSD tank, integrated within the basement structure, shall be converted into internal storage space.
- Slight lowering of the ground level of the basement by 100mm

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

There are no assessment issues.

SITE DESCRIPTION

Property Description:	<p>Lot 1 DP 22450 , 77 Foamcrest Avenue NEWPORT NSW 2106</p> <p>Lot 2 DP 22450 , 75 Foamcrest Avenue NEWPORT NSW 2106</p>
Detailed Site Description:	<p>The subject site consists of two (2) allotment located on the eastern side of Foamcrest Avenue.</p> <p>The site is regular in shape with a frontage of 30.48m along Foamcrest Avenue and a depth of 45.72m. The site has a surveyed area of 1393m².</p> <p>The site is located within the R3 Medium Density Residential zone.</p> <p>The site is relatively level with very slight fall to the rear.</p> <p>The site has established vegetation along the rear boundary consisting of medium and tall shrubs and canopy trees.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by</p>

two storey medium density residential development. Immediately to the north of the site is a two storey medium density development with basement parking. To the south of the site is a single storey cottage which is the last remaining single dwelling the eastern side of this block along Foamcrest Avenue. Across the road to the west are two storey medium density residential developments.

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:

Application **DA2020/1695** for Construction of a Residential Flat Building (Approved by DDP on 05/05/2021)

Application **CDC2021/0809** for Demolition of existing dwelling - XC2021-/00168

Application **CDC2021/0808** Demolition of existing dwelling - XC2021-/00167

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 DA2020/1695, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55(1A) - Other Modifications	Comments
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	<p>The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons:</p> <p>The original development application sought consent for the construction of a residential flat building.</p> <p>The proposed modification works do not alter any built form controls of the approved development and are considered not to result in any adverse amenity impacts. As a result, the spatial relationship of the proposed works to adjoining properties is adequately maintained with a complimentary and compatible streetscape presentation.</p> <p>As the proposed modification is not considered to increase the scope of the works to an extent that an unreasonable adverse impact will be incurred to the amenity or desired future character of the locality, Council can be satisfied that the modified works are of minimal environmental impact.</p>
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	<p>The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2020/1695 for the following reasons:</p> <p>The original development application sought consent for the construction of a residential flat building.</p> <p>As the proposed modification is not considered to increase the scope of the works to an extent that an unreasonable adverse impact will be incurred to the amenity or desired future character of the locality, Council is satisfied that the proposed works are substantially the same as those already approved under DA2020/1695.</p>
(c) it has notified the application in accordance with:	The application has been publicly exhibited in accordance with the Environmental Planning and

Section 4.55(1A) - Other Modifications	Comments
(i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	Assessment Act 1979, Environmental Planning and Assessment Regulation 2001, and the Northern Beaches Community Participation Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	No submissions were received in relation to this application.

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no draft instruments which apply to this development.
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)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62</u> and/or 64 of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 21/06/2022 to 05/07/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>
Environmental Health (Acid Sulphate)	<p>General Comments</p> <p>Proposed modification to the approved DA 2020/1695 includes movement of the OSD westward, to be placed beneath the driveway. In the geotech report, bore hole two is in the approximate location of the OSD, showing that underlying soils are of a low likelihood of the presence of Acid Sulfate Soils (PASS or AASS). Furthermore, the excavation depth of the OSD does not appear to exceed the trigger value of excavation 'more than 2 metres bgl' that would require detailed investigation and management as per the <i>Acid Sulfate Soil Manual 1998</i>.</p> <p>Due to the low level of risk, reasoning that design principles account for the predominant importance of lifelong structural integrity (protection of concrete/steel from ASS is considered in design), we have no objections to the proposed MOD, and recommend no changes to the existing ASS condition.</p>
NECC (Development Engineering)	No objections to the modification which proposes to relocate the OSD tank to under the driveway. Conditions will be provided.

External Referral Body	Comments

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations have been included as a condition of consent under the original application.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 65 - Design Quality of Residential Apartment Development

Clause 4 of State Environmental Planning Policy No. 65 – Design Quality for Residential Apartment Development (SEPP 65) stipulates that:

(1) This Policy applies to development for the purpose of a residential flat building, shop top housing or mixed use development with a residential accommodation component if:

- (a) the development consists of any of the following:
 - (i) the erection of a new building,
 - (ii) the substantial redevelopment or the substantial refurbishment of an existing building,
 - (iii) the conversion of an existing building, and
- (b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and
- (c) the building concerned contains at least 4 or more dwellings.

As previously outlined the proposed development is for the erection of a 2 storey residential flat 'housing' development plus basement car parking for the provisions of 7 self-contained dwellings.

As per the provisions of Clause 4 outlining the application of the policy, the provisions of SEPP 65 are not applicable to the assessment of this application, as the building is only 2 stories.

DESIGN REVIEW PANEL

Under DA2020/1695, the application was referred to the DSAP for review and advice. Although the

proposal does not fall under SEPP 65, given the nature and scale of the development the application was referred to the DSAP for review and the recommendations provided remain relevant under this modification.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No.1157603M_04 dated 23 March 2022).

A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Transport and Infrastructure) 2021

Ausgrid

Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

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

Comment:

The proposal was referred to Ausgrid who raised no objections, subject to conditions which have been included in the recommendation of this report.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

The site is subject to Chapter 2 of the SEPP. Accordingly, an assessment under Chapter 2 has been carried out as follows:

Division 4 Coastal use area

2.11 Development on land within the coastal use area

- 1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:
 - a) has considered whether the proposed development is likely to cause an adverse impact on the following:
 - i) existing, safe access to and along the foreshore, beach, headland or rock
 - ii) platform for members of the public, including persons with a disability,

- iii) overshadowing, wind funnelling and the loss of views from public places to
- iv) foreshores,
- v) the visual amenity and scenic qualities of the coast, including coastal headlands, Aboriginal cultural heritage, practices and places, cultural and built environment heritage, and
- b) is satisfied that:
 - i) the development is designed, sited and will be managed to avoid an adverse
 - ii) impact referred to in paragraph (a), or
 - iii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or if that impact cannot be minimised—the development will be managed to mitigate that impact, and
- c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

The proposed development is not considered likely to cause an adverse impact on safe access to and along the foreshore, overshadowing, wind funnelling and the loss of views from public places to foreshores, the visual amenity and scenic qualities of the coast, including coastal headlands, or cultural and built environment heritage.

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 proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

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
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After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

The modification application relates to the relocation of an approved OSD tank, and minor internal reconfiguration only. Therefore no changes are proposed to the approved built form of the building or development standards.

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes

Pittwater 21 Development Control Plan

Built Form Controls

The modification application relates to the relocation of an approved OSD tank, and minor internal reconfiguration only. Therefore no changes are proposed to the approved built form of the building or locality specific development controls under P21 DCP.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.10 Newport Locality	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.15 Storage Facilities	Yes	Yes
D10.1 Character as viewed from a public place	Yes	Yes
D10.3 Scenic protection - General	Yes	Yes

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 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 2000;
- All relevant and draft Environmental Planning Instruments;
- Pittwater Local Environment Plan;
- Pittwater Development Control Plan; and
- Codes and Policies of Council.

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

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

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

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. Mod2022/0156 for Modification of Development Consent DA2020/1695 granted for Construction of a Residential Flat Building on land at Lot 1 DP 22450,77 Foamcrest Avenue, NEWPORT, Lot 2 DP 22450,75 Foamcrest Avenue, NEWPORT, subject to the conditions printed below:

A. Add Condition No.1A - Modification of Consent - Approved Plans and supporting Documentation to read as follows:

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

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA03-I (Basement Plan)	18 March 2022	Richard Cole Architecture
DA10-I (Sections)	18 March 2022	Richard Cole Architecture
DA11-I (Sections)	18 March 2022	Richard Cole Architecture
DA21-I (Driveway Profile)	18 March 2022	Richard Cole Architecture

Engineering Plans		
Drawing No.	Dated	Prepared By
C2-C (Stormwater Management Plan - Basement)	22 February 2022	Acor Consultants
C3-C (Stormwater Management Plan - Ground Floor)	22 February 2022	Acor Consultants
C4-C (Stormwater Management Details Sheet 1)	22 February 2022	Acor Consultants
C5-C (Stormwater Management Details Sheet 2)	22 February 2022	Acor Consultants
C6-C (Stormwater Management Details Sheet 3)	22 February 2022	Acor Consultants

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate (1157603M_04)	23 March 2022	Insight Energy
Geotechnical Report (2020-202)	4 February 2022	Crozier Geotechnical Consultants

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

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

B.

Modify Condition 16. On-site Stormwater Detention Details to read as follows:

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's WATER MANAGEMENT POLICY for DEVELOPMENT, and generally in accordance with the concept drainage plans prepared by ACCOR, drawing number CC210481 C2 C, C3 C, C4 C, C5 C, C6 C. dated Feb 2022. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NER) and registered in the General Area of Practice for civil engineering.

Detailed drainage plans, including engineering certification, are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for the disposal of stormwater and stormwater management arising from the development.

Modify Condition 17. Submission Roads Act Application for Civil Works in the Public Road to read as follows:

The Applicant is to submit an application for approval for infrastructure works on Council's roadway. Engineering plans for the new development works within the road reserve and this development consent are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993.

The application is to include four (4) copies of Civil Engineering plans for the design of 225mm stormwater outlet pipe and new kerb inlet pit in Foamcrest Avenue which are to be generally in accordance with the Council's specification for engineering works - AUS-SPEC #1. The plan shall be prepared by a qualified civil engineer. The design must include the following information:

1) A services locator is to be engaged to locate all services within the footpath area to ensure there are no conflicts with the proposed 225mm Stormwater outlet pipe.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

An approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate

Reason: To ensure engineering works are constructed in accordance with relevant standards and Council's specification.

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

Signed



Dean Pattalis, Planner

The application is determined on 13/07/2022, under the delegated authority of:



Adam Richardson, Manager Development Assessments