

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2022/0341
<b>Responsible Officer:</b>	Gareth David
<b>Land to be developed (Address):</b>	Lot 11 DP 10519, 973 Pittwater Road COLLAROY NSW 2097
<b>Proposed Development:</b>	Modification of Development Consent DA2018/1981 granted for alterations and additions to a dwelling house
<b>Zoning:</b>	Warringah LEP2011 - Land zoned R2 Low Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	David Neal Greenberg
<b>Applicant:</b>	David Neal Greenberg
<b>Application Lodged:</b>	01/08/2022
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Refer to Development Application
<b>Notified:</b>	Not Notified
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

### PROPOSED DEVELOPMENT IN DETAIL

The s4.55(1A) modification application seeks to modify Development Application No DA2018/1981 approved for alterations and additions to a dwelling house in the following way:

- Retain the existing driveways and access arrangements to the property rather than remove the existing southern driveway and widen the existing northern driveway.
- In retaining the existing access arrangement the application seeks to delete of conditions 7 and 12 imposed as part of DA consent DA2018/1981. These conditions read as follows:

#### **7. Vehicle Crossings Application**

*A Driveway Levels and Formwork Inspections Application shall be made with Council subject to the payment of the fee in accordance with Council's Fees and Charges. The fee includes all Council*

*inspections relating to the removal of the driveway and must be paid. The redundant layback and vehicular crossing adjacent the southern boundary shall be reinstated to conventional kerb and gutter, footpath or grassed verge as appropriate with all costs borne by the Applicant. Concurrence from the RMS shall be obtained. Approval of the application by Council is to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.*

*Reason: To facilitate suitable vehicular access to private property.*

## **12. Reinstatement of Kerb**

*The redundant layback and vehicular crossing adjacent the southern boundary shall be reinstated to conventional kerb and gutter, footpath or grassed verge as appropriate with all costs borne by the applicant. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.*

*Reason: To remove redundant vehicular access.*

It is on note that these conditions and the removal of the existing second driveway crossing was originally a TfNSW requirement. TfNSW have now provided support to the proposed modification.

## **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**

Warringah Local Environmental Plan 2011 - 6.4 Development on sloping land  
Warringah Development Control Plan - B1 Wall Heights  
Warringah Development Control Plan - B3 Side Boundary Envelope  
Warringah Development Control Plan - C2 Traffic, Access and Safety  
Warringah Development Control Plan - E10 Landslip Risk

## **SITE DESCRIPTION**

<b>Property Description:</b>	Lot 11 DP 10519 , 973 Pittwater Road COLLAROY NSW 2097
<b>Detailed Site Description:</b>	The subject site consists of one (1) allotment located on the

western side of Pittwater Road.

The site is regular in shape with a frontage of 15.24m along Pittwater Road and a depth of 46.34m. The site has a surveyed area of 682.9m<sup>2</sup>.

The site is located within the R2 Low Density Residential zone and accommodates a two (2) storey dwelling. The site is currently under construction for alterations and additions, including a new upper floor level as approved within DA2018/1981 and a new secondary dwelling as approved within CDC2019/0480.

The site slopes up gradually from Pittwater Road to the rear of the site by approximately 4.5m.

The site consists of grass and low lying shrubs within the front setback. Within the rear setback, the site is predominantly grass with three (3) canopy trees.

Adjoining and surrounding development is characterised by single residential dwellings along the western side of Pittwater Road. Directly opposite the site is Griffith Park which consists of tennis courts and playing fields.

The site and adjacent homes enjoy scenic views, including that of the ocean to the east.

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:

- **DA2018/1981** - Development Application for alterations and additions to a dwelling house (subject of modification) - Approved 07/06/2019
- **CDC2019/0480** - Complying Development Certificate for a detached Secondary Dwelling - Approved 28/06/2019

## 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 DA2018/1981, 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><b>Yes</b></p> <p>The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons:</p> <ul style="list-style-type: none"> <li>• The modifications will not change the use of the site,</li> <li>• The modifications will not significantly alter the form of development that was originally approved,</li> <li>• The modifications will not result in increased adverse impacts on the natural environment nor the amenity of surrounding residential properties</li> </ul>
(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 DA2018/1981 for the following reasons:</p> <ul style="list-style-type: none"> <li>• The modifications will not change the use of the site,</li> </ul>

Section 4.55(1A) - Other Modifications	Comments
	<ul style="list-style-type: none"> <li>The modifications will not significantly alter the form of development that was originally approved,</li> <li>From qualitative and quantitative perspectives, the proposal will not be significantly altered by the proposed modifications.</li> </ul>
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require,</p> <p>or</p> <p>(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</p>	<p>The Northern Beaches Community Participation Plan allows for Circumstances where public exhibition is not required. One such circumstance is when a section 4.55 (1A) application would not unreasonably cause an environmental impact. It is considered that the proposed changes within this application would not unreasonably cause an environmental impact and therefore the application was not notified in this instance.</p>
<p>(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.</p>	<p>No submissions were received in relation to this application. The subject development application was not notified.</p>

### 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 current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – 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)	<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.



Section 4.15 'Matters for Consideration'	Comments
	<p><u>Clause 29</u> of the EP&amp;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&amp;A Regulation 2021 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 61</u> of the EP&amp;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 and/or 64</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&amp;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) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> 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 'Matters for Consideration'	Comments
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 was not notified.

## REFERRALS

Internal Referral Body	Comments
NECC (Development Engineering)	<p>The proposed modification to delete the conditions relating to the removal of one of the existing crossings is supported subject to concurrence from Transport for NSW and Council's Traffic Engineers.</p> <p>Provided concurrence is received, Development Engineering support the proposal subject to the deletion of conditions 7 and 12 of DA2018/1981.</p>
Traffic Engineer	<p>The proposed modification is to retain the existing access arrangements to the property rather than remove the southern driveway and construct an on-site turning area. The existing arrangements allow for forwards ingress via the southern driveway and forwards egress via the northern driveway. It is noted that removal of the second point of vehicle access was originally a TfNSW requirement but that TfNSW have now given pre-DA informal support to the proposed modification. As Pittwater Road is a State Road subject to TfNSW formally endorsing the retention of the existing access arrangements there are no traffic engineering objections to the modification.</p> <p>As noted in the development engineers comments Conditions 7 &amp; 12 can be deleted if the modification is approved. Conditions 9 &amp; 13 should remain to ensure that the access arrangements do, in fact, allow for concurrent forwards entry and egress to/from the site</p>

External Referral Body	Comments
Integrated Development - NSW Roads and Maritime Services - Roads Act 1993 (s138 Works on classified road where Council is not the consent authority)	The proposal was referred to TfNSW who raised no objection to the proposed modifications including the retention of the existing driveways on Pittwater Road.

## **ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\***

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

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

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

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

#### **SEPP (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.

##### Roads and Maritime Service (RMS)

Section 2.118 - Development with frontage to classified road states:

The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that—

*(a) where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and*

*(b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of—*

*(i) the design of the vehicular access to the land, or*

*(ii) the emission of smoke or dust from the development, or*

*(iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*



*(c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

Comment:

The application was referred to Transport for NSW who did not raise any objection to the proposal.

## SEPP (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.

## Warringah Local Environmental Plan 2011

Is the development permissible?	Yes
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

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.1m	Unaltered	N/A	Yes

### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
5.3 Development near zone boundaries	Yes
5.8 Conversion of fire alarms	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

### Detailed Assessment

#### 6.4 Development on sloping land

The subject modification seeks to retain the existing driveway arrangement and does not propose any physical works. As such a geotechnical report is not required in this instance. The application has been reviewed by Council's Development Engineers who have raised no objection to the proposal.

## Warringah Development Control Plan

### Built Form Controls

Standard	Requirement	Approved	Proposed	Complies
B1 Wall height	7.2m	7.6m	Unaltered	No (Unaltered)
B3 Side Boundary Envelope	4m (S)	Outside envelope	Unaltered	No (Unaltered)
	4m (N)	Outside envelope	Unaltered	No (Unaltered)
B5 Side Boundary Setbacks	0.9m (S)	2.57m	Unaltered	Yes (Unaltered)
	0.9m (N)	0.94m	Unaltered	Yes (Unaltered)
B7 Front Boundary Setbacks	6.5m	6.5m	Unaltered	Yes (Unaltered)
B9 Rear Boundary Setbacks	6m	18.3m	Unaltered	Yes (Unaltered)
D1 Landscaped Open Space and Bushland Setting	40%	53.6%	Unaltered	Yes (Unaltered)

### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	No	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	No	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	No	Yes

### Detailed Assessment

#### **B1 Wall Heights**

The proposal does not seek to alter the wall height approved within DA2018/1981. No change to approved built form of the dwelling is proposed.

#### **B3 Side Boundary Envelope**

The proposal does not seek to alter the side boundary envelope approved within DA2018/1981. No change to approved built form of the dwelling is proposed.

#### **C2 Traffic, Access and Safety**

The proposal seeks to retain the existing driveways and access arrangements to the property rather than remove the southern driveway and widen the northern driveway as required within DA2018/1981. The removal of the existing second southern driveway crossing was originally a TfNSW requirement.

The applicant has specified that conditions of minimising traffic hazards (vehicles having to queue on Pittwater road) and allowing two (2) vehicles to simultaneously enter and exit the property to/from Pittwater Road (in a forward direction) cannot be achieved by closing the southern crossing and widening the northern crossing. This is because an existing power pole in the front of the property does not allow the northern crossing to be widened enough for simultaneous vehicle access.

The proposed modification was referred to Transport for NSW who raised no objection to the proposed modifications including the retention of the existing driveways on Pittwater Road. The proposed modification has also been reviewed by Council's Traffic Engineer and Development Engineer who raised no objection to the proposed modification.

Conditions 9 and 13 of Development Consent DA2018/1981 will remain on the consent to ensure that the access arrangements do, in fact, allow for concurrent forwards entry and egress to/from the site and that the existing driveway can be used as a turning bay and is not to be used as off street car parking space.

## **E10 Landslip Risk**

The subject modification seeks to retain the existing driveway arrangement and does not propose any physical works. As such a geotechnical report is not required in this instance. The application has been reviewed by Council's Development Engineers who have raised no objection to the proposal.

## **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 2021;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;
- Warringah 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. Mod2022/0341 for Modification of Development Consent DA2018/1981 granted for alterations and additions to a dwelling house on land at Lot 11 DP 10519,973 Pittwater Road, COLLAROY, 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
401/01	-	The George Group Pty Ltd

#### 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. Delete Condition 7 (Vehicle Crossings Application) which read as follows:

A Driveway Levels and Formwork Inspections Application shall be made with Council subject to the payment of the fee in accordance with Council's Fees and Charges. The fee includes all Council inspections relating to the removal of the driveway and must be paid. The redundant layback and vehicular crossing adjacent the southern boundary shall be reinstated to conventional kerb and gutter, footpath or grassed verge as appropriate with all costs borne by the Applicant. Concurrence from the RMS shall be obtained. Approval of the application by Council is to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To facilitate suitable vehicular access to private property.

### C. Delete Condition 12 (Reinstatement of Kerb) which read as follows:

The redundant layback and vehicular crossing adjacent the southern boundary shall be reinstated to conventional kerb and gutter, footpath or grassed verge as appropriate with all costs borne by the applicant. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To remove redundant vehicular access.

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



**Signed**



**Gareth David, Planner**

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



**Steven Findlay, Manager Development Assessments**