



**REPORT TO ACCOMPANY AN APPLICATION UNDER SECTION
4.55(1A) OF THE
ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979**

Minor changes to the approved development of the site for the construction of a swimming pool, inclinor and associated landscaping.

April 2020



1. Introduction

This report has been prepared to accompany an application under Section 4.55(2) of the Environmental Planning and Assessment Act 1979 for the modification of the Development Consent DA2019/0619, issued by Northern Beaches Council on the 10 October 2019 for the following works:

“The construction of a swimming pool, inclinator and associated landscaping.”

This report will provide details of the proposed modification, as outlined in Section 2 of this Report. The report also provides an assessment of the proposed modification pursuant to the considerations that apply under Section 4.55 (2) of the Environmental Planning and Assessment Act, 1979.

The proposed modification application requests amendments to the approved plans primarily including:

1. The pool is reduced length and the pool fence between the pool and terrace is relocated. The spas and the towel lawn locations are swapped. The pool and pool terrace, spa and towel lawn areas are all lifted up 550mm – 3 risers in height.
2. The plant room and the WC locations are swapped.
3. The inclinator is also proposed to be extended to the ground floor / street level of the existing primary dwelling. With the extension of the inclinator, the stairwell is proposed for removal should the inclinator be approved.

The proposed changes do not affect the overall presentation of the approved proposal to its boundaries and does not materially alter the bulk, or scale of the building as it presents to its neighbours or to the public domain. The proposal in its amended form will continue to comply with the height and landscaped area controls of the Pittwater Local Environmental Plan.

2. Background

The site is known as 13A Ocean Road, Palm Beach. On 3 April 2018, a development application DA-N0373/17 for the construction of a secondary dwelling was approved for the site following the withdrawal of a previous application that combined the pool and the second dwelling in one location on site.

On the 10 October 2019, the development application for the construction of a swimming pool and inclinator that was separated from the secondary dwelling by landscaped gardens was approved. This is the DA that is the subject of this Section 4.55 amendment application.

The amendments have been the subject of informal discussions and correspondence with council. The Council have confirmed that they do not have a fundamental concern with proposed changes to the pool terrace area.

3. Details of the proposed Modifications and impact considerations

The proposed modification of the approved development consent relates to the proposed changes as shown on the submitted plans prepared by MacCormick Associates Architects, which include the following:

1. The pool is reduced length and the pool fence between the pool and terrace is relocated. The spas and the towel lawn locations are swapped. The pool and pool terrace, spa and towel lawn areas are all lifted up 550mm – 3 risers in height.
2. The plant room and the WC locations are swapped.
3. The inclinator is also proposed to be extended to the ground floor / street level of the existing primary dwelling. With the extension of the inclinator, the stairwell is proposed for removal should the inclinator be approved.

The requested changes are minor in nature and do not materially affect the presentation of the proposal to its neighbours or to the public domain.

The requested changes on the ground floor level of the dwelling are minor in nature and do not materially affect the presentation of the dwelling to its neighbours or to the public domain. In fact, some elements of the revised scheme, such as the deletion of the eastern verandah (and conversion to planters) will increase privacy to the east. The revised design reduces the usability of the eastern terrace however passive surveillance of the street is still provided for.

Any minor changes to floor area will still result in the overall FSR being compliant with the maximum control of 0.5:1. In this regard, the revised proposal increases the approved floor space by 6.42sqm. The GFA of the approved plans is 6.71m² under the maximum GFA. The proposal, as revised will meet the maximum GFA for this site and the resulting FSR is 0.5: 1 or just under.

4. Considerations required under Section 4.55

The relevant clause of Section 4.55 of the Environmental Planning and Assessment Act, 1979 for this application state:

(2) Other modifications A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if--

(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and

Sub clause (3) states:

(3) In determining an application for modification of a consent under this section, 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 consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.

(2) (a) The proposed modification is of minimal environmental impact

As stated above, there are only minor changes sought to the approved plans and the variation sought will not result in any non-compliances with key planning controls and as such, the proposal is of minimal impact.

The proposed modification does not change the essential features of the development as approved. The proposed modification does not significantly alter the development for which the development consent was granted and will not alter the approved description of the development.

There will be no material change to the streetscape in terms of the bulk and scale or the appearance of the development, as originally approved, when viewed from the street or from any neighboring properties. The landscape garden beds in front of the pool and terrace wall will hide the wall even with the additional height of the terrace proposed. The proposed replacement of the stairwell with the inclinor rail will provide a net reduction in built form visible from the public domain and the neighboring properties.

Raising the spa area will result in a lower retaining wall behind the spa thereby reducing the appearance of built form.

The limited extent of change to the building, as originally approved, is further evidenced by the continued compliance with hard surface and landscape controls.

Accordingly, the development, as modified, is substantially the same development for which development consent was originally granted under Development Consent.

(subclause 3) 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

4.15 (1) Evaluation

In accordance with the requirements of Section 4.55(1A) the following Section 4.15(1) matters are of relevance.

Environmental Planning & Assessment Act, 1979

Section 5 of the EP&A Act, 1979 states that the Act is to encourage

‘(ii) the promotion and co-ordination of the orderly and economic use and development of land,’

The proposed minor changes will allow for small changes to the approved development to suit the needs of the Owners which will have no material effect upon any surrounding resident. The proposal therefore promotes the stated aim.

a)(i) Environmental planning instruments

State Environmental Planning Policy No.55 (SEPP 55) – Remediation of Land

Nothing in the proposed amendments affects the previous assessment under SEPP 55.

State Environmental Planning Policy (BASIX 2004) (BASIX)

There is no change to the BASIX requirements. The pool volume, whilst it is smaller will still comply with the specified compliance requirements of the BASIX certificate A345820

State Environmental Planning Policy (Coastal Management) 2018

The amended proposal remains consistent with the objectives of the SEPP (Coastal Management) 2018, as set out in Clause 3 of the Coastal Management Act 2016. Furthermore, the proposed works will be carried out in accordance with the recommendations of the consulting Structural Engineer and Geotechnical Engineer, which will ensure that appropriate structural integrity for the site will be maintained. There is no change to the collected stormwater collection arrangements or the approved sediment and erosion control measures.

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

The amended proposal will not require the removal of any vegetation that is in addition to the current approval. In fact, the replacement of the stairwell with the inclinor will maintain a greater amount of landscape on the existing shotcrete wall behind the house. The amended proposal will therefore continue to comply with the provisions of the SEPP.

Pittwater Local Environmental Plan

The clauses within the LEP which are of relevance to the amended proposal are:

Clause 2.2 Zone objectives and Land Use Table – The proposal maintains the currently

approved location for the pool which is located between landscaped components of the site, thereby ensuring the massing of the development is broken up and softened. The proposed replacement of the stairwell with the inclinator rail will provide a net reduction in built form visible from the public domain and the neighbouring properties. The inclinator maintains the required separation from the boundary of 2.5m to the rail and 2m to the car.

The proposed inclinator is able to change gradients of up to 45 degrees with a maximum gradient of 90 degrees. These properties of the proposed inclinator will enable it to closely follow the existing topography of the site and together with the dark colour for the inclinator rail minimise its visual impact from the public domain and prevent it being seen from the neighbouring property.

The extension of the inclinator rail, whilst closer to the house of the southern neighbour will be concealed by both the land form and the existing and proposed vegetation. Refer to images below.

There are no north-facing windows in the wall of the house nearest the proposed inclinator path. The closest north-facing window at No.13 is over 16m away and is separated by landscape. Refer to images 3 and 4.

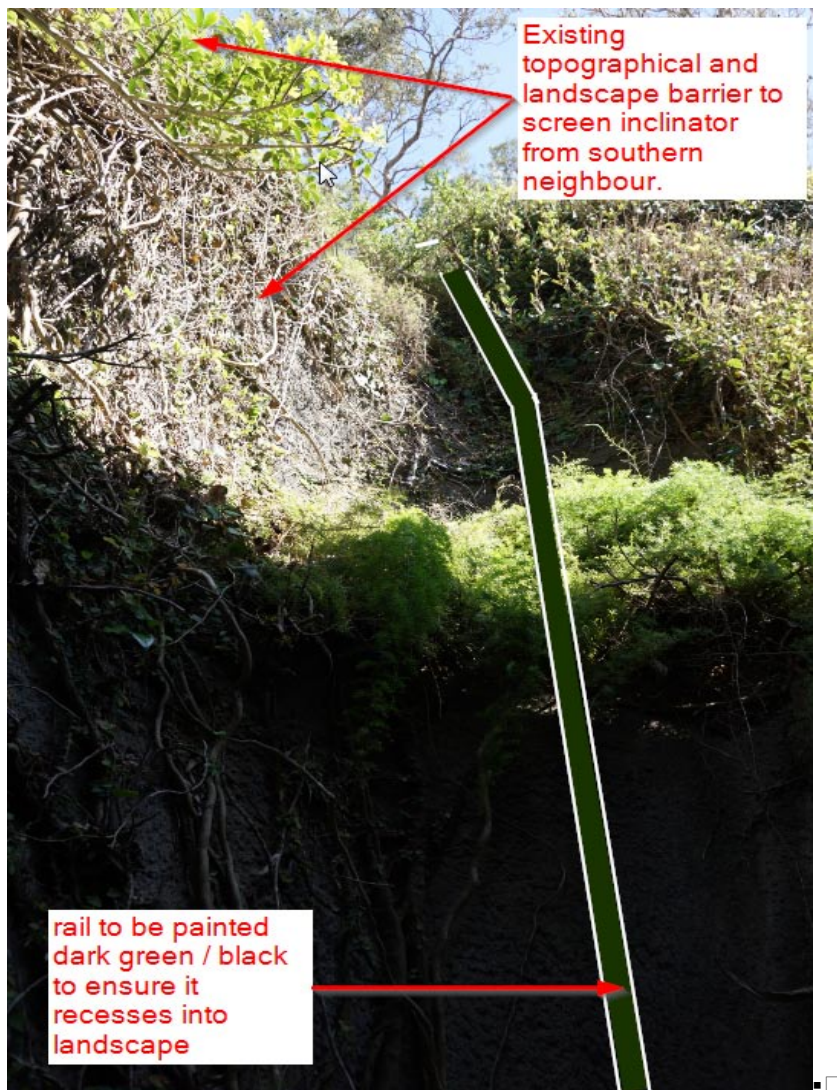


Image 1

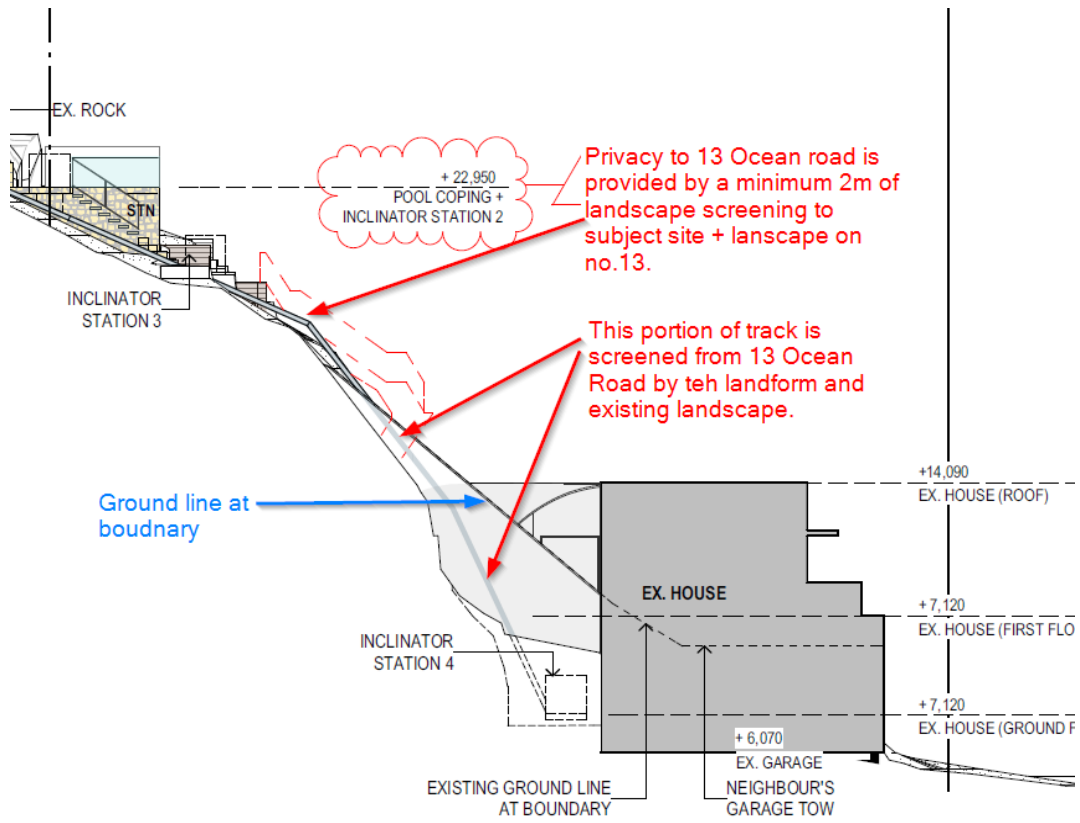


Image 2

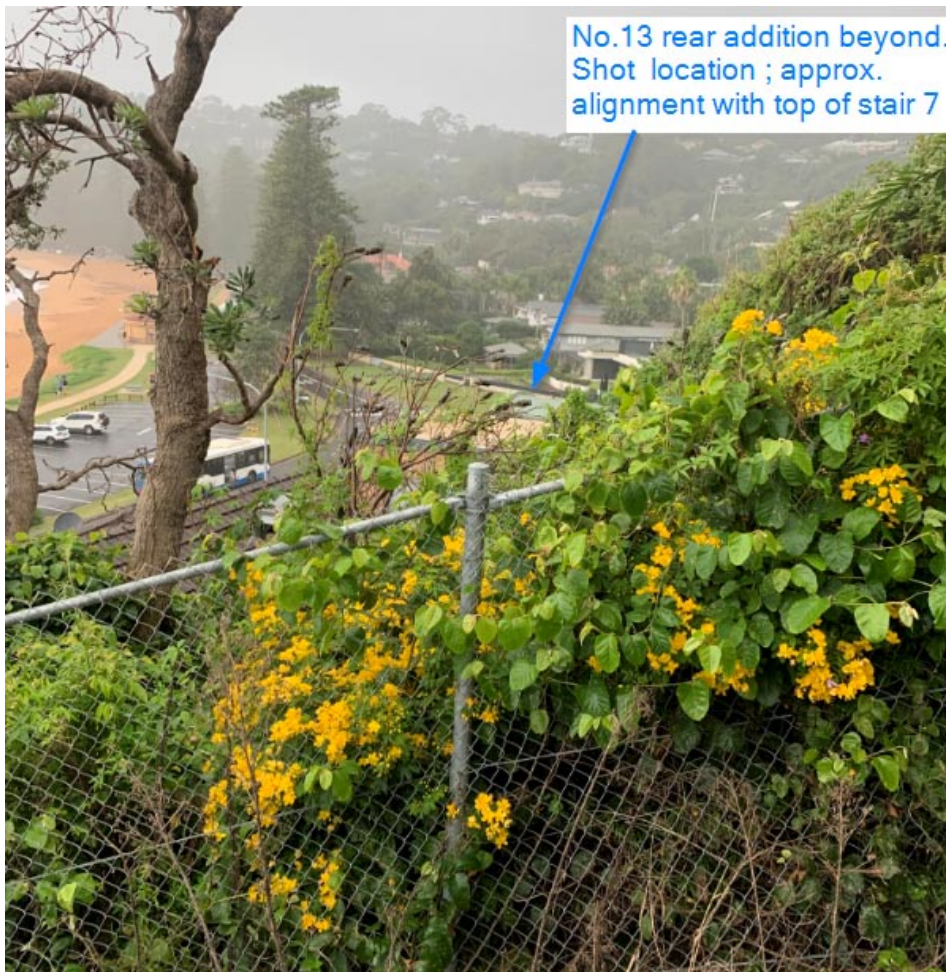


Image 3

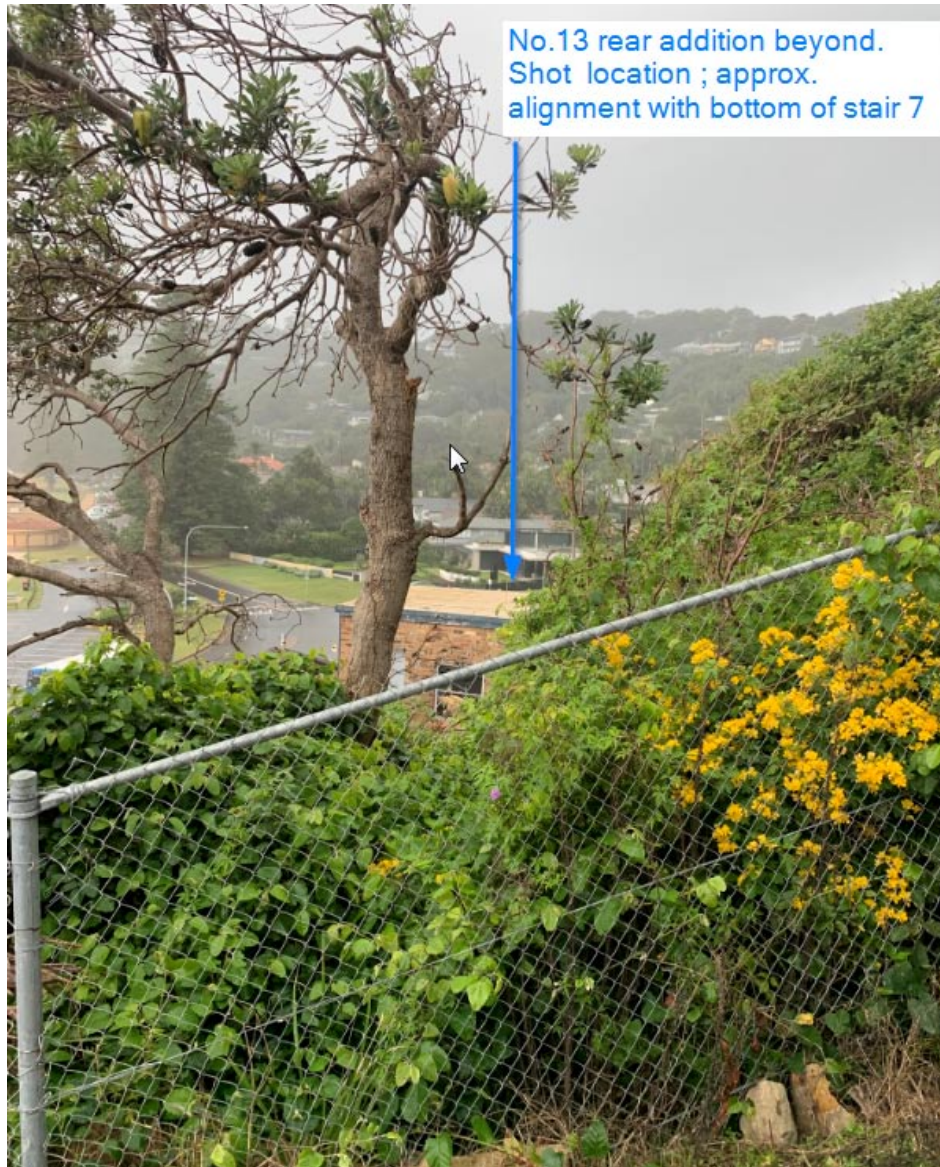


Image 4

Clause 4.3 Height – the revised maximum height is approximately 3.5m to the top of the pool fence. Accordingly the proposal easily complies with the height control for the site, which is 10m due to the site’s overall slope exceeding 30%.

Pittwater 21 Development Control Plan

Palm Beach Locality

It is considered that the amended proposal will be consistent with the desired character of the locality by providing for a new swimming pool, spa, terrace, stairs, inclinor and associated landscaping.

The amended proposal will continue to be compatible with the low density scale of the area and with the recessive colours and finishes will not be visually prominent within the Palm Beach locality. The amended proposal maintains the revegetation of the slope with locally indigenous plants to soften the built form of the new works.

The proposed increase in the height of the pool and surrounding terrace will also reduce the excavation required by the approved development.

Landslip Hazard and coastline Hazard

A Geotechnical Engineer has reviewed the amend proposal and has written a supplementary letter to confirm that the scope of work outlined in the amended proposal is consistent with the comments and recommendations provided in their earlier report No. 85471.02, dated 24 April 2019.

Landscaped Areas

The amended proposal continues to comply with the landscape area minimum requirement as well as the hard surface area maximum requirements. Relocating the spa to the northern side distances the built form from the large rock boulder in the middle of the site, allowing it to be read more clearly.

Solar Access

Updated shadow analysis diagrams have been provided with the submission. The diagrams confirm that the neighboring southern property (13 Ocean Road) will not be affected to any greater degree than the currently approved proposal. The additional height of the terrace does not cast additional shadow as it is setback a further 500mm from the boundary.

Setbacks

The setback to the inclinator still complies with the required 2.5m to the rail and 2m to the car.

Visual and acoustic privacy

There is no material change to either the visual or the acoustic privacy.

The proposed extension of the inclinator will follow closely the topography of the land and accordingly, the existing landscape and land form will block lines of sight to the southern neighbour from the proposed inclinator extension. Where the inclinator is adjacent to the terrace, the impact is equivalent or less than the visual impact of the approved stairwell.

There is no additional noise that will be generated from the proposal as the consent conditions require a maximum of 5D(b)A above the ambient noise level for the approved inclinator.

5. Conclusion

The proposed modification involves modest changes to the approved development Consent DA2019/0619, issued by Northern Beaches Council.

The impact of the proposed modified development on the surrounding natural and built environment will be minimal. There are very minor changes proposed to the pool area, and the replacement of the approved stairwell with an inclinator to suit the changing needs of the Owners will result in less built form visible from outside of the site.

The proposal is in accordance with council's planning policies and guidelines. Accordingly, it is considered that council's favourable determination of this section 4.55 application is warranted.