

**STATEMENT OF MODIFICATION - APPLICATION TO MODIFY CONSENT UNDER
S4.55 (2) OF THE ENVIRONMENTAL PLANNING & ASSESMENT ACT 1979**

**ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE, INCLUDING A NEW GARAGE
AND STUDIO**

AT

73 PACIFIC ROAD, PALM BEACH

FOR

CAMERON BLANKS



**Prepared
June 2022**

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1.0 Introduction

This Statement of Modification has been prepared to assist Council in the consideration of an application pursuant to Section 4.55(2) of the Environmental Planning & Assessment Act 1979 (**EP&A Act**) to modify Development Consent DA2020/1392, which approved alterations and additions to a dwelling house, including a new garage and studio, at **73 Pacific Road, Palm Beach**.

The proposed modifications are detailed in the accompanying architectural plans prepared by C+M Studio Pty Ltd (Job No. 2020_112, Revision C, dated 23 June 2022).

The proposed modifications are discussed in further detail in this submission

2.0 Background

Development Application DA2020/1392 for *“Alterations and additions to a dwelling house, including a new garage and studio”* was approved by Council in accordance with the Notice of Determination dated 4 February 2021.

The approved alterations and additions to the dwelling have commenced in accordance with Construction Certificate 2022/0576.

3.0 Proposed Modifications

The application involves changes to the form of the approved development, which are detailed in the modified architectural plans prepared by C+M Studio Pty Ltd (Job No. 2020_112, Revision C, dated 23 June 2022).

Specifically, the proposed modifications include:

Studio Level

- Proposed terracing to the northern side of the driveway (retaining wall, external stairs and fill)

Lower Ground Floor

- Proposed extension to deck atop of studio
- New windows W04 (to Bathroom 2) and W05 (to laundry)
- Amendments to the layout of the Laundry, Bedroom 1 and Bedroom 2, including the retention of the existing dividing wall between Bedroom 1 and Bedroom 2, the relocation of the doorway to Bedroom 1 and the extension of the laundry.
- Proposed awning above lift

The proposed modifications do not alter the overall height, or the general configuration of the proposed works as viewed from the street or from the surrounding neighbouring properties.

Whilst not proposed modifications (as they have already been approved by virtue of conditions of consent), the architectural plans also include the following amendments required by Conditions of DA2020/1392:

Garage Level

- Existing driveway crossing to be replaced as per Condition 17 of the development consent and approved as per SL2022/0116

Lower Ground Floor

- Privacy screen along north-eastern corner of the timber deck as per Condition 12 of the development consent

The proposed modifications to the consent are accompanied by a revised Geotechnical Letter prepared by White Geotechnical Group under Reference No J2963A dated 27 June 2022.

The development indices for the site remain consistent with that originally approved, as follows:

Site Area	977.6m ²
Required Landscaped Area	60% or 586.5m ²
Proposed Landscaped Area	36% or 357.0m ² (unchanged)

4.0 Zoning and Development Controls

4.1 State Environmental Planning Policy (Resilience and Hazards) 2021

In the time since DA2020/1392 was approved, State Environmental planning Policy No. 55 – Remediation of Land has been revoked and replaced by the provisions of Chapter 4 of SEPP (Resilience and Hazards).

Chapter 4 of SEPP (Resilience and Hazards) applies to all land and aims to provide for a state-wide planning approach to the remediation of contaminated land.

Clause 4.6(1)(a) of this policy requires the consent authority to consider whether land is contaminated. Given the history of residential use of the land, the site is not considered to be subject to contamination and further investigation is not required at this stage.

Overall, the proposed modified development remains consistent with the relevant provisions of SEPP (Resilience and Hazards).

4.2 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

The proposal continues to meet the relevant water, thermal and energy standards required by SEPP BASIX. An amended BASIX certificate has been submitted with the subject modification application.

4.3 Pittwater Local Environmental Plan 2014

Clause 2.2 Zone objectives and Land Use Table

The site is zoned C4 Environmental Living under the provisions of the PLEP 2014. The proposed modified development remains permissible with consent and consistent with the objectives of the C4 Environmental Living zone.

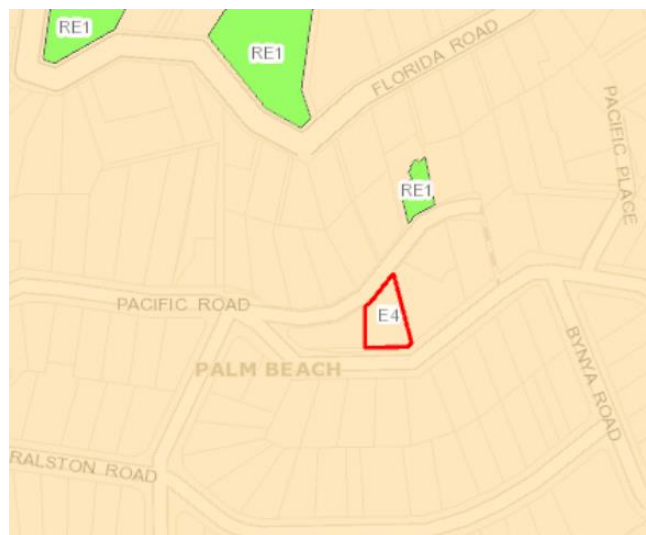


Fig 1: Extract of Zoning Map of PLEP 2014

Clause 4.3 Height of Buildings provides controls relating to the height of buildings.

The maximum height of the development, as approved in DA2020/1392, remains unchanged.

The proposed modifications reach a maximum height of approximately 7m and are maintained well below the 8.5m maximum prescribed by this control.

There are no other clauses of PLEP 2014 that are considered to be relevant to the subject modification application.

4.4 Pittwater 21 Development Control Plan

Council's Pittwater 21 DCP and Section D12 Palm Beach Locality Statement provide a range of outcomes and controls which form the primary criteria control for development within the subject locality.

The provisions relevant to the proposed modifications are considered, as follows:

Clause C1.5 Visual privacy

The provisions of clause C1.5 of P21 DCP require areas of private open space, including swimming pools, and living rooms of adjoining properties to be protected from overlooking within 9m. The clause also requires elevated decks to comprise privacy screens, where necessary.

The modification application seeks to extend the timber deck atop of the studio and garage. The resultant terrace is not located within 9m of areas of private open space or windows associated with living room of adjoining dwellings, and as such, further privacy screening is not required.

The proposed deck is consistent with the provisions of this control.

Clause D12.5 Front building line

The application seeks consent to extend the front timber deck atop of the studio and garage. The area of the proposed deck is wholly maintained behind both the 6.5m front building line and the 3.25m variable building line for secondary street frontages.

Clause D12.10 Landscaped Area – Environmentally Sensitive Land

The proposed modifications to the size of the timber deck atop of the studio and garage result in the removal of an area approved as a garden. However, the proposed development will not result in any change to the approved landscaped area calculation, as the area in question did not meet the definition of "landscaped area" as defined by PLEP 2014.

Furthermore, whilst shown as a garden in the approved plans, the approved elevations and sections do not demonstrate any soil depth such that they area in question would not have been able to accommodate any plants. As such, the proposal will not result in the loss of any landscaping on the site.

5.0 Matters for Consideration under Section 4.55 of the EP&A Act

The EP&A Act provides for the modification of a consent under Section 4.55(2) which notes:

(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*
- b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*
- (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 the period prescribed by the regulations or provided by the development control plan, as the case may be.*

Subsections (1) and (1A) do not apply to such a modification.

Accordingly, for the Council to approve the S4.55 Modification Application, the Council must be 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.

Substantially the same

To assist in the consideration of whether a development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted, Justice Bignold established the following test in the *Moto Projects (No 2) Pty Ltd v North Sydney Council (1999) 106 LGERA 289 (Moto)* where His Honours states:

[54] The relevant satisfaction required by s96(2)(a) to be found to exist in order that the modification power be available involves an ultimate finding of fact based upon the primary facts found. I must be satisfied that the modified development is substantially the same as the originally approved development.

[55] The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is “essentially or materially” the same as the (currently) approved development.

[56] The comparative task does not merely involve a comparison of the physical features or components of the development as currently approved and modified where that comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted).

In my opinion, in terms of both a qualitative and quantitative comparison, the modified development remains substantially the same as that which was originally approved by DA2020/1392.

The works continue to provide for the construction of alterations and additions to a dwelling house, including a new garage and studio, with no change to the impact arising from the development compared to that already approved. The proposed modifications do not result in a radical transformation of any aspect of the approved development, with the general form, height, footprint and siting of the development remaining exactly the same.

The internal changes to the lower ground floor do not alter the use of the rooms or the potential occupancy of the dwelling, with no adverse impacts arising as a result of the newly proposed windows (W04 and W05).

When viewed from the public domain or from neighbouring properties, the development will largely present the same visual impact and appearance to that originally approved.

In my view, this application is substantially the same as the original application when considered in the context of the Bignold J determination in Moto.

6.0 Matters for Consideration under Section 4.15 of the EP&A Act

Section 4.55(3) of the EP&A Act requires the consideration of such matters referred to in Section 4.15(1) of the EP&A Act. The matters are considered below.

6.1 The provisions of any environmental planning instrument

The provisions of PLEP 2014, SEPP (Resilience and Hazards) and SEPP (BASIX) have been considered with respect to the modifications proposed.

6.2 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 Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and

There are no draft instruments applying to the land.

6.3 Any development control plan

The development has been designed to comply with the outcomes of P21 DCP. The proposed modifications do not result in any new or intensified areas of non-compliance with the provisions of this policy.

6.4 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

No matters of relevance are raised in regard to the proposed development.

6.5 The regulations (to the extent that they prescribe matters for the purposes of this paragraph),

No matters of relevance are raised in regard to the proposed development.

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

The proposed modifications will not result in any unreasonable impacts upon the natural or built environment, or the amenity of adjoining properties, beyond that which is reasonably anticipated under the provisions of PLEP 2014 and P21 DCP.

It is considered that the resultant development is compatible with and will complement the residential character of the area.

6.7 The suitability of the site for the development

The subject land is currently C4 Environmental Living under the provisions of PLEP 2014 and is considered suitable for the proposed development.

The subject site does not pose any significant constraint to the proposed development, noting that all hazards/affectations are appropriately managed.

6.8 Any submissions made in accordance with this Act or the regulations

This is a matter for Council in the consideration of this proposal.

6.9 The public interest

The proposal will not unreasonably impact upon the environment, the character of the locality or upon the amenity of adjoining properties and is therefore considered not to be contrary to the public interest.

7.0 Conclusion

The test established in Moto requires both a quantitative and a qualitative assessment.

In terms of the quantitative extent of the changes to the originally approved development, the works which are the subject of the application are minor and do not inherently alter the nature and form of the alterations and additions to the dwelling as originally approved by Council.

The proposal also satisfies the qualitative assessment required by the Moto test. The modifications will result in a development which remains generally the same as that approved, for the same purpose and with no significant or adverse changes to the physical appearance of the approved development.

Consistent with the Court decision in Moto, Council can be satisfied that the development as modified will remain essentially or materially the same as the approved development, consistent with the provisions of section 4.55(2) of the EP&A Act.

Council's support of the proposed modifications is sought in this instance. Please contact me on 9999 4922 or 0412 448 088 should you wish to discuss these proposed amendments.

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