

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2021/0339
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Responsible Officer:	Adam Mitchell
Land to be developed (Address):	Lot 1 DP 1229229, 145 A Crescent Road NEWPORT NSW 2106
Proposed Development:	Modification of Development Consent DA2020/1780 granted for the construction of a dwelling house
Zoning:	E4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Jessica Louise Shanahan Jacob Stephen Shanahan
Applicant:	Midcoast Design And Drafting

Application Lodged:	04/06/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	14/06/2021 to 28/06/2021
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

This Section 4.55(1A) Modification Application seeks to amend elements of the approved DA2020/1780.

Those changes include:

- relocated water tanks;
- northward extension of rumpus room including changes to internal layout and windows;
- change of alfresco roof to vergola roofing;
- modification to windows.

The application also seeks to remove Condition 5 pertaining to Section 7.12 Contributions.

Herein this report these works are described as the 'development.'

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:	Lot 1 DP 1229229 , 145 A Crescent Road NEWPORT NSW 2106
Detailed Site Description:	The subject site is known as 145A Crescent Road, Newport and is legally referred to as Lot 1 DP 1229229. The site consists of one (1) allotment located on the northeastern side of Crescent Road, with vehicular and pedestrian access gained via a right of carriageway. The site is irregular in shape with an access frontage of 6.9m along Crescent Road and a depth of 41.4m. The site has a surveyed area of 800.1m². The site is located within the E4 Environmental Living zone and is currently an undeveloped allotment that contains a number of established native canopy trees towards the front of the site and a turfed lawn area to the rear. The slope of the site is measured at 27%, falling approximately 12m from the rear boundary to the Crescent Road frontage.

The site is mapped within the Pittwater Geotechnical Hazard Map and the Pittwater Biodiversity Map.

Surrounding properties consist of dwelling houses of varying age, size and construction.

Map:



SITE HISTORY

The site has numerous past development applications but the following two are of relevance:

Development Application no. N0338/15 for the subdivision of one lot into two lots, approved on 21 March 2016.

Development Application no. DA2020/1780 for the construction of a dwelling house, approved on 16 April 2021.

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 DA2020/1780, 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	Yes The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons: - the scope of works sought do not change the height or footprint of the development; - the scope of works sought are not readily readable from the public domain. With regards to the request to remove Condition 5 Policy Controls, Council's Infrastructure Officer has provided the following comments: <i>145A Crescent Road (Lot 1 DP 1229229) was created upon the subdivision of 145 Crescent Road under DA N0338/15. Condition F1 of the development consent required payment of a monetary contribution of \$20,000 calculated pursuant to the Pittwater Section 94 Contributions Plan. This contribution was based on the creation of one additional dwelling/allotment.</i> <i>DA2020/1780 was approved on 16/04/21 and authorises the construction of a dwelling house on the newly created Lot 1 DP 1229229. Condition 5 of DA2020/1780 requires the payment of a monetary contribution totalling \$4,360 pursuant to the Northern Beaches Section 7.12 Contributions Plan. This contributions is based on the proposed cost of works of the development.</i> <i>The Environmental Planning and Assessment (Local Infrastructure Levies) Direction 2015 was issued on 14 April 2016. This Ministerial Direction stipulates:</i> <i>If a development contribution under section 94 of the Environmental Planning and Assessment Act 1979 has been required in respect of the subdivision of land</i>

Section 4.55(1A) - Other Modifications	Comments
	<i>(initial subdivision), a levy under section 94A of that Act may not be required in respect of any other development on the land, unless that other development will, or is likely to, increase the demand for public amenities or public services beyond the increase in demand attributable to the initial subdivision.</i> <i>The development contribution required to be paid under N0338/15 was levied based on the demand generated by one additional dwelling/allotment. No monetary contribution should be levied on the construction of a dwelling under DA2020/1780. I support the removal of condition 5 from DA2020/1780.</i>
(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	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 DA2020/1780 for the following reasons: • the scope of works sought do not materially change the approved development; • the scope of works are not readily readable commensurate to the approved development.
(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 under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Pittwater Local Environment Plan 2014 and Pittwater 21 Development Control 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	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
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)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent. <u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case. <u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent. <u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 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 in the original consent. <u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent.

Section 4.15 'Matters for Consideration'	Comments
	<u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.
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	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah/Manly/Pittwater 21 Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (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.
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 14/06/2021 to 28/06/2021 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
Landscape Officer	The application is for modification to the approved new dwelling and

Internal Referral Body	Comments
	attached garage and retaining walls under development consent DA2020/1780. The modification proposal involves building amendments including redesign of concrete tanks in the lower floor garage level, extension of rumpus room and additional ensuite into subfloor area on the first floor, powder room and window on the upper floor level, and modify roof structure over the rear Alfresco area on the upper floor. The proposed modifications do not impact upon the landscape outcome and Landscape Referral raise no objections. Development consent landscape conditions 7, 14, 15, 16, and 17 remain.
NECC (Bushland and Biodiversity)	The biodiversity planning requirements for this site were addressed as part of the previously approved application (DA2020/1780). The Arborist Report (Growing My Way 2020) references that Tree 1 (Turpentine) is to be removed, however it is noted that this report has since been superseded by the previous consent and this tree must be retained. Council's Natural Environment Unit - Biodiversity referral team has no objections to the proposed modification subject to the conditions provided for the previous DA consent (DA2020/1780).
NECC (Development Engineering)	The proposed modifications do not alter the original assessment by Development Engineering. The letter by the Geotechnical Engineer addresses the modification and the requirements of the DCP controls. No objection to approval with no additional or modified conditions of consent recommended.

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 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 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 Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 957201S_10 dated 26 May 2021).

The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
Water	40	41
Thermal Comfort	Pass	Pass
Energy	50	52

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

Pittwater Local Environmental Plan 2014

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	7.4m	No change	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
Front building line	6.5m	6.6m	No change	Yes
Rear building line	6.5m	17.8m	No change	Yes
Side building line	(west) 2.5m	3.8m	No change	Yes
	(east) 1m	1.8m	No change	Yes
Building envelope	(west) 3.5m	No encroachments	No change	Yes
	(east) 3.5m	No encroachments	No change	Yes
Landscaped area	60% (480.06m ²)	60.5% (484.2m ²)	No change	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.10 Newport Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C1.13 Pollution Control	Yes	Yes
C1.14 Separately Accessible Structures	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.23 Eaves	Yes	Yes
D10.1 Character as viewed from a public place	Yes	Yes
D10.3 Scenic protection - General	Yes	Yes
D10.4 Building colours and materials	Yes	Yes
D10.7 Front building line (excluding Newport Commercial Centre)	Yes	Yes
D10.8 Side and rear building line (excluding Newport Commercial Centre)	Yes	Yes
D10.11 Building envelope (excluding Newport Commercial Centre)	Yes	Yes
D10.13 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D10.16 Construction, Retaining walls, terracing and undercroft areas	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 2019

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. Mod2021/0339 for Modification of Development Consent DA2020/1780 granted for the construction of a dwelling house on land at Lot 1 DP 1229229, 145 A Crescent Road, 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
Sheet 01, Rev. 08	21 May 2021	Midcoast Design & Drafting
Sheet 02, Rev. 08	21 May 2021	Midcoast Design & Drafting
Sheet 03, Rev. 08	21 May 2021	Midcoast Design & Drafting
Sheet 04, Rev. 08	21 May 2021	Midcoast Design & Drafting
Sheet 05, Rev. 08	21 May 2021	Midcoast Design & Drafting
Sheet 06, Rev. 08	21 May 2021	Midcoast Design & Drafting
Sheet 09, Rev. 08	21 May 2021	Midcoast Design & Drafting
Sheet 10, Rev. 08	21 May 2021	Midcoast Design & Drafting

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. 957201S_10	26 May 2021	Midcoast Design & Drafting

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 no. 5 - Policy Controls.

Deleted

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

Signed



Adam Mitchell, Principal Planner

The application is determined on 08/07/2021, under the delegated authority of:



Catriona Shirley, Acting Development Assessment Manager