



# MODIFICATION REPORT

Application under Section 4.55(1a) of the Environmental Planning and Assessment Act 1979 to modify Development Consent No. 10.2016.194.1 issued 28 July 2016.

**Original Consent:**  
Dwelling House and Swimming Pool

## **Proposed Modifications:**

- To modify the Description to read “Dwelling House” by the removal of “and Swimming Pool”,
- To modify Condition 1 relating to approved plans as part of the parameters of the Development Consent to include minor alterations and additions to Dwelling House,
- To delete the Swimming Pool and all conditions pertaining to it, including Condition 14, 26, 27, 28, 29 and 30.

LOT 149 DP 1206177  
12 Player Parade,  
Ocean Shores

9 February 2024

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## **Annexures**

Annexure 1 – Architectural Plans Prepared by Barefoot Building Design dated 17/01/2024.

Annexure 2 – Development Consent and Stamped Plans No. 10.2016.194.1.

Annexure 3 – BASIX certificate, stamped and approved as part of DA 10.2016.194.1

Annexure 4 – Amended Estimated Cost of Works

Annexure 3 – Letter of Authorisation, Owner’s Consent and ASIC extract.

## 1.0 Details of Modification of Development Consent

In accordance with Clause 100 of the Environmental Planning and Assessment Regulation 2021, the following information is provided to meet the 'content of modification application':

(1) An application for modification of a development consent under section 4.55 (1), (1A) or (2) or 4.56 (1) of the Act must contain the following information:

(a) the name and address of the applicant,

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C/- Certifiers 2U  
PO Box 7 New Brighton NSW 2483**

(b) a description of the development that will be carried out under the development consent,

**The original development consent described the proposal as:  
Dwelling House and Swimming Pool.**

(c) the address and folio identifier of the land on which the development will be carried out,

**LOT 149 DP 1206177 known as (12 Player Parade, Ocean Shores NSW 2483)**

(d) a description of the modification to the development consent, including the name, number and date of plans that have changed, to enable the consent authority to compare the development with the development originally approved,

**It is proposed to make modifications to the development consent to modify the Description to read “Dwelling House” by the removal of “and Swimming Pool”;  
To modify Condition 1 relating to approved plans as part of the parameters of the Development Consent remove the swimming pool and include minor alterations and additions to Dwelling House, and -  
To delete reference to Swimming Pool and all conditions pertaining to it, including Condition 14, 26, 27, 28, 29 and 30.**

(e) Whether the modification is intended to:

(i) Merely correct a minor error, misdescription or miscalculation, or

(ii) have another effect specified in the modification application,

**The modifications to reduce the size of the development as part of the parameters of the development consent to amend accordingly to alterations and additions that have occurred and to delete the swimming pool that the owner no longer proposes to construct, therefore deleting any conditions pertaining to a swimming pool and to correct the description from “Dwelling House and Swimming Pool” to read simply “Dwelling House”.**

- (f) a description of the expected impacts of the modification:

**It is not anticipated that the modifications will result in any adverse impacts on the natural or built environments. The development in its current form has been in place since the Construction Certificate approval No. 11.2016.194.1 for the *New Construction for Dwelling – 1 Storey* issued on 15 September 2016.**

**The proposed alterations and additions that have occurred do not present any unacceptable environmental impacts for the residents. The proposed modification is to “regularise” the existing unauthorised work which was mistakenly undertaken as “Exempt Development”.**

**Therefore as provided for by the Land and Environmental Court’s decision in *Windy Dropdown Pty Ltd v Warringah Council [2000] NSWLEC 240 (Windy Dropdown)* approval is sort of the minor modifications. To regularise the unauthorised work, both a modification application (section 4.55 of the EPA Act allows “modification applications” to be made to modify an existing development consent on land); and a Building Information Certificate application have been made: BIC-25606 – submitted on 24 January 2024.**

- (g) an undertaking that the modified development will remain substantially the same as the development originally approved:

**The development where approved would remain substantially the same as that already approved under Development Consent No. 10.2016.194.1. Minor alterations and additions have occurred consisting of:**

- **The addition of a deck on the northern elevation, as an extension of the existing approved verandah, mistakenly believed to be exempt development.**
- **Relocation of stairs to the verandah, which are now located further north on the deck addition**
- **Minor change to the ensuite and Walk-in Robe layout of Bed 1**
- **Deletion of swimming pool**

- (h) for a modification application that is accompanied by a biodiversity development assessment report—the biodiversity credits information,

**Not applicable.**

- (i) if the applicant is not the owner of the land, a statement that the owner consents to making of the modification application:

**All landowners have provided consent to the lodgment of the Section 4.55 Application in this regard. See signed consent form and attached ASIC extract.**

- (j) Whether the modification application is being made to
  - (i) the Court under the Act, section 4.55, or
  - (ii) the consent authority under the Act, section 4.56

**The application is not being made to the Court (under section 4.55) or to the consent authority (under section 4.56).**

- (2) Subsection (1)(i) does not apply if the consent of the owner is not required under section 98.

**Not applicable.**

- (3) If a modification application under the Act, section 4.55(1A) or (2) relates to BASIX development, or BASIX optional development if the development application was accompanied by a BASIX certificate, the application must be accompanied by:

- (a) The BASIX certificate, or
- (b) a new BASIX certificate if the current BASIX certificate is no longer consistent with the development:

**The development already complies with the BASIX certificate requirements No. 674908S\_02 for a Separate Dwelling House, as approved in Development Consent No. 10.2016.194.1.**

**No changes to windows, ground floor area of conditioned spaces, or to any of the water/electric/thermal commitments are proposed in this application and as such the BASIX certificate remain the same.**

- (4) In this section— biodiversity credits information, in relation to a modification application, means the reasonable steps taken to obtain the like-for-like biodiversity credits required to be retired under a biodiversity development assessment report if different biodiversity credits are proposed to be used as offsets in accordance with the variation rules under the Biodiversity Conservation Act 2016.

**Not applicable.**

In accordance with Clause 105 of the Environmental Planning and Assessment Regulation 2021, for *'Notice of modification applications involving minimal environmental impact'*:

- (1) This section applies to—
  - (a) a modification application under the Act, section 4.55(1A), and
  - (b) a modification application under the Act, section 4.56, if the modification is, in the consent authority's opinion, of minimal environmental impact.
- (2) If a modification application is required by a community participation plan to be notified or advertised and the development consent was granted by the Court on appeal, the modification application must be notified or advertised by the consent authority to which the original development application was made.

- (3) The consent authority must, for a modification application referred to in subsection (1)(b), notify the Court of—
  - (a) the way in which the application was notified or advertised, and
  - (b) the period for submissions required by the community participation plan, and
  - (c) the period during which the application was notified or advertised.
- (4) This section does not apply to State significant development.

**The application for modification of a development consent No. 10.2016.194.1 is made under section 96 of the *Environmental Planning and Assessment Act 1979*.**

In accordance with Clause 110 of the Environmental Planning and Assessment Regulation 2021, for '*Fees payable for notice of modification applications*':

- (1) (The additional fee payable for a modification application in relation to which notice is required to be given under the Act, section 4.55(2) or 4.56(1) is specified in Schedule 4.
- (2) The fee is not payable for notice given on the NSW planning portal.

**The application for modification is made under Section 4.55(1a). Modification fees should be charged in accordance with Council's Fees and Charges.**

## 2.0 Discussion of Modification of Development Consent

It is proposed to make modifications to development consent No. 10.2016.194.1 to change the Description of Development to reflect: “Dwelling” and to delete “and Swimming Pool”.

It is proposed to make modifications to Condition 1 relating to approved plans as part of the parameters of the development consent to include minor alterations and additions that have occurred, including the deletion of the proposed Swimming Pool.

Existing condition requires:

### Parameters of this Consent

#### 1) Development is to be in accordance with approved plans

The development is to be in accordance with plans listed below:

Plan No.	Description	Prepared by	Dated:
1516 – Issue I	Drawing List	Scott carpenter architect	04/02/2016
DA-01 – Issue I	Site Plan	Scott carpenter architect	04/02/2016
DA-02 – Issue I	Ground Floor Plan	Scott carpenter architect	04/02/2016
DA-03 – Issue I	North & East Elevations	Scott carpenter architect	04/02/2016
DA-04 – Issue I	South & West Elevations	Scott carpenter architect	04/02/2016
DA-05 – Issue I	Section A-A	Scott carpenter architect	04/02/2016
DA-06 – Issue I	Section B-B	Scott carpenter architect	04/02/2016
DA-07 – Issue I	Driveway Section	Scott carpenter architect	04/02/2016

The development is also to be in accordance with any changes shown in red ink on the approved plans or conditions of consent.

The approved plans and related documents endorsed with the Council stamp and authorised signature must be kept on site at all times while work is being undertaken.

It is proposed that the condition be modified as such:

#### 1. Development is to be in accordance with approved plans.

The development is to be in accordance with plans listed below:

As modified by the following plans:

Plan No.	Description	Prepared by	Dated:
Drawing No. 1 of 5	Site Plan	Barefoot Building Design	17/01/2024
Drawing No. 2 of 5	Floor Plan	Barefoot Building Design	17/01/2024
Drawing No. 3 of 5	Elevations – N&S	Barefoot Building Design	17/01/2024
Drawing No. 4 of 5	Elevations – E & W	Barefoot Building Design	17/01/2024
Drawing No. 5 of 5	S-01 Section	Barefoot Building Design	17/01/2024

The development is also to be in accordance with any changes shown in red ink on the approved plans or conditions of consent.

The approved plans and related documents endorsed with the Council stamp and authorised signature must be kept on site at all times while work is being undertaken.

It is proposed to make modification to the consent by deleted all conditions pertaining to a Swimming Pool, as it will no longer be constructed. This would include the deletion of conditions 14, 26, 27, 28, 29 and 30.

### 3.0 Conclusion

This report summarises the proposed modifications to the approved development consent No. 10.2016.194.1 which is limited to the changing the description of Development, Condition 1 and the deletion of Conditions 14, 26, 27, 28, 29 and 30 only.

The modifications are to delete the proposed Swimming Pool as approved on 8 July 2016, and adjust the Description of Development to reflect accordingly, and, to modify the approved plans to include minor alterations and additions that have occurred.

This could allow for the development consent to be completed and an occupation certificate issued by the certifier where appropriate.

The bulk and scale of the existing development will generally remain unchanged with the removal of swimming and slight increase to the deck area. The proposed modifications result in a development that is same as that is already constructed on-site.

It is considered that adequate information has been provided to assess the proposal as a modification to a development consent, however, please advise the applicant should further information be required to address any issues that may arise during assessment.

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