

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2022/0314
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<b>Responsible Officer:</b>	Thomas Burns
<b>Land to be developed (Address):</b>	Lot 41 DP 13760, 214 Hudson Parade CLAREVILLE NSW 2107 Lot LIC 187249, 214 Hudson Parade CLAREVILLE NSW 2107
<b>Proposed Development:</b>	Modification of Development Consent DA2021/1790 granted for Alterations and additions to a dwelling house, including a swimming pool and garage
<b>Zoning:</b>	C4 Environmental Living
<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>	Yes
<b>Owner:</b>	Peter Karl Heller Marianne Heller Patrick Alexander Heller Nicole Susanne Heller
<b>Applicant:</b>	Patrick Alexander Heller

<b>Application Lodged:</b>	17/06/2022
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Refer to Development Application
<b>Notified:</b>	28/06/2022 to 12/07/2022
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	1
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Refusal

### PROPOSED DEVELOPMENT IN DETAIL

Development Consent was granted on 18 April 2022 under Development Application DA2021/1790 for alterations and additions to a dwelling house, including a swimming pool and garage.

Condition 10 of the aforementioned development consent required the maximum height of the roof to "Bedroom 4" in the module at the front of the site to be lowered by 600mm from RL21.68 AHD (proposed) to RL21.08 AHD (approved).

**"10. Amendments to the approved plans**

*The following amendments are to be made to the approved plans:*

- *The maximum height of the roof to "Bedroom 4" in the module at the front of the site is not to exceed RL 21.08. This is to minimise the view impacts of the development.*
- *The eastern edge of the inclinator carriage must be affixed a 1.7 metre high privacy screen (measured from the finished floor level of the carriage). The privacy screen shall be of fixed panels or louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development.*
- *The proposed Coastal Banksia (BI) located at the front of the property to the northwestern corner is to be replaced with a species of native plant that will not reach a significant height upon maturity, in consideration to No. 211 Hudson Parade view corridor to the south-east.*

*Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the construction certificate.*

*Reason: To ensure development minimises unreasonable impacts upon surrounding land".*

The intent behind the reduction in building height was to allow for reasonable view sharing.

This application has been made pursuant to Section 4.55(2) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) seeking to modify Condition 10 in part, by deleting the first requirement, such that the condition will read as follows:

**10. Amendments to the approved plans**

*The following amendments are to be made to the approved plans:*

- *The eastern edge of the inclinator carriage must be affixed a 1.7 metre high privacy screen (measured from the finished floor level of the carriage). The privacy screen shall be of fixed panels or louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development.*
- *The proposed Coastal Banksia (BI) located at the front of the property to the northwestern corner is to be replaced with a species of native plant that will not reach a significant height upon maturity, in consideration to No. 211 Hudson Parade view corridor to the south-east.*

*Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the construction certificate.*

*Reason: To ensure development minimises unreasonable impacts upon surrounding land.*

In doing so, the applicant seeks approval to re-instate the previously proposed roof form above bedroom 4 to a height of RL21.68 AHD.

On 5 August 2022, Council was notified that the Class 1 appeal was filed in the Land and Environment Court of New South Wales against Council's deemed refusal of the Modification Application.

**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

Pittwater 21 Development Control Plan - C1.3 View Sharing

### SITE DESCRIPTION

<b>Property Description:</b>	<p>Lot 41 DP 13760 , 214 Hudson Parade CLAREVILLE NSW 2107</p> <p>Lot LIC 187249 , 214 Hudson Parade CLAREVILLE NSW 2107</p>
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the southern side of Hudson Parade.</p> <p>The site is irregular in shape with a frontage of 15.24m and an average depth of 49.68m. The site has a surveyed area of 739.8m<sup>2</sup>.</p> <p>The site is located within the C4 Environmental Living zone under the Pittwater Local Environmental Plan 2014 and accommodates a dwelling house and double carport.</p> <p>The site slopes downwards from north to south by approximately 17.58m, presenting a relatively steep topography.</p> <p>The site incorporates a mix of native and exotic species of vegetation and consists of a well-maintained lawn area to the centre of the site.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by single and two-storey dwelling houses with a variation of architectural designs situated within a landscaped setting along the waterfront.</p>

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:

- **Development Application DA2021/1790** for alterations and additions to a dwelling house, including a swimming pool and garage approved by Council on 18 April 2022.

## APPLICATION HISTORY

On 3 August 2022, Council wrote to the applicant requesting that height poles be erected and certified by a registered surveyor to represent the outline of the bedroom 4 roofline.

On 5 August 2022, Council was notified that the Class 1 appeal was filed in the Land and Environment Court of New South Wales against Council's deemed refusal of the Modification Application.

On 24 August 2022, a view impact assessment was carried out at 211 Hudson Parade, which is located directly to the north of the subject site.

## 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 DA2021/1790, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55 (2) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55 (2) - 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 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 DA2021/1790 for the following reasons:</p> <ul style="list-style-type: none"> <li>The development remains alterations and additions to a dwelling house and maintains an overall density that is consistent with the approved alterations and additions.</li> </ul>
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) 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	Development Application DA2021/1790 did not require concurrence from the relevant Minister, public authority or approval body.
(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 2021, and the Northern Beaches Community Participation Plan.

Section 4.55 (2) - Other Modifications	Comments
(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.	See discussion on "Notification & Submissions Received" in this report.

## 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 96 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	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – 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)	<p><u>Part 4, Division 2</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to certified height poles to represent the roofline of the modified development. This information was not received.</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	<p>(i) <b>Environmental Impact</b></p> <p>The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section</p>

Section 4.15 'Matters for Consideration'	Comments
economic impacts in the locality	<p>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 (1) (e) – the public interest	The proposed development should be refused having regard to the matters that have been raised in submissions that have been received by Council to the extent that such submissions are consistent with Council's concerns regarding reasonable view sharing.

## 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 28/06/2022 to 12/07/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 1 submission/s from:

Name:	Address:
Mr John Michael Raymond Mrs Chesne Maree Raymond	211 Hudson Parade CLAREVILLE NSW 2107

One (1) submission was received following the public exhibition period. The submission raised concern of the modified development's impact on existing views from 211 Hudson Parade.

This matter has been discussed in detail within the section of this report relating to Clause C1.3 'View Sharing' of the Pittwater 21 DCP. The assessment has concluded that the modified development does not allow for reasonable view sharing. This has formed a reason for refusal.

## REFERRALS

No referrals were sent in relation to this application

## 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 (Resilience and Hazards) 2021

#### Chapter 2 – Coastal Management

The site is subject to Chapter 2 of the SEPP. Accordingly, an assessment under Chapter 2 has been carried out as follows:

#### ***Division 3 Coastal environment area***

#### ***2.10 Development on land within the coastal environment area***

- 1) *Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:*
  - a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
  - b) *coastal environmental values and natural coastal processes,*
  - c) *the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
  - d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
  - e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
  - f) *Aboriginal cultural heritage, practices and places,*
  - g) *the use of the surf zone.*
- 2) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*
  - a) *the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or*



- b) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
- c) *if that impact cannot be minimised—the development will be managed to mitigate that impact.*

Comment:

The modified development will not have an adverse impact upon the matters referred to in Division 3.

**Division 4 Coastal use area**

**2.11 Development on land within the coastal use area**

- 1) *Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:*
  - a) *has considered whether the proposed development is likely to cause an adverse impact on the following:*
    - i) *existing, safe access to and along the foreshore, beach, headland or rock*
    - ii) *platform for members of the public, including persons with a disability,*
    - iii) *overshadowing, wind funnelling and the loss of views from public places to*
    - iv) *foreshores,*
    - v) *the visual amenity and scenic qualities of the coast, including coastal headlands, Aboriginal cultural heritage, practices and places, cultural and built environment heritage, and*
  - b) *is satisfied that:*
    - i) *the development is designed, sited and will be managed to avoid an adverse*
    - ii) *impact referred to in paragraph (a), or*
    - iii) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or if that impact cannot be minimised—the development will be managed to mitigate that impact, and*
  - c) *has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.*

Comment:

The modified development will not have an adverse impact upon the matters referred to in Division 4.

**Division 5 General**

**2.12 Development in coastal zone generally—development not to increase risk of coastal hazards**

*Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.*

Comment:

The modified proposal will not increase the risk of coastal hazards within the locality.

As such, it is considered that the application complies with the requirements of Chapter 2 of the State

Environmental Planning Policy (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.

#### **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	8.5m	8.5m	-	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
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.8 Limited development on foreshore area	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	Nil (Garage) 3.1m - 5.7m (Entry)	unaltered	No further non-compliance
Rear building line	Foreshore Building Line	No new works below Foreshore	unaltered	No further non-compliance

		Building Line		
Side building line	2.5m (west)	2.6m (Dwelling House) 1.0m (Swimming Pool) 0.3m (Side Access Stairway)	unaltered	No further non-compliance
	1m (east)	1.5m (Dwelling House) 0.3m (Inclinators - Existing)	unaltered	No further non-compliance
Building envelope	3.5m (west)	Outside Envelope	unaltered	No further non-compliance
	3.5m (east)	Outside Envelope	Outside Envelope	No - slightly further non-compliant when compared to approved development amended under Condition 10
Landscaped area	60%	53.9% (398.8m <sup>2</sup> )	unaltered	No further non-compliance

**Note:** The approved built form non-compliances have been addressed within the Assessment Report for Development Application DA2021/1790. Hence, a detailed assessment against these controls has not been provided within this report, with the assessment focusing on the modified development's impact on existing views from surrounding properties.

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.1 Avalon Beach 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
B3.7 Estuarine Hazard - Low density residential	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B4.15 Saltmarsh Endangered Ecological Community	Yes	Yes
B4.16 Seagrass Conservation	Yes	Yes
B4.19 Estuarine Habitat	Yes	Yes
B5.13 Development on Waterfront Land	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

Clause	Compliance with Requirements	Consistency Aims/Objectives
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	No	No
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
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes

#### Detailed Assessment

#### **C1.3 View Sharing**

##### Merit consideration

The development is considered against the underlying outcomes of the control as follows:

- *A reasonable sharing of views amongst dwellings.*

##### Comment:

One (1) submission was received following the public exhibition period raising concern of the modified proposal's impact upon existing views from 211 Hudson Parade, which is located directly to the north of the subject site on the opposite side of Hudson Parade.

The DCP view sharing control stipulates that height poles should be erected and certified by a Registered Surveyor to demonstrate the impact on view corridors, to assist the assessment of view loss.

To assist in the assessment of the proposal's impact on existing views Council requested that height poles be erected to reflect the outline of bedroom 4, which is the subject of this modified proposal. The applicant has not provided the requested information to enable an accurate assessment. The applicant has submitted photo montages to depict the potential impacts. However, this information cannot be relied upon to be accurate and the diagrams do not consider or reflect the views lost from all relevant vantage points, and from both a seating and standing position.

In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of *Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140*, are applied to the proposal.

## 1. Nature of the views affected

*"The first step is the assessment of the views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured".*

### Comment to Principle 1:

The affected views from 211 Hudson Parade consist of generally whole views comprising the Pittwater waterway, including the land-water interface. One minor obstruction to the view is an existing canopy tree on the southern side of Hudson Parade. Noting the minimal obstructions, the views hold significant value in accordance with this planning principle.

## 2. What part of the affected property are the views obtained

*"The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic".*

### Comment to Principle 2:

The affected views from can be observed from both sitting and standing perspectives from internal bedrooms, a living room, a rumpus room and an outdoor private open space. These views are observed in a southerly direction over the front boundary of the adjacent property. Figure 1 below depicts the affected corridor when observed from the private open space at a seated position.

**Figure 1:** view corridor when observed from private open space - seated position





### 3. Extent of impact

*“The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating”.*

#### Comment to Principle 3:

The applicant has not provided certified height poles to reflect the outline of the bedroom 4 module. This information is required to accurately assess the extent of the view loss from 211 Hudson Parade. Notwithstanding, the modification to the approved bedroom 4 roof module will result in a loss of water views from both sitting and standing perspectives from internal bedrooms, a living room, a rumpus room and an outdoor private open space. The qualitative extent of the view loss is considered to be moderate in accordance with this planning principle.

### 4. Reasonableness of the proposal that is causing the impact

*“The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide*

*the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable."*

#### Comment to Principle 4:

It is noted that the bedroom 4 roof module complies with the 8.5m height of buildings development standard. Notwithstanding, step 4 of the Tenacity Principle requires Council to consider whether a more skilful design could provide for a similar development potential and level of amenity whilst retaining views. The design of Bedroom 4 including the roof design feature does not allow for a reasonable sharing of views as the 'butterfly roof form' does not follow the sloping topography and would reduce additional available water views from 211 Hudson Parade. The Bedroom 4 design also includes generous floor to ceiling heights between 2.7m and 3.1m that could be reduced to allow for the retention of additional water views. It is considered that a more skilful design (which is currently encompassed in condition 10 of Development Consent DA2021/1790) would provide for similar development potential and amenity, whilst also protecting the water views obtained from the northern adjacent property No. 211 Hudson Parade. Consequently, the modified proposal offends Principle 4 of the Tenacity Principle.

- *Views and vistas from roads and public places to water, headland, beach and/or bush views are to be protected, maintained and where possible, enhanced.*

#### Comment:

The proposal does not unreasonably impact upon public domain views.

- *Canopy trees take priority over views.*

#### Comment:

The modified proposal does not necessitate the removal of canopy trees to provide additional views.

#### Conclusion

Having regard to the above assessment, it is concluded that the outcomes of this control are not achieved, in that the modified proposal fails to provide sufficient information to enable an accurate view loss assessment, and does not provide a reasonable view sharing scenario in accordance with the planning principles outlined within the Land and Environment Court Case of *Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140*. This issue warrants refusal of the application.

#### **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;
- 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, in this regard the application is not considered to be acceptable and is recommended for refusal.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Inconsistent 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
- Inconsistent with the objects of the Environmental Planning and Assessment Act 1979

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

### **RECOMMENDATION**

THAT Council , as the consent authority REFUSE Modification Application No. Mod2022/0314 for Modification of Development Consent DA2021/1790 granted for Alterations and additions to a dwelling house, including a swimming pool and garage on land at Lot 41 DP 13760,214 Hudson Parade, CLAREVILLE, Lot LIC 187249,214 Hudson Parade, CLAREVILLE, subject to the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C1.3 View Sharing of the Pittwater 21 Development Control Plan.
2. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979 the proposed development is not in the public interest.

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

**Signed**



**Thomas Burns, Planner**

The application is determined on 13/09/2022, under the delegated authority of:



**Steven Findlay, Manager Development Assessments**