

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2022/0625
----------------------------	--------------

<b>Responsible Officer:</b>	Brittany Harrison
<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 - Zone C4 Environmental Living Yes - Zone W1 Natural Waterways
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	NBLPP
<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>	21/11/2022
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Refer to Development Application
<b>Notified:</b>	25/11/2022 to 09/12/2022
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	7.8 Limited development on foreshore area
<b>Recommendation:</b>	Approval

### EXECUTIVE SUMMARY

This modification application seeks to amend the previously approved development application DA2021/1790 for the alterations and additions to a dwelling house, including a swimming pool and garage. The proposed modified works include landscaping works within the Foreshore Building Area, these works consist of the demolition and replacement of waterway access stairs, replacement and

retention of retaining walls and the addition of two steel retaining walls. The proposed stairs will be located in a similar position to that of the existing, with the retaining walls stepping up the site which will accommodate for native planting.

The application is referred to the Northern Beaches Local Planning Panel (NBLPP) due to the modified development proposing excavation/fill works within the restricted foreshore area to facilitate the construction of the waterway access stairs, retaining walls and landscaping works. These works are considered to both provide stability to the site as it extends towards the foreshore and enhance the visual character along the waterfront, with minimal environmental impact.

As such, a variation to the non-numerical development standard of *Clause 7.8 Limited development on foreshore area* under the *Pittwater Local Environmental Plan 2014* is considered acceptable as the excavation/fill works are within the area already disturbed by existing retaining walls and stairway access.

The proposed development was notified in accordance with the Northern Beaches Community Participation Plan (CPP) for fourteen (14) days, with no submissions received.

This report concludes with a recommendation that the NBLPP grant approval to the development application, subject to recommended conditions.

## **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, and further modified by the Land and Environment Court under Mod2022/0314.

This application has been made pursuant to Section 4.56 of the *Environmental Planning and Assessment Act 1979* seeking to make the following amendments to the approved development, as modified by the Court.

- Existing external waterway access stairs below the footprint of the dwelling house to be replaced with a new staircase with new masonry retaining walls.
- Existing vegetation consisting of introduced species to be removed and replaced with predominantly native plantings.
- Rear landscaping to increase from 2 tiers to 4 tiers through introduction of two new Corten steel retaining walls and one new masonry wall.
- Existing stone retaining wall at rear between landscaping and Foreshore Area to be retained.
- Excavation of approximately 24.5m<sup>3</sup> and fill of 1.0m<sup>3</sup> to facilitate the works.

## **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

Environmental Planning and Assessment Act 1979 - Section 4.56 - Environmental Planning and Assessment Act 1979 - Section 4.56 - with S4.15 Assessment

Pittwater Local Environmental Plan 2014 - Zone C4 Environmental Living

Pittwater Local Environmental Plan 2014 - Zone W1 Natural Waterways

Pittwater Local Environmental Plan 2014 - 7.1 Acid sulfate soils

Pittwater Local Environmental Plan 2014 - 7.2 Earthworks

Pittwater Local Environmental Plan 2014 - 7.8 Limited development on foreshore area

Pittwater 21 Development Control Plan - D1.8 Front building line

Pittwater 21 Development Control Plan - D1.9 Side and rear building line

Pittwater 21 Development Control Plan - D1.14 Landscaped Area - Environmentally Sensitive Land

## 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 15.24 metres and an average depth of 49.68 metres. 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, double carport, boat house and jetty.</p> <p>The site slopes downwards from north to south by approximately 17.58 metres, 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>

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 Pittwater waterfront.

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:

### **DA2021/1790**

Development application for the alterations and additions to a dwelling house, including a swimming pool and garage.

Determined on 18 April 2022 by Delegated Authority.

### **Mod2022/0314**

Modification of Development Consent DA2021/1790 granted for Alterations and additions to a dwelling house, including a swimming pool and garage.

As modified by the Land and Environment Court on 13 December 2022.

## Current Application History

The development application was notified for a period of fourteen (14) days, as stated within Council's Community Participation Plan and resulted in no submissions.

Council however requested additional information to address the following:

- **Amend Application Type:** Development consent DA2021/1790 granted for alterations and additions to a dwelling house, including a swimming pool and garage, was recently modified by the Land and Environment Court (LEC) under Modification Application No. Mod2022/0314. Therefore, it was requested that the original submitted Section 4.55 (2) be amended pursuant to Section 4.56 of the *Environmental Planning and Assessment Act 1979*, as the consent is now a

Court issued consent.

- **Amend Statement of Modification:** An amended Statement of Modification was also provided to reflect a Section 4.56, which was requested to demonstrate in detail that the modified works are substantially the same works that were approved.
- **Amend Geotechnical Report:** The submitted Geotechnical Report within this application does not accurately reflect the works being proposed. An Addendum was provided, and deemed acceptable.

The amended plans were received on 24 February 2023, formal re-notification was not required due to a reduction in environmental impacts and clarification on various aspects of the proposal.

Council requested further additional information on 2 March 2023:

- A Cut and Fill Site Plan be submitted, noting the location of the proposed excavation and fill. This plan should also note the approximate volume of excavation and fill to occur.
- The southern steel retaining wall (RL 6.54) is to be amended to reduce visual impact of the wall and to better reflect the difference in levels when compared to the eastern adjoining property.

The amended plans were received on 6 March 2023, formal re-notification was not required due to a reduction in environmental impacts and clarification on various aspects of the proposal.

## **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 4.56 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.56- Other Modifications	Comments
(1) 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.</p> <p>The applicant has provided the following justification to support their argument that the modifications are substantially the same:</p> <p><i>"This Section 4.56 Modification only seeks to provide some detailed specification in terms of the landscaped area between the proposed dwelling and the water, to the south facing slope. The approved dwelling, the courtyard and the garage/ Level 4 bedroom remains exactly the same as per the Sealed Orders granted by the Land and Environment Court.</i></p> <p><i>The proposed landscaped under this Section 4.56 Modification is substantially the same development as the development for which the consent was originally granted:</i></p> <ul style="list-style-type: none"> <li><i>• The development will look exactly the same from the public areas on Hudson Parade as the development that has been granted consent by the Court.</i></li> <li><i>• The development will look substantially the same from the public areas when viewed from Pittwater. The proposed landscaping will remain similar to existing, that is, low level shrubs and plants within a sloping/ stepped area from the house down to the water with a single external set of steps to allow access from the house down to the existing boat shed and waterfront.</i></li> <li><i>• There are no extensions of hard landscaping, no Cabannas or any increase in entertaining areas. The extent of soft landscaping is essentially the same as the approved development.</i></li> <li><i>• The proposed landscaping, while essentially remaining the same in terms of overall effect when viewed from surrounding areas and sites, will provide improved planting in terms of native species in place of introduced European plants. It will be an overall improvement in terms of the aesthetic and will contribute to the setting of the approved development.</i></li> <li><i>• The proposed landscaping will not impact upon the amenity of any neighbour, will not provide any additional overshadowing or loss of view. To that intent it will remain substantially the same as the existing area.</i></li> <li><i>• The re-built staircase will improve the safety and amenity by removing the existing steep uneven stairs and creating a safe walkway from the house down to the waterfront.</i></li> </ul>

Section 4.56- Other Modifications	Comments
	<p><i>In support of this position, due consideration has been given to numerous decisions made by the NSW Land and Environment Court and by the NSW Court of Appeal involving applications made pursuant to Section 4.55 of the EP&amp;A Act. In this regard, particular reference is made to the City of Sydney vs Ilenace Pty Ltd (1984) 3 NSWLR 414 and Moto Projects (No. 2) Pty Ltd vs North Sydney Council (1999) 106 LGERA 298. In both these cases, it was established that the proposed modification would result in a building or development that would be 'essentially or materially' the same as the currently approved development."</i></p> <p>Reviewing the above comments and the court judgement by Justice Bignold established in the Moto Projects (No 2) Pty Ltd v North Sydney Council (1999) 106 LGERA 289 it is concurred that the proposed modification is substantially the same as the development for which the consent was originally granted and can be considered under Section 4.56 of the Act.</p>
<p>(b) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require,</p> <p>or</p> <p>(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</p>	<p>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.</p>
<p>(c) it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and</p>	<p>Written notices of this application have been sent to the last address known to Council of the objectors or other persons who made a submission in respect of DA2021/1790.</p>
<p>(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.</p>	<p>No submissions were received in relation to this application.</p>

## Section 4.15 Assessment

In accordance with Section 4.56 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	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)(iiia) – 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>Clause 29</u> of the EP&amp;A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36</u> and 94 of the EP&amp;A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to an elevation from the waterway, Geotechnical Addendum, Cut and Fill Site Plan.</p> <p><u>Clause 61</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via an existing condition of consent.</p> <p><u>Clauses 62</u> and/or 64 of the EP&amp;A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</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 clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the provisions of the</p>



Section 4.15 'Matters for Consideration'	Comments
	Building Code of Australia (BCA). This matter has been addressed via an existing condition of 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) The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report. (ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) 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 25/11/2022 to 09/12/2022 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 of the application Council received no submissions.

## REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p><b><i>Supported, subject to conditions.</i></b></p> <p>The application is for modification to development consent DA2021/1790.</p> <p>The proposed landscape amendments to the south of the property will improve the existing condition, which is supported. Landscape Referral raises no concerns with the modification application. Condition 36, imposed in DA2021/1790, shall be amended to reflect</p>

Internal Referral Body	Comments
	the additional landscaping proposed by Fifth Season Landscapes, and all other conditions remain.
NECC (Bushland and Biodiversity)	<p><b><i>Supported, subject to conditions.</i></b></p> <p>The proposal seeks approval for modifications under section 4.56 for DA2021/1790.</p> <p>The comments on this referral relate to the following provisions:</p> <ul style="list-style-type: none"> <li>• SEPP (Resilience and Hazards) 2021 - Chapter 2 Coastal Environment Area</li> <li>• Pittwater LEP 2014 - Clause 7.6 Biodiversity Protection</li> <li>• Pittwater 21 DCP - Clause B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community</li> </ul> <p>The proposal seeks approval for the landscaping plan. Species selection complies with previous requirements where at least 80% of species and plant total has to belong within the Pittwater Spotted Gum Forest Endangered Ecological Community. Therefore, it is unlikely that native flora and fauna will be impacted by the proposed modifications.</p>
NECC (Coast and Catchments)	<p><b><i>Supported, subject to conditions.</i></b></p> <p>The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Resilience &amp; Hazards) 2021 and has also been assessed against requirements of the Pittwater LEP 2014 and Pittwater 21 DCP.</p> <p><b>Coastal Management Act 2016</b> The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>.</p> <p><b>State Environmental Planning Policy (Resilience &amp; Hazards) 2021</b> The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience &amp; Hazards) 2021 (SEPP R &amp; H). Hence, Clauses 2.10, 2.11 and 2.12 of the CM (R &amp; H) apply for this DA.</p> <p><u>Comment</u></p> <p>On internal assessment and as assessed in the submitted Estuarine Risk Management Report prepared by Total Earth Care Pty. Ltd. dated 20 September 2021 supported by a letter prepared by Total Earth Care Pty. Ltd. dated 14 November 2022, the DA satisfies requirements under clauses 2.10, 2.11 and 2.12 of the SEPP R&amp;H. As such, it is considered that the application does comply with the</p>

Internal Referral Body	Comments
	<p>requirements of the State Environmental Planning Policy (Resilience &amp; Hazards) 2021.</p> <p><b>Pittwater LEP 2014 and Pittwater 21 DCP</b></p> <p><b>Estuarine Risk Management</b></p> <p>The subject property has also been identified as affected by estuarine wave action and tidal inundation on Council's Estuarine Hazard Mapping. As such, the Estuarine Risk Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP) and the relevant B3.7 Estuarine Hazard Controls will apply to any proposed development of the site.</p> <p>In accordance with the Pittwater Estuary Mapping of Sea Level Rise Impacts Study (2015), a base estuarine planning level (EPL) of RL 2.78m AHD would apply at the subject site. A reduction factor (RF) based upon the distance from the foreshore of proposed development may also apply at a rate of 0.06m reduction to the EPL for every 5.00m distance from the foreshore edge up to a maximum distance of 40.00m.</p> <p>On internal assessment and as assessed in the submitted Statement of Environmental Effects (SEE) report prepared by UTZ Banby Architects dated 7 November 2022 and as assessed in the submitted Estuarine Risk Management Report prepared by Total Earth Care Pty. Ltd. dated 20 September 2021 supported by a letter prepared by Total Earth Care Pty. Ltd. dated 14 November 2022, the level for some of the proposed additions and alterations is below the derived EPL for the site.</p> <p>The proposed development is therefore subject to conditions to satisfy the relevant estuarine risk management requirements of P21 DCP.</p> <p><b>Development on Foreshore Area</b></p> <p>A section of the subject property is within the foreshore building line. Part 7, Clause 7.8 –Limited development on foreshore area of the Pittwater LEP 2014 applies for any development within the foreshore area.</p> <p>The modification application proposes stairs, retaining walls and landscaping works. Consideration of the acceptability of these works is deferred as part of the wider planning assessment.</p>
NECC (Riparian Lands and Creeks)	<p><b><i>Supported, no conditions required.</i></b></p> <p>This application was assessed in consideration of:</p>

Internal Referral Body	Comments
	<ul style="list-style-type: none"> <li>- Submitted plans and associated reports;</li> <li>- Coastal Management Act 2016;</li> <li>- State Environmental Planning Policy (Resilience and Hazards) 2021;</li> <li>- Relevant LEP and DCP clauses; and</li> <li>- Northern Beaches Council Water Management for Development Policy.</li> </ul>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p><b><i>Supported, no conditions required.</i></b></p> <p>The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.</p> <p><b>Planner Comment:</b> Condition 2 of Development Consent DA2021/1790 covers the aforementioned requirement.</p>
Aboriginal Heritage Office	<p><b><i>Supported, no conditions required.</i></b></p> <p>Reference is made to the proposed development at the above area and Aboriginal heritage.</p> <p>No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.</p> <p>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</p> <p>Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.</p>

External Referral Body	Comments
	<b>Planner Comment:</b> Condition 35 of Development Consent DA2021/1790 covers the aforementioned requirement.

## **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 (Transport and Infrastructure) 2021**

##### Ausgrid

Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

##### Comment

The proposal was referred to Ausgrid who raised no objections, subject to conditions which have been included in the recommendation of this report.

#### **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 proposal has been reviewed by Council's Coastal, Biodiversity and Riparian Officers, who are in support of the modified works, subject to recommended conditions. The Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development. However, due to the excavation works approved under DA2021/1790, a recommended condition had been included to ensure Aboriginal Heritage Protection. This condition will still apply.

### **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 platform for members of the public, including persons with a disability,
    - ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
    - 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 impact referred to in paragraph (a), or
    - ii) 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 development is unlikely to create unacceptable impacts to the foreshore or waterway areas and will not detract from the scenic quality of the locality, maintaining an appropriate visual relationship with the surrounding built environment. The works seek to approve waterway access and although, excavation within the foreshore area is facilitated, recommended conditions are included to ensure that the protection to the environmental environment is to occur, to mitigate any adverse impacts.

### **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

Council is satisfied that the proposed development has been adequately designed, subject to recommended conditions to respond to the environmental constraints of the site, such that it can be stated that the proposed development is not likely to cause increased risk of coastal hazards within the locality.

#### **2.13 Development in coastal zone generally—coastal management programs to be considered**

Development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land.

#### Comment

Council's Coastal Officer has reviewed the proposal. Therefore Council is satisfied that consideration that the relevant provisions of any certified coastal management program that applies to the land has occurred.

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?	Zone C4 : Yes
---------------------------------	---------------

	Zone W1 : Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Zone C4 : Yes Zone W1 : Yes

#### Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings	8.5m	8.5m	Dwelling: 8.5m Retaining Wall: Maximum 1.6m	-	Yes

#### Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
5.7 Development below mean high water mark	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	No
7.10 Essential services	Yes

#### Detailed Assessment

#### Zone C4 Environmental Living

The C4 - Environmental Living zone objectives are addressed below:

- To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.***

#### Comment

The proposed works include the demolition and replacement of waterway access stairs, replacement of retaining walls and construction of additional landscaped retaining walls located within the Foreshore Building Area, which have been designed to complement and enhance the surrounding natural area. As the works are located within the Foreshore Building Area, the application will be assessed in accordance with the objectives of *Clause 7.8 Limited development on foreshore area* of the PLEP 2014. It is noted that the works trigger the need for excavation and fill, with excavation of approximately 24.5m<sup>3</sup> and fill of 1.0m<sup>3</sup> to facilitate the works. Therefore, the proposal has been reviewed by the relevant interdepartmental Officers to



ensure low impact to the ecological, scientific or aesthetic values of the site.

- ***To ensure that residential development does not have an adverse effect on those values.***

Comment

The proposed landscaped plan has been reviewed by both Council's Landscape and Biodiversity Officers who make comment that the species selection complies with the previous conditions under DA2021/1790, where at least 80% of vegetation total has to belong within the Pittwater Spotted Gum Forest Endangered Ecological Community. Therefore, it is unlikely that native flora and fauna will be impacted by the proposed modifications, but rather enhanced.

The subject property has also been identified as affected by estuarine wave action and tidal inundation on Council's Estuarine Hazard Mapping, and has been accompanied by an Estuarine Risk Management Report prepared by Total Earth Care Pty. Ltd. and an addendum, which has been reviewed by Council's Coastal Officer.

In addition to the above, recommended conditions of consent have been included by Council's Biodiversity, Coastal and Landscape to ensure that impacts to the ecological, heritage, scientific or aesthetic values of the site, are minimised.

- ***To provide for residential development of a low density and scale integrated with the landform and landscape.***

Comment

The proposal includes a landscape plan that utilises elements to aid in the integration of the immediate landform and landscape.

- ***To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.***

Comment

Council's Coastal and Biodiversity Officers have reviewed the proposal and support the development subject to recommended conditions of consent to ensure that the impacts to the riparian and native wildlife corridors are also minimised.

## **Zone W1 Natural Waterways**

The proposed works under this application are not located within the W1 Natural Waterways zone, and therefore no further assessment is required.

### **7.1 Acid sulfate soils**

Clause 7.1 Acid sulfate soils requires Council to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. The proposed works have been assessed against the below, accordingly.

Specifically subclause (2) and (3) provide:

***(2) Development consent is required for the carrying out of works described on land shown on the Acid Sulfate Soils Map as being of the class specified for those works.***

**Class of Works  
land**

1	Any works
2	Works below the natural ground surface Works by which the watertable is likely to be lowered.
3	Works more than 1 metre below the natural ground surface Works by which the watertable is likely to be lowered more than 1 metre below the natural gr
4	Works more than 2 metres below the natural ground surface.  Works by which the watertable is likely to be lowered more than 2 metres below the natural g
5	Works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 lar

Comment

The site is located in an area identified as Acid Sulfate Soil **Class 5**, as indicated on Council's Acid Sulfate Soils Planning Map.

***(3) Development consent must not be granted under this clause for the carrying out of works unless an acid sulfate soils management plan has been prepared for the proposed works in accordance with the Acid Sulfate Soils Manual and has been provided to the consent authority.***

Comment

As noted in the table above, works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the watertable is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land is required to be assessed to determine if any impact will occur, before being granted development consent.

The proposed development is located within 500 metres of adjacent Class 1 land that is below 5 metres Australian Height Datum. Despite this, the proposed works are situated predominantly above ground in exception of minor foundation works for the proposed retaining walls and stairway. The proposed excavation includes a maximum depth of 0.9 metres in relation to the top platform and stairs, and a maximum excavation of 0.5m in relation to the retaining walls. A total volume of 24.5m<sup>3</sup> will be required to facilitate the works.

The works will not exceed below 1.60 metres Australian Height Datum, by which the watertable is not likely to be lowered below 1.0 metre Australian Height Datum on adjacent Class 1 land. In this instance, a referral comment from Environmental Health was not triggered. In light of the above, development consent is not required for the carrying out of the proposed works, and an Acid Sulfate Soils Management Plan (ASSMP) in accordance with the Acid Sulfate Soils Manual, is therefore not required.

In addition subclause (4) is not deemed relevant, as the proposed works do not meet the criteria for development consent or the need for a preliminary assessment of the proposed works prepared in accordance with the Acid Sulfate Soils Manual, also indicating that an ASSMP is not required.

Therefore, the proposal complies with Clause 7.1 Acid sulfate soils, with no additional recommended conditions.

## **7.2 Earthworks**

The objective of Clause 6.2 Earthworks requires development to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

In this regard, before granting development consent for earthworks, Council must consider the following matters:

*(a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality of the development*

Comment: The proposal is unlikely to unreasonably disrupt existing drainage patterns and soil stability in the locality. Council's Riparian and Coastal Officers have reviewed the proposal, and recommended conditions.

*(b) the effect of the proposed development on the likely future use or redevelopment of the land*

Comment: The proposal will not unreasonably limit the likely future use or redevelopment of the land.

*(c) the quality of the fill or the soil to be excavated, or both*

Comment: The excavated material will be processed according to the Waste Management Plan for the development.

*(d) the effect of the proposed development on the existing and likely amenity of adjoining properties*

Comment: The proposed earthworks will not result in unreasonable amenity impacts on adjoining properties. Conditions have been included in the recommendation of this report to limit impacts during excavation/construction.

*(e) the source of any fill material and the destination of any excavated material*

Comment: The excavated material will be processed according to the Waste Management Plan for the development. Excavation of approximately 24.5m<sup>3</sup> and fill of 1.0m<sup>3</sup> are required to facilitate the works.

*(f) the likelihood of disturbing relics*

Comment: The development was referred to the Aboriginal Heritage Office who provided comments and conditions that have been included in the consent.

*(g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area*

Comment: The site is not located in the vicinity of any watercourse, drinking water catchment or environmentally sensitive areas.

*(h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Comment: Conditions are included in the recommendation of this report that will minimise the impacts of the development.

*(i) the proximity to and potential for adverse impacts on any heritage item, archaeological site or heritage conservation area.*

Comment: The site is not a heritage item, in the vicinity of a heritage item or in a conservation area or archaeological site.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of PLEP 2014, Pittwater 21 DCP and the objectives specified in s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

7.8 Limited development on foreshore area

Description of Non-compliance:

Development Standard:	Limited Development on Foreshore Area
Requirement:	Foreshore Building Line
Proposed:	The variation occurs as the works include the addition of new and the replacement of existing retaining walls and an upgrade to the waterway access stairs that facilitate the need for minor excavation and fill works.
Percentage variation to requirement:	N/A - Non-numerical Development Standard.

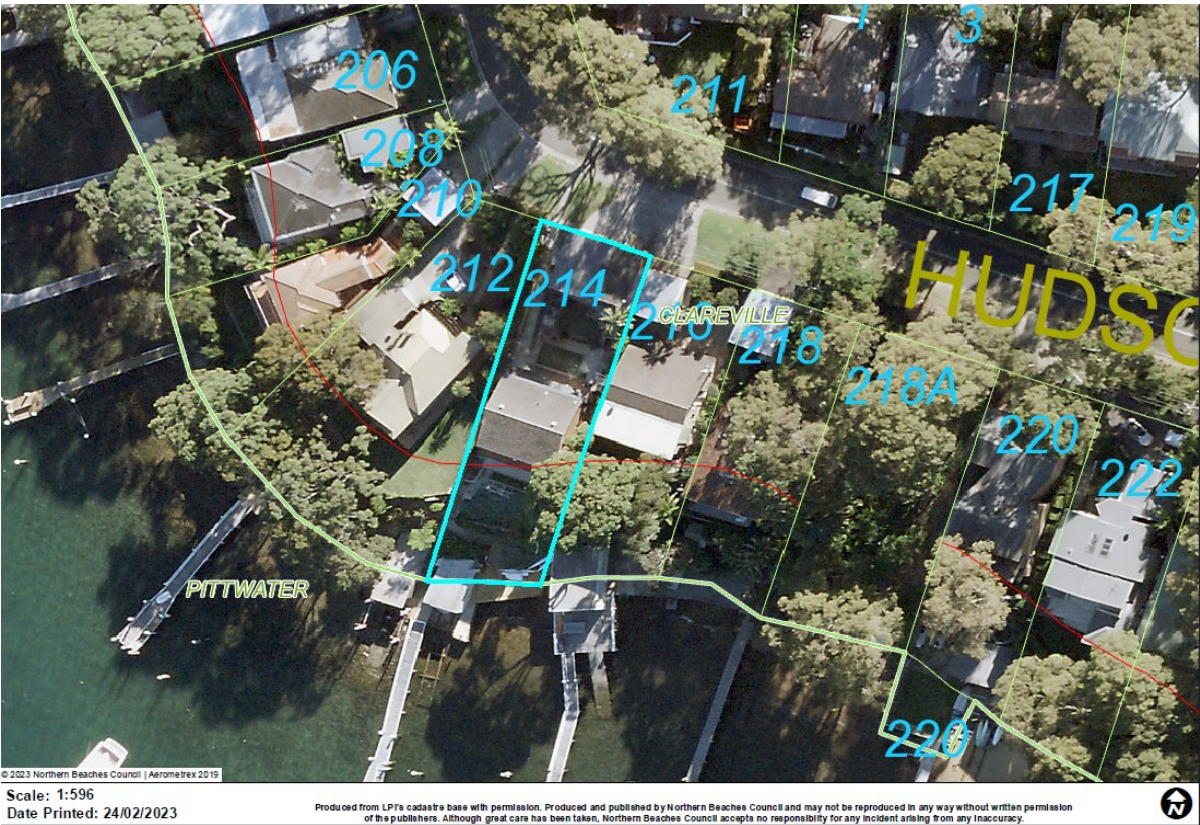


Figure 1 - FSBL Map





landscaped retaining walls, the application does not strictly need to address the requirements of Clause 4.6.

The application has been made under Section 4.56 of the Environmental Planning and Assessment (EPA) Act 1979, which is a free standing provision that in itself authorises the development to be approved notwithstanding any breach of development standards. Section 4.56 is subject to its own stand-alone tests (such as the substantially the same test and consideration of all relevant Section 4.15 matters) and does not rely upon having a Clause 4.6 variation in order to determine the modification application.

Notwithstanding that Clause 4.6 does not apply to Section 4.56 modification applications, the merits of the variation have been assessed with regard to the objectives of the 'Limited development on foreshore area' and the underlying objectives of the C4 Environmental Living zone. Notwithstanding that Clause 4.6 does not strictly apply, the assessment has also taken into consideration the relevant tests of the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

**Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case,**

Comment

It is considered that compliance with the development standard is unreasonable or necessary in the circumstances of the case as the works included involve an upgrade and enhancement of the foreshore area (i.e. landscaped retaining walls and upgraded stairway access). The works will involve excavation and fill works within the area to facilitate the development (see Figure 3 above), which in this case cannot be avoided. The works are in part essential to ensure the stability of the site.

**There are sufficient environmental planning grounds to justify contravening the development standard,**

Comment

The applicants supporting documentation argues, in part:

- *The development will look exactly the same from the public areas on Hudson Parade;*
- *The development will look substantially the same from the public areas when viewed from Pittwater. The proposed landscaping will remain similar to existing, that is, low level shrubs and plants within a sloping/ stepped area from the house down to the water with a single external set of steps to allow access from the house down to the existing boat shed and waterfront;*
- *There are no extensions of hard landscaping;*
- *The proposed landscaping, while essentially remaining the same in terms of overall effect when viewed from surrounding areas and sites, will provide improved planting in terms of native species in place of introduced European plants. It will be an overall improvement in terms of the aesthetic and will contribute to the setting of the approved development.*
- *The proposed landscaping will not impact upon the amenity of any neighbour, will not provide any additional overshadowing or loss of view;*
- *The re-built staircase will improve the safety and amenity.*

It has demonstrated that the modified development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying cls 1.3 (c) and (g) of the EPA Act. The modified development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is

proposed to be carried out.

#### **Clause 7.8 Limited development on foreshore area**

(1) The objectives of this clause are as follows:

***(a) To ensure that development in the foreshore area will not impact on natural foreshore processes or affect the significance and amenity of the area,***

##### Comment

The proposed works include the replacement of retaining walls and stairway access which already exist within the foreshore area, with the addition of further, retaining walls that are necessary for stability. It is not considered that an upgrade or replacement of these works will detrimentally impact the significance or amenity of the area, but rather result in an enhancement of the site as it extends towards the foreshore. The critical part of the assessment is in regard is the need for excavation and fill within the foreshore area to facilitate the works. These works have been reviewed by Council's relevant interdepartmental officers which include Biodiversity, Landscape, and Coastal, who are supportive of the works, subject to recommended conditions to ensure that the development and excavation will not detrimentally impact upon the natural foreshore processes or affect the significance and amenity of the area. Excavation of approximately 24.5m<sup>3</sup> and fill of 1.0m<sup>3</sup> is required to facilitate the works. The proposed excavation includes a maximum depth of 0.9 metres in relation to the top platform and stairs, and a maximum excavation of 0.5m in relation to the retaining walls. The proposal has also been accompanied by the relevant supporting documentation to ensure the protection of the ecological and aesthetic values on site.

***(b) To ensure continuous public access along the foreshore area and to the waterway.***

##### Comment

The proposed works within the foreshore area have no impact on public access along the foreshore area and to the waterway. The works however, will improve access for the residents from the dwelling house to the waterway, in terms of safety and aesthetics.

#### **Zone Objectives**

The works proposed under this modification application have been assessed in accordance with the objectives for the C4 Environmental Living and W1 Natural Waterways zone, and is considered to be consistent with the objectives. Refer to 'Zone Objectives', elsewhere within this report.

#### **Clause 4.6 (4)(b) (Concurrence of the Secretary) assessment:**

cl. 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted.

##### Comment

The subject application is made under Section 4.55 of the EPA Act. As such, Clause 4.6 does not strictly apply and the concurrence of the Secretary is not required to be obtained.

#### **Part 2: Assessment of Development permissible within the Foreshore Area**

**(2) Development consent must not be granted for development on land in the foreshore area except for the following purposes:**

- *the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area, but only if the development will not result in the footprint of the building extending further*

- *into the foreshore area,*
- *boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).*

#### Comment

Clause 7.8 of the Pittwater Local Environmental Plan 2014 stipulates that consent may be granted for development on land within the foreshore area for the purposes of waterway access stairs, or the rebuilding of development that doesn't result in a building extending further into the foreshore area.

In addition to the variation assessed in Part 1 above, the proposed development includes the rebuilding of waterway access stairs which constitute works to which maybe permitted within the foreshore area. In addition to this, the modification seek to also replace / rebuild retaining walls wholly within the foreshore area, which will not result in the footprint of the building extending further into the foreshore area.

#### **(3) Development consent must not be granted under this clause unless the consent authority is satisfied that:**

- *the development will contribute to achieving the objectives for the zone in which the land is located, and*
- *the appearance of any proposed structure, from both the waterway and adjacent foreshore areas, will be compatible with the surrounding area, and*
- *the development will not cause environmental harm such as:*
  - *pollution or siltation of the waterway, or*
  - *an adverse effect on surrounding uses, marine habitat, wetland areas, fauna and flora habitats, or*
  - *an adverse effect on drainage patterns, or*
  - *the removal or disturbance of remnant riparian vegetation, and*
- *the development will not cause congestion or generate conflict between people using open space areas or the waterway, and*
- *opportunities to provide continuous public access along the foreshore and to the waterway will not be compromised, and*
- *any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land on which the development is to be carried out and of surrounding land will be maintained, and*
- *in the case of development for the alteration or rebuilding of an existing building wholly or partly in the foreshore area, the alteration or rebuilding will not have an adverse impact on the amenity or aesthetic appearance of the foreshore, and*
- *sea level rise, coastal erosion and recession, or change of flooding patterns as a result of climate change have been considered.*

#### Comment:

The proposed development is consistent with the objectives of the C4 Environmental Living zone. The appearance of the proposed development is compatible with the surrounding area and will not cause environmental harm in relation to pollution, siltation, surrounding uses, marine habitat, wetland areas, flora or fauna habitats, drainage patterns or remnant riparian vegetation, which is to be ensured by recommended conditions of consent. The development will not cause congestion or generate conflict between people using the adjacent open space or waterway and will retain public access along the foreshore. The development will not result in adverse impacts to any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land. The development will not impact upon sea level rise, coastal erosion or recession, or change flooding patterns.



**(4) In deciding whether to grant consent for development in the foreshore area, the consent authority must consider whether and to what extent the development would encourage the following:**

- *continuous public access to and along the foreshore through or adjacent to the proposed development,*
- *public access to link with existing or proposed open space,*
- *public access to be secured by appropriate covenants, agreements or other instruments registered on the title to land,*
- *public access to be located above mean high water mark,*
- *the reinforcing of the foreshore character and respect for existing environmental conditions.*

Comment:

The proposed development will retain the availability of the existing continuous public access to and along the foreshore portion of the site. The proposed development does not impact upon or restrict the level of existing public access. The proposed development is acceptable in relation to the foreshore character and the existing environmental conditions. As such, the proposed modifications are acceptable.

**Pittwater 21 Development Control Plan**

Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
Front Building Line	6.5m Northern Boundary	Garage: Nil Entry: 3.1m - 5.7m	Proposed landscaped works: > 6.5m	Yes
Rear Building Line	Foreshore Building Line (FBL) Applies	Works to dwelling within existing building footprint below the FBL and permitted under cl7.8 of PLEP 2014	Proposed works: Within FBL	<b>No</b> (Refer to Clause 7.8 under PLEP 2014)
Side Building Line	2.5m Western Boundary	Dwelling: 2.6m Swimming pool: 1.0m Side access stairway: 0.3m	No Change No Change No Change Proposed retaining walls: nil* Proposed waterway access: nil	Yes Yes No-previously approved Yes <b>No</b>
	1.0m Eastern Boundary	Dwelling: 1.5m Inclinor - Existing: 0.3m	No Change No Change Proposed retaining walls: 0.2m*	Yes No - previously approved Yes
Building Envelope	3.5m Western Elevation	Outside Envelope	No change the extent of envelope breach	N/A - under this application
	3.5m	Outside Envelope	No change the	N/A - under this

	Eastern Elevation		extent of envelope breach	application
Landscaped Area	60.0% (443.9m <sup>2</sup> )	53.9% (398.8m <sup>2</sup> )	47.4% (351.0m <sup>2</sup> )	<b>No</b>

\*The minimum side and rear building line does not apply to structures such as driveways, fences and retaining walls as stipulated under *Clause D1.9 Side and rear building line* of the P21DCP.

#### 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
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
B8.6 Construction and Demolition - Traffic Management Plan	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
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	Yes	Yes
D1.1 Character as viewed from a public place	Yes	Yes
D1.5 Building colours and materials	Yes	Yes
D1.8 Front building line	No	Yes
D1.9 Side and rear building line	No	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D1.14 Landscaped Area - Environmentally Sensitive Land	No	Yes
D1.20 Scenic Protection Category One Areas	Yes	Yes
D15.11 Waterfront lighting	Yes	Yes
D15.12 Development seaward of mean high water mark	Yes	Yes
D15.14 Minimum frontage for waterfront development	Yes	Yes

### Detailed Assessment

#### **D1.8 Front building line**

Clause D1.8 Front building line stipulates that built structures, other than driveways, fences and retaining walls must comply with a 6.5 metres front setback.

However, the subject site benefits from a previously approved non-compliant nil front setback, when measured from the previously approved garage and 2.1 metres - 5.7 metres, when measured from the previously approved dwelling house under DA2021/1790. The modified works under this application are located at approximately 34.0 metres from the front boundary line, and will therefore not further increase the numerical non-compliance.

A detailed merit assessment is not required, in this instance.

#### **D1.9 Side and rear building line**

##### Description of Non-compliance

Clause D1.9 Side and Rear Building Line prescribes a side setback of 2.5 metres to one side and 1.0 m to the other. For this assessment, the 2.5 metres side building line is applied to the western boundary and the 1.0 metres side building line applied to the eastern boundary.

The proposed modification works include an upgrade of the existing waterway access stairs with a portion exhibiting a nil setback. It is noted that the existing stairway was situated in a similar location and setback.

##### Merit Consideration

With regard to the consideration of a variation, the proposed development is considered against the underlying outcomes of the control as follows:

- ***To achieve the desired future character of the Locality.***

##### Comment

The proposed works will maintain a predominantly low-density residential design within a landscaped setting, integrated with the landform and natural environment.

- ***The bulk and scale of the built form is minimised.***

##### Comment

The elements encroaching the setback area can be considered lightweight in nature compared to the development as a whole. The dwelling house will maintain existing setbacks previously approved under DA2021/1790. The proposed landscaping within the foreshore area will result in

acceptable minimisation of bulk and scale when visually consumed from the adjoining properties and waterway.

- ***Equitable preservation of views and vistas to and/or from public/private places.***

Comment

The encroachment into the side setback as a result of the proposed works are not considered to result in any unreasonable view loss from surrounding private properties or the public domain.

- ***To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.***

Comment

As mentioned above, the proposed works will not cause a detrimental impact to the preservation of existing views due to these design elements being located close to ground level.

- ***To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties.***

Comment

The side encroachment is not considered to unreasonably impede on the amenity to the neighbouring properties in terms of privacy or solar access to that of what was previously approved under DA2021/1790.

- ***Substantial landscaping, a mature tree canopy and an attractive streetscape.***

Comment

The proposal is sited below mature tree canopy level in the immediate vicinity and provides adequate spacing for landscaping within the side setback areas. The proposed modification consist of a high quality landscaped design which is considered to be visually appealing from the waterway and enhance the existing character of the area.

- ***Flexibility in the siting of buildings and access.***

Comment

The modified stairs are appropriately positioned to allow for external access between the house and waterway. The remainder of the modifications within the side setback area are likely to enhance the flexibility and access of the subject site and dwelling house.

- ***Vegetation is retained and enhanced to visually reduce the built form.***

Comment

Despite a reduction in the soft landscaping calculation when compared to DA2021/1790, the works include an upgrade in the landscaped area within the foreshore, which is considered to enhance the built form through new plantings.

- ***A landscaped buffer between commercial and residential zones is achieved.***

Comment

The subject site is located in and is surrounded immediately by either environmental protection or residential zones, this outcome does not apply.

Having regard to the above assessment, it is concluded that the outcomes of the clause have been

achieved. Therefore, the application is supported on merit in this particular circumstance.

#### **D1.14 Landscaped Area - Environmentally Sensitive Land**

##### Description of Non-compliance

Clause D1.14 Landscaped Area - Environmentally Sensitive Land requires a minimum of 60% landscaped area which equates to 443.9m<sup>2</sup>.

The proposed modification results in a landscaped area of 47.4% or 351m<sup>2</sup>, with a variation of 20.9%. Which is an overall reduction when compared to DA2021/1790, by approximately 47.8m<sup>2</sup>.

It is noted that the existing waterway access stairs were calculated in the original landscaped open space calculation, due to the variation allowed under this clause for impervious areas less than 1.0 metres in width. As the new stairway access is greater than 1.0 metres in width (as it acts in part as a retaining structure), it has now been excluded from the calculation. Were the stairs <1 metres in width and still included, the landscaping ratios of the site would remain unaltered.

##### Merit Consideration

The proposed development will still be considered against the underlying outcomes of the clause as follows:

- ***Achieve the desired future character of the Locality.***

##### Comment

The development will remain sited below tree canopy height, and will consist of new native vegetation within the foreshore building area that will complement the natural environment within the immediate vicinity. Therefore, it can be considered that the proposal is consistent with the desired future character of the Avalon/Clareville Locality, in preserving the significance of the surrounding natural environment.

- ***The bulk and scale of the built form is minimised.***

##### Comment

Despite the non-compliance, the new landscape works provide dimensions capable of accommodating the proposed vegetation that shall, over time, aid in the screening of the building to mitigate the bulk and scale when viewed from the public domain and neighbouring properties.

- ***A reasonable level of amenity and solar access is provided and maintained.***

##### Comment

The landscape works proposed under this application is not considered to impact on the solar access that was approved under DA2021/1790. The works will contribute to neighbouring amenity by way of providing a quality landscaped space to the foreshore building area, when compared to that of the existing.

- ***Vegetation is retained and enhanced to visually reduce the built form.***

##### Comment

The proposal has submitted a detailed landscape plan prepared by a suitably qualified professional. As mentioned above, the proposed landscaping works and the existing retained vegetation on site will act to mitigate any perceivable bulk and scale and visually soften the built form of the development.

- ***Conservation of natural vegetation and biodiversity.***

Comment

Council's Biodiversity Officer has reviewed the proposal in relation to biodiversity conservation and found the development to be acceptable, subject to conditions. The proposal includes the plantation of predominately native vegetation, enhancing the natural character of the land and waterfront.

- ***Stormwater runoff is reduced, preventing soil erosion and siltation of natural drainage channels.***

Comment

Stormwater runoff is not expected result in any unreasonable impacts to soil erosion and siltation of natural drainage channels. Condition 25 Installation and Maintenance of Sediment and Erosion Control of DA2021/1790, will ensure the protection of the surrounding environment from the effects of sedimentation and erosion from the site.

- ***To preserve and enhance the rural and bushland character of the area.***

Comment

The subject site is located within, and is surrounded by environmental and residential zones, however the proposal has addressed the incorporation of appropriate landscaping. Furthermore, preserving the landscaped character present within the Clareville area.

- ***Soft surface is maximised to provide for infiltration of water to the water table, minimise run-off and assist with stormwater management.***

Comment

There is adequate soft landscaping on the site, which will assist in water infiltration.

Having regard to the above assessment, it is concluded that the outcomes of the clause have been achieved. Therefore, the application is supported on merit in this particular circumstance.

## **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, 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

## PLANNING CONCLUSION

This proposal, to amend the previously approved development application DA2021/17990, has been referred to the Northern Beaches Local Planning Panel (NBLPP) due to a variation of a non-numerical development standard *Clause 7.8 Limited development on foreshore area*. The application includes disturbance to the existing foreshore area by way of excavation/fill works and the addition of new retaining walls to facilitate an upgrade to the waterway stair access and landscaping. Hence meeting the requirements for the determination by the NBLPP.

The proposed development was notified in accordance with the Northern Beaches Community Participation Plan (CPP) for fourteen (14) days, with no submissions received.

On balance, and considering the preceding detailed assessment of the application, including a detailed analysis of the variation to *Clause 7.8* of the PLEP 2014, it is considered that the proposal, subject to recommended conditions will result in a development that is acceptable in design, and not unacceptably impact the natural foreshore processes or affect the significance and amenity of the area.

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed. Accordingly, the application is referred to the NBLPP with a recommendation for approval.

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

## RECOMMENDATION

THAT Northern Beaches Local Planning Panel as the consent authority grant approval to Modification Application No. Mod2022/0625 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 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

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
DA00, DA Site Plan / Roof Plan, Revision B	12 December 2022	UTZ Sanby Architects
LCP-01, Concept Plan - Level 1, Revision A	31 October 2022	Fifth Seasons Landscapes
DET-01, Level 1: Sections 01, Revision A	31 October 2022	Fifth Seasons Landscapes
DET-02, Level 1: Sections 02, Revision A	31 October 2022	Fifth Seasons Landscapes
DET-03, Level 1: Sections 03, Revision A	31 October 2022	Fifth Seasons Landscapes
DET-04, Excavation Plan - Level 1, Revision A	6 March 2023	Fifth Seasons Landscapes

<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
Estuarine Risk Management Report Addendum (Ref. J10028)	14 November 2022	Total Earth Care Pty Ltd.
Geotechnical Report Addendum - Request for Additional Information (Ref. R.002.Rev0)	16 November 2022	Douglas Partners Pty Ltd.

#### b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

#### d) The development is to be undertaken generally in accordance with the following:

<b>Landscape Plans</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
PLT-01, Planting Plan - Level 1, Revision A	31 October 2022	Fifth Seasons Landscapes

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.



**B. Amend Condition No. 15 Compliance with Estuarine Risk Management Report to read as follows:**

The development is to comply with all recommendations of the approved Estuarine Risk Management Report prepared by Total Earth Care Pty. Ltd. dated 20 September 2021 supported by a letter prepared by Total Earth Care Pty. Ltd. dated 14 November 2022 and these recommendations are to be incorporated into construction plans.

Reason: To minimise potential hazards associated with development in an estuarine habitat.

**C. Add Condition No. 23A Estuarine Planning Level Requirements to read as follows:**

An Estuarine Planning Level (EPL) of 2.78m AHD has been adopted by Council for the subject site and shall be applied to all development proposed below this level as follows:

- All structural elements below 2.78m AHD shall be of flood compatible materials;
- All electrical equipment, wiring, fuel lines or any other service pipes and connections must be located either above 2.78m AHD or waterproofed to this level; and
- The storage of toxic or potentially polluting goods, chemicals or materials, which may be hazardous or pollute the waterway, is not permitted below 2.78m AHD.
- All interior power supplies (including electrical fittings, outlets and switches) must be located at or above 2.78m AHD. All exterior power supplies (including electrical fittings, outlets and switches) shall be located at or above 2.78m AHD to avoid the likelihood of contact with splashing waves and spray.

Reason: To ensure aspect of the development are built at the appropriate level

**D. Add Condition No. 35A Wildlife Protection to read as follows:**

If construction activity associated with this development results in injury or displacement of a native mammal, bird, reptile or amphibian, a registered wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To protect native wildlife.

**E. Amend Condition No. 36 Landscape Completion to read as follows:**

Landscaping is to be implemented in accordance with the approved Landscape Plan (drawing DA-04 by Utz Sanby dated 16/09/22), inclusive of the following conditions:

i) substitute the proposed *Pennisetum alopecuroides* with a locally native alternative. Suggested species include: *Imperata cylindrica*, *Lomandra longifolia*, or *Themeda australis*.

Landscaping in the rear setback, proposed in Mod2022/0625, shall supersede the above proposal and be implemented in accordance with the approved Landscape Plan (drawing PLT-01 by Fifth Season Landscapes dated 31/10/22).

Prior to the issue of an Occupation Certificate, details shall be submitted to the Certifier, certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: Environmental amenity.