

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	MOD2024/0355
<b>Responsible Officer:</b>	Kalinda Li (Consultant Planner)
<b>Land to be developed (Address):</b>	120 Prince Alfred Parade, Newport
<b>Lot and Deposited Plan:</b>	Lot 9 DP 752046 Lot 34 DP 13457 Lot 35 DP 13457 Lot B DP 391307 LIC 190387
<b>Proposed Development:</b>	Modification of consent to DA2022/0246 granted for demolition works, subdivision of 4 lots into 2 lots and the construction of 1 dwelling on each lot including swimming pools and landscaping works
<b>Zoning:</b>	W1 – Natural Waterways 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>	No
<b>Owner:</b>	Bravo Futura Residential Development No.1 Pty Ltd
<b>Applicant:</b>	Ella Maree Miles
<b>Application Lodged:</b>	04/07/2024
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>Notified:</b>	Yes – Between 15/07/2024 to 29/07/2024
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	Nil (0)
<b>Clause 4.6 Variation:</b>	No
<b>Recommendation:</b>	Approval

### EXECUTIVE SUMMARY

This report is an assessment of a modification application under Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) on land at 120 Prince Alfred Parade, Newport (Lot 9 DP 752046, Lot 34 DP 13457, Lot 35 DP 13457, Lot B DP 391307, and LIC 190387). The modification (MOD2024/0355) was lodged on 04 July 2024 and seeks to modify the consent under DA2022/0246 which was determined by the Northern Beaches Local Planning Panel on 07 December 2022 for the demolition works, subdivision of four lots into two lots and the construction of one dwelling on each lot including swimming pools and landscape works. The site is zoned C4 Environmental Living and W1 Natural Waterways under the *Pittwater Local Environmental Plan 2014* (PLEP 2014), and the proposed development is permitted with consent.

The application is reported to Council's Development Determination Panel (DDP) as the applicant for the application is a relative of a Council Staff member who is responsible for functions administered under the *Environmental Planning and Assessment Act, 1979*.

The Modification Application was notified between 15 July 2024 and 29 July 2024. No submissions were received.

A site visit was conducted on 06 August 2024.

The preliminary assessment of the submitted documentation revealed that details regarding the external staircase above the kayak storage area was insufficient. A request for further information was therefore issued to the applicant on 23 August 2024.

Revised documentation was received on 29 August 2024 which provided further details regarding the amended external staircase.

The amended documentation resolved the concern raised in relation to insufficient information.

An independent planning consultant has externally assessed this application.

Having regard to the matters for consideration under Section 4.15 of the *Environmental Planning and Assessment Act*, it is recommended that modification application MOD2024/0355 be approved.

The proposed development is not considered to result in any unacceptable impacts to adjoining properties and is deemed suitable for the site.

## **PROPOSED DEVELOPMENT IN DETAIL**

The application proposes to modify the consent under DA2022/0246 and includes the following works:

### **Dwelling No.120:**

- Addition of a spa within approved swimming pool footprint
- changing the façade materials for kayak storage room to lightweight materials
- Increasing the width of the gym door by including a sliding door
- Raised garden landscape planter removed to natural ground level and a replenishment tree proposed adjacent to the shared western boundary with Dwelling No. 120a
- Amendment to master ensuite layout
- Amendment to guest bedroom layout
- Addition of eight skylights
- Amendment to window and door dimensions
- Deletion of lift void (all levels)
- increasing the retaining wall setback for the external staircase alignment (atop the kayak storage room) from the street to minimize excavation and change the staircase from four to three runs and includes the deletion of raised landscape planters.

### **Dwelling No.120a:**

- Addition of a spa within approved swimming pool footprint
- Amendment to master ensuite layout
- Amendment to bathroom layout
- Addition of three skylights
- Amendment to window and door dimensions
- Reduction in length of internal wall between hall and dining room
- Amendment to powder room layout

- Deletion of lift void deleted (all levels).

It is noted that the Architectural Plans show a driveway location that differs to the stamped plans approved under DA2022/0246. The new driveway was approved under s138 of the Roads Act (S138A2023/0014) on 24 June 2024 and therefore does not form part of this modification application.

### Amended plans 29 August 2024

The following amendments to the plans were made by the Applicant after request from Council:

- Details of the amendment of external staircase and retaining wall along the western boundary (Dwelling No. 120).

### ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted, and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers,
- State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

### SUMMARY OF ASSESSMENT ISSUES

There are no assessment issues.

### SITE DESCRIPTION

<b>Property Description:</b>	120 Prince Alfred Parade, Newport Lot 9 DP 752046 Lot 34 DP 13457 Lot 35 DP 13457 Lot B DP 391307 LIC 190387
<b>Detailed Site Description:</b>	The subject property consists of four lots located at the northern side of Prince Alfred Parade. The site is an irregularly shaped lot and consists of 58.87m frontage to Prince Alfred Parade and extends back to Salt Pan Cove. The site has a total area of 1,631.6m <sup>2</sup> and is zoned as C4 Environmental Living and W1 Natural Waterways.

The terrain slopes steeply up from the street before leveling off near the approved dwellings and continuing toward the waterfront. A concrete crib wall and retaining wall, reaching up to 2 meters in height, support the filled embankment for the road. Low brick retaining walls terrace the downward slope from the front boundary. Currently, the rear of the site consists of a flat earthed surface that stretches from the rear of the approved dwellings and swimming pools to the water, supported by a low sandstone block seawall. The site boundaries and adjacent Council reserve, Florence Park, feature a mix of native and non-native trees, in various stages of maturity.

Physical works approved under DA2022/0246 have already commenced and previous structures, which included a single-story house, and a detached garage with a studio, have been demolished under and the construction works are currently underway.



*Figure 1 Subject site as viewed from Prince Alfred Parade. Source: CPS site inspection 06 August 2024*



*Figure 2 Rear portion of the site, with boundary to Salt Pan Cove. Source: CPS site inspection 06 August 2024*



*Figure 3 Prince Alfred Parade from the subject site. Source: CPS site inspection 06 August 2024*



Figure 4 Aerial Image with the site delineated in red. Source: Near Map 4 August 2024

**Detailed Description of Adjoining/ Surrounding Development:**

The site adjoins Florence Park on its eastern boundary and Salt Pan Bay to the north. Adjoining and surrounding development is characterised by detached dwellings in landscaping settings.

The adjoining dwellings to the west of the site 118A, 118, 116A, 116 and 114 Prince Alfred Parade are built close to the front boundary with a four-storey appearance when viewed from Salt Pan Cove.



Figure 5 Location Map with the site delineated in red. Source: Near Map 4 August 2024.

**SITE HISTORY**

DA2022/0246 was determined by the Northern Beaches Local Planning Panel on 07 December 2022 for the demolition works, subdivision of four lots into two lots and the construction of one dwelling on each lot including swimming pools and landscape works.

The new driveway design was approved under s138 of the Roads Act (S138A2023/0014) on 24 June 2024.

## APPLICATION HISTORY

04 July 2024	The Modification Application was lodged.
15 July 2024 – 29 July 2024	The DA was notified to surrounding properties. In response, no submissions were received.
06 August 2024	The consultant planner undertook a site inspection of the subject site.
23 August 2024	A request for further information (RFI) was issued to the applicant requesting for further details regarding the proposed changes to the external staircase above the kayak storage area.
29 August 2024	The applicant responded to the RFI with amended architectural plans providing additional details of the amended external staircase and retaining wall along the western side boundary.
20 September 2024	A second RFI was issued to the applicant requiring confirmation from a geotechnical engineer that the development was consistent with the provisions of P21DCP.
28 September 2024	The applicant responded to the RFI with a revised Geotechnical Report confirming that the proposed modifications are minor from a geotechnical perspective and do not alter the recommendations or the risk assessment in the report submitted for the original DA.

## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EP&A Act)

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 DA2022/0246, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55(1A) – Other Modifications	Comments
<p>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:</p>	
<p>(a) it is satisfied that the proposed modification is of minimal environmental impact, and</p>	<p><b>Yes.</b> The modification, as proposed in this application, is of minimal environmental impact for the following reasons:</p> <ul style="list-style-type: none"> <li>• The proposed addition of the spas is located within the each of the approved pool footprints and therefore does not change the area allocated to the pool, and any associated earthworks. Furthermore, the proposed modifications to the window sill heights and dimensions, door dimensions, and inclusion of new sky lights do not result in an increase of impacts on the visual and acoustic impacts of neighbouring properties, and rather, improves the privacy of the habitable spaces of each dwelling by reducing overall glazed areas.</li> <li>• The amendment of internal walls and room layouts, and removal of the lift voids across each level do not result in changes to the approved gross floor area and therefore maintains the massing and scale of the approved dwellings.</li> <li>• The amendments also include modifications of the extent of earthworks and retaining walls, kayak storage room and the external staircase above the kayak storage room. The works are minimal in nature and are not considered to negatively impact the soil and stormwater conditions of the site. However, it is noted that these changes have the opportunity to generate a perceived visual privacy impact for the occupants at the adjoining residential building at 118A Prince Alfred Parade which is discussed in detail below.</li> <li>• The proposed modification works generally do not alter any existing approved built form controls or principal development standards of the existing approved development and are of minimal environmental impact.</li> </ul>
<p>(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and</p>	<p><b>Yes.</b> The consent authority can be satisfied that the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted under DA2022/0246 for the following reasons:</p> <ul style="list-style-type: none"> <li>• The building height, building density and setbacks are maintained as approved.</li> </ul>



Section 4.55(1A) – Other Modifications	Comments
	<ul style="list-style-type: none"> <li>• Amendments to the building façade and footprint are minor in nature.</li> <li>• The modifications to the extent of earthworks, retaining walls, kayak storage area and the external staircase are not substantial, and do not change the intended purpose of the allocated site area.</li> </ul>
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require, or</p> <p>(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</p>	<p>The application has been notified from 15 July 2024 – 29 July 2024 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>(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 'Matters for Consideration'	Comments
<p>Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument</p>	<p>See discussion on “Environmental Planning Instruments” in this report.</p>
<p>Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument</p>	<p>There are no current draft environmental planning instruments relevant to the application.</p>
<p>Section 4.15 (1) (a)(iii) – Provisions of any development control plan</p>	<p>Pittwater 21 Development Control Plan (P21 DCP) applies to this proposal.</p>
<p>Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement</p>	<p>None applicable.</p>

Section 4.15 'Matters for Consideration'	Comments
<p>Section 4.15 (1) (a)(iv) – Provisions of the regulations</p>	<p><u>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 104</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. Additional information was requested on 23 August 2024. The contents of the correspondence can be seen above under <i>Application History</i>:</p> <p><u>Clause 61(1)</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider AS 2601 - 2001: The Demolition of Structures. This matter can be addressed via a condition of consent in the event of DA approval. which applied to the consent as issued.</p> <p><u>Clauses 64</u> 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(2)</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider insurance requirements under the <i>Home Building Act 1989</i>. 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 Building Code of Australia (BCA). This matter can be addressed via a condition of consent in the event of DA approval.</p>
<p>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</p>	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the P21 DCP section in this report. The development results in an acceptable environmental impact.</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 'Matters for Consideration'	Comments
Section 4.15 (1) (c) – the suitability of the site for the development	The site is 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	For the reasons outlined within this report, the development is acceptable and does not result in any adverse impacts upon adjoining properties and the environmental features of the site. Approval of the development would not be contrary to the public interest and the application is recommended for approval.

#### 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.

#### FLOOD PRONE LAND

The site is classified as flood prone land.

#### BIODIVERSITY VALUES

The site is not classified as containing any biodiversity values. However, the adjoining land to the east is mapped as ‘biodiversity’ under the Pittwater LEP 2014.

#### NOTIFICATION & SUBMISSIONS RECEIVED

The Modification Application has been notified, from 15 July 2024 and 29 July 2024, in accordance with the *Environmental Planning and Assessment Act 1979*, *Environmental Planning and Assessment Regulation 2021* and the Northern Beaches Community Participation Plan 2019 (CPP).

As a result of the notification of the application Council received no submissions.

#### REFERRALS

Internal Referral Body	Comments
Development Engineering	<p>Referral dated 26/08/2024 advised that the proposed amended works within public road reserve were approved under Road Act-Infrastructure works within public road way application S138A2023/0014, internal ref: TRIM 2024/428435,440226, 451350.</p> <p>Council’s Development Engineering officer did not have objections to approval. The proposal was therefore supported.</p>

Internal Referral Body	Comments
	<p>The application was subsequently re-referred to the development engineering officer following receipt of amended plans that detailed a modification to the approved extent of earthworks and amendment to the approved retaining walls.</p> <p>A second referral received on 18/09/2024 advised that the extent of excavation is altered within the site, and as site is mapped on Geotechnical Hazard area H1, comments from consultant Geotech Engineer were therefore required.</p> <p>An RFI was issued on 20/09/2024 requesting that the applicant provide confirmation from a geotechnical engineer that the development was consistent with the provisions of the P21DCP. The applicant responded with additional information on 28/09/2024 and the application was subsequently re-referred to Council's Development Engineering officer.</p> <p>A third referral was received on 30/09/2024, which advised that no objections were raised subject to the inclusion of recommended conditions and that the existing development engineering conditions for DA2022/0246 are considered to still be relevant and adequate.</p>
Natural Environment	<p>Council's Natural Environment officer advised that none of the proposed modifications will have adverse impacts on flood behaviour or risk to life and property. Subject to the retention of the flood conditions outlined in DA2022/0246, the proposal is compliant with Section B3.11 of the Pittwater DCP and Clause 5.21 of the Pittwater LEP.</p> <p>The proposal is therefore supported.</p>
Parks, Reserves and Foreshores	<p>The Parks, Reserves and Foreshores Referral raised no concerns following review of the modification proposal as described in reports and as illustrated on plans.</p> <p>Parks Reserves and Foreshores Referral development consent conditions remain unaltered.</p> <p>The proposal is therefore supported.</p>
External Referral Body	Comments
Water NSW	<p>The Department of Planning and Environment-Water reviewed documents for the above application to modify a DA Consent and considers that, for the purposes of the Water Management Act 2000 (WM Act), previously issued General Terms of Approval are adequate, remain current, and no further assessment by this agency is necessary.</p>

### ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)\*

All Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans (DCPs) and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and

LEPs), Development Controls Plans (DCPs) 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 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)**

### **State Environmental Planning Policy (Sustainable Buildings) 2022**

The proposed modification has been supported by revised BASIX Certificates (No. 1258806S\_02 and No. 1258883S\_03) dated 26 June 2024. The certificate demonstrates compliance with the provisions of the SEPP and is consistent with the commitments identified in the documentation.

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

### **State Environmental Planning Policy (Resilience and Hazards) 2021 (RH SEPP)**

## **Chapter 2 – Coastal Management**

The site is subject to Chapter 2 of the SEPP. Accordingly, an assessment under Chapter 2 has been conducted 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**

#### Comment:

The proposed modification is unlikely to cause adverse impacts on the ecological environment, coastal values and processes, marine vegetation, access to the beach or heritage.

- (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*
  - (b) referred to in subclause (1), or*
  - (c) if that impact cannot be reasonably avoided—the development is designed, sited and*
  - (d) will be managed to minimise that impact, or*
  - (e) if that impact cannot be minimised—the development will be managed to mitigate that impact.**

Comment:

The approved development incorporates measures to avoid adverse impacts on the ecological environment, coastal values and processes, marine vegetation, access to the beach or heritage. The proposed modification does not exacerbate any further adverse impacts.

*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,*
  - (iii) *the visual amenity and scenic qualities of the coast, including coastal headlands,*
  - (iv) *Aboriginal cultural heritage, practices and places,*
  - (v) *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*
  - (iii) *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 proposal will not impede access to the foreshore or degrade the visual amenity of the coast or heritage.

## **Chapter 4 – Remediation of Land**

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. A preliminary site investigation has been undertaken by White Geotechnical to address the requirements of the SEPP as part of DA2022/0246. Council records indicate that the subject site has been used for residential purposes for a significant period 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 suitable for the proposed residential development.

## **State Environmental Planning Policy (Transport and Infrastructure) 2021 (TI SEPP)**

### **Chapter 2 – Infrastructure**

Subdivision 2 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 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.

DA2022/0246 was referred to Ausgrid who raised no objections. The building envelope and swimming pool footprint have largely remained as approved and therefore further referral is not warranted.

### 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

#### Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements, and instruments	Yes
2.6 Subdivision – consent requirements	Yes
2.7 Demolition requires consent	Yes
4.1 Minimum subdivision lot size	Yes – as approved
4.3 Height of buildings	Yes – as approved
4.6 Exceptions to development standards	N/A
5.7 Development below mean high water mark	Yes
5.10 Heritage conservation	N/A
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes – proposed modifications are minor in nature.
7.10 Essential services	Yes – The site is within an established area. As such, Council is satisfied that the proposed allotments can be connected to essential services (water, electricity, sewerage).

### PITTWATER 21 DEVELOPMENT CONTROL PLAN

#### Built Form Controls

No. 120

Built Form Control	Requirement	Approved	Proposed	% Variation	Complies
Front building line	6.5m	2.1m-3.6m	As approved	68%	No – As approved
Rear building line	6.5m	Foreshore building line applies	As approved	N/A	Yes
Side building line	East 1m	1.66m	As approved	N/A	Yes
	West 2.5m	2.6m	As approved	N/A	Yes

Built Form Control	Requirement	Approved	Proposed	% Variation	Complies
Building envelope	East 3.5m	Outside envelope (Encroachment between 0.83m to 1.84m at entry level and first floor level)	As approved	23.7% to 52.6%	No – As approved
	West 3.5m	Within envelope	As approved	N/A	Yes
Landscaped area	60%	52% (416.2sqm)	As approved	13%	No – As approved

No. 120a

Built Form Control	Requirement	Approved	Proposed	% Variation	Complies
Front building line	6.5m	2.7m	As approved	58%	No – As approved
Rear building line	6.5m	Foreshore building line applies	As approved	N/A	Yes
Side building line	East 2.5m	2.5m	As approved	N/A	Yes
	West 1m	1.6m	As approved	N/A	Yes
Building envelope	East 3.5m	Within envelope	As approved	N/A	Yes
	West 3.5m	Within envelope	As approved	N/A	Yes
Landscaped area	60%	59.5% (495.21sqm)	As approved	0.8%	No – As approved

### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
<b>Section A: Shaping Development in Pittwater</b>		
A1.7 Considerations before consent is granted	Yes	Yes
A4.10 Newport Locality	Yes	Yes
<b>Section B: General Controls</b>		
<b>B1 Heritage Controls</b>		
B1.3 Heritage Conservation	Yes	Yes
B1.4 Aboriginal Heritage Signage	Yes	Yes
<b>B3 Hazard Controls</b>		
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



Clause	Compliance with Requirements	Consistency Aims/Objectives
B3.10 Estuarine Hazard – Subdivision	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B3.12 Climate Change	Yes	Yes
<b>B4 Controls relating to the Natural Environment</b>		
B4.15 Saltmarsh Endangered Ecological Community	Yes	Yes
B4.16 Seagrass Conservation	Yes	Yes
B4.19 Estuarine Habitat	Yes	Yes
B4.22 Preservation of Trees and Bushland Vegetation	Yes	Yes
<b>B5 Water Management</b>		
B5.13 Development on Waterfront Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
<b>B6 Access and Parking</b>		
B6.1 Access Driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	No	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.6 On-Street Parking Facilities	Yes	Yes
B6.7 Transport and Traffic Management	Yes	Yes
<b>B8 Site Works Management</b>		
B8.1 Construction and Demolition – Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition – Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition – Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
<b>Section C: Development Type Controls</b>		
<b>C1 Design Criteria for Residential Development</b>		
C1.1 Landscaping	No (variation as approved under DA2022/0246)	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.10 Building Facades	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.14 Separately Accessible Structures	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve – Landscaping and Infrastructure	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Overruns	Yes	Yes
<b>C4 Design Criteria for Subdivision</b>		
C4.1 Subdivision – Protection from Hazards	Yes	Yes
C4.2 Subdivision - Access Driveways and Off-Street Parking Facilities	Yes	Yes
C4.3 Subdivision - Transport and Traffic Management	Yes	Yes
C4.4 Subdivision - Public Roads, Footpath and Streetscape	Yes	Yes
C4.5 Subdivision - Utility Services	Yes	Yes
C4.6 Service and delivery vehicle access in subdivisions	Yes	Yes
C4.7 Subdivision - Amenity and Design	Yes	Yes
C4.8 Subdivision - Landscaping on the Existing and proposed public road reserve frontage to subdivision lots	Yes	Yes
<b>D10 Newport Locality</b>		
D10.1 Character as viewed from a public place	Yes	Yes
D10.3 Scenic protection - General	Yes	Yes
D10.4 Building colours and materials	Yes	Yes
D10.8 Side and rear building line (excluding Newport Commercial Centre)	Yes	Yes
D10.7 Front building line (excluding Newport Commercial Centre)	No (variation as approved under DA2022/0246)	Yes
D10.11 Building envelope (excluding Newport Commercial Centre)	No (variation as approved under DA2022/0246)	Yes
D10.12 Landscaped Area - General	No (variation as approved under DA2022/0246)	Yes
D10.14 Fences - General	Yes	Yes
D10.16 Construction, retaining walls, terracing, and undercroft areas	Yes	Yes
D10.18 Scenic Protection Category One Areas	Yes	Yes
D15.1 Character as viewed from a public place	Yes	Yes
<b>D15 Waterways Locality</b>		

Clause	Compliance with Requirements	Consistency Aims/Objectives
D15.3 Building colours and materials	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
D15.15 Waterfront development	Yes	Yes
D15.18 Seawalls	Yes	Yes
D15.19 Dredging	Yes	Yes

Detailed Assessment:

**B6.1 Access driveways and Works on the Public Road Reserve**

The Architectural Plans show a driveway location that differs to the stamped plans approved under DA2022/0246. The new driveway was approved under s138 of the Roads Act (S138A2023/0014) on 24 June 2024 and does not form part of this modification application. B6.1 specifies that the maximum width at the boundary and the kerb of an access driveway for a dwelling house is determined on the distance between the building line to the boundary.

The controls therefore require the development to have a maximum access driveway to have a maximum width of 5.5m at the boundary and 6m at the kerb.

The approved amendments under S138A2023/0014 show the following measurements:

Dwelling No. 120:

- Width at boundary: 6.1m (not compliant)
- Width at kerb: 6.4m (not compliant)

Dwelling No. 120a:

- Width at boundary: 4.8m (complies)
- Width at kerb: (cannot be determined from plans)

Although the access driveway widths for Dwelling No. 120 do not comply with the controls, the contravention is supported by Council's development engineer and from a merit perspective is supported given that a wider driveway at the boundary improves sightlines to the eastern bend in Prince Alfred Street when egressing from the site in a western direction.

**B6.2 Internal Driveways**

As outlined above, an amended driveway design was approved under s138 of the Roads Act (S138A2023/0014).

The revised driveway is compatible with the approved dwelling, and appears to provide safe and convenient access while minimising visual impact on the surrounding landscape by retaining existing vegetation.

Council is therefore satisfied that the development proposal demonstrates an adequate approach to safety and environmental considerations, and meets the objectives of B6.2.

**C1.1 Landscaping**

The PDCP requires at least 2 canopy trees in the front yard and 1 canopy tree in the rear yard. Given the constraints of the site, the large Fig trees adjoining the site, and the multitude of additional plantings proposed, the outcomes for section C1.1 were determined as satisfied under DA2022/0246.

An additional tree is proposed for dwelling No. 120 adjacent to the shared boundary with 120A. Amendments to the approved landscape plan and nomination of the tree species has been conditioned as part of this consent. Given minimal changes to the proposed landscaping and planting schedule have been proposed, the proposal remains satisfactory.

### C1.3 View Sharing

The proposed modification does not increase the height or massing of the dwellings and does not intensify development within the site. As such, the development, as modified, remains satisfactory in achieving reasonable sharing of views from surrounding and nearby properties.

### C1.5 Visual Privacy

The proposed modification consists of amending the extent of excavation, staircase and the location of the retaining walls along the western side boundary for Dwelling No. 120..

The perceived visual privacy concerns as a result of staircase impacts associated with removing raised planter beds and reducing some staircase run setbacks have been considered and still achieve the objectives of the control given:

- The staircase is located below adjacent levels at 118B and the potential for overlooking is unlikely.
- The removal of staircase runs ensures less area for congregating and provides for a more direct path of travel.
- A minimum 0.3m wide landscape area is maintained adjacent to the western shared boundary with No. 118B Prince Alfred Street and is capable of accommodating screen plants to filter views to and from the staircase.

The following assessment of the proposed new staircase landings has been undertaken to determine the compliance of the modification:

Proposed staircase levels for Dwelling No. 120	Levels at 118B (taken from entry level plan MOD104 (Issue B), dated 28/08/2024)	Overlooking Opportunity
First/Top staircase landing: 9.100	Adjacent garage door at 118B: 11.81 Fence height: 10.600	No
Second staircase landing: 7.235	Adjacent terrace: 8.97 (above staircase) Fence height: (Cannot be obtained from plans)	No
Third staircase landing: 5.600	No adjacent terrace or openings Adjacent top of wall 12.53	No
Ground level: 2.700	Terraces 8.97 and 5.96.	No

### **D10.11 Building Envelope (excluding Newport Commercial Centre)**

Merit consideration was granted for a variation to the building envelope, in the assessment of DA2022/0246. The proposed modification does not increase the height or massing of the dwellings and does not intensify development within the site. As such, the development, as modified, remains satisfactory in achieving the objectives of the control.

### **D10.13 Landscaped Area - Environmentally Sensitive Land**

The subject site is located within Area 1 of the Landscaped Area Map and therefore the site requires a minimum of 60% landscaped area.

Merit consideration was granted under DA2022/0246 to vary this development control. The proposed modification does not further reduce the minimum landscaped areas provided and maintains satisfactory in achieving compliance with the objectives of this control.

## **7.12 CONTRIBUTIONS**

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, including the Pittwater Local Environment Plan 2014;
- Pittwater 21 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:

- 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**

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 Council as the consent authority grant approval to Modification Application MOD2024/0355 for the demolition works, subdivision of four lots into two lots and the construction of one dwelling on each lot including swimming pools and landscape works on land at 120 Prince Alfred Parade, Newport (Lot 9 DP 752046, Lot 34 DP 13457, Lot 35 DP 13457, Lot B DP 391307, and LIC 190387), subject to the conditions printed below:

## Modification Summary

The development consent is modified as follows:

### Modification Summary Table

Application Number	Determination Date	Modification description
MOD2024/0355	The date of this notice of determination	<p>Modification of Development Consent DA2022/0246 granted for the demolition works, subdivision of four lots into two lots and the construction of one dwelling on each lot including swimming pools and landscape works.</p> <p>Insert Condition 1A – Modification of Consent – Approved Plans and Supporting Documentation</p> <p>Insert Condition 2A – Modification of Consent – Amendments to the approved plans</p> <p>Insert Condition 60A – Certification of Civil Works and Works ad Executed Data in accordance with Roads Act Approval.</p>

### Modified Conditions

#### **A. Add Condition No.1A - Modification of Consent - Approved Plans and supporting documentation, to read as follows:**

##### (1A) Approved Plans and Supporting Documentation

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

##### a) Approved Plans

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
Driveway profile, DA01, revision D	11.11.2022	ARCLAB Pty Ltd
Site plan, MOD101, revision B	28.08.2024	ARCLAB Pty Ltd
Ground level plan, MOD102, revision B	28.08.2024	ARCLAB Pty Ltd
First floor plan, MOD103, revision B	28.08.2024	ARCLAB Pty Ltd
Entry level plan, MOD104, revision B	28.08.2024	ARCLAB Pty Ltd
North and south elevations, MOD105, revision B	28.08.2024	ARCLAB Pty Ltd
Eastern elevations, MOD106, revision B	28.08.2024	ARCLAB Pty Ltd
Western elevations, MOD107, revision B	28.08.2024	ARCLAB Pty Ltd
Sections, MOD108, revision B	28.08.2024	ARCLAB Pty Ltd
Sections Driveway, MOD109, revision B	28.08.2024	ARCLAB Pty Ltd
Section Stairs MOD110, revision B	28.08.2024	ARCLAB Pty Ltd

Streetscape and materials/finishes schedule, DA12, revision D	11.11.2022	ARCLAB Pty Ltd
Building envelope section, DA13, revision D	11.11.2022	ARCLAB Pty Ltd
Sediment and Erosion, MOD114, revision B	28.08.2024	ARCLAB Pty Ltd
Window and Door schedule P1, MOD115, revision B	28.08.2024	ARCLAB Pty Ltd
Window and Door schedule P2, MOD116, revision B	28.08.2024	ARCLAB Pty Ltd
Window and Door schedule P3, MOD 117, revision B	28.08.2024	ARCLAB Pty Ltd
Window and Door schedule P4, MOD 118, revision B	28.08.2024	ARCLAB Pty Ltd

<b>Engineering Plans</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
Subdivision Plan	15.07.2022	DP Surveying
Stormwater Management Plan – 120A Prince Alfred Pde	14.04.2022	Taylor Consulting
Stormwater Management Details – 120A Prince Alfred Pde	04.02.2022	Taylor Consulting
Excavation plan	4.02.2022	Taylor Consulting
Driveway plan – 120A Prince Alfred Pde	4.02.2022	Taylor Consulting
Stormwater Management Plan – 120 Prince Alfred Pde	14.04.2022	Taylor Consulting
Stormwater Management Details – 120 Prince Alfred Pde	04.02.2022	Taylor Consulting
Excavation plan	4.02.2022	Taylor Consulting
Driveway plan and long sections – 120 Prince Alfred Pde	4.02.2022	Taylor Consulting
Swept path analysis TX16422.00, C1.00, C1.01, C2.00, C2.01, C2.02	11.02.2022	Taylor Consulting

<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>
Statement of Environmental Effects	11 February 2022	Four Towns Pty Ltd
Statement of Modification	26 June 2024	Four Towns Pty Ltd
Geotechnical Report Ref: J3814B	27 September 2024	White Geotechnical Group
BASIX Certificate 1258806S_02 (120A Prince Alfred Pde)	26 June 2024	Chapman Environmental Services Pty Ltd
BASIX Certificate 1258883S_03 (120 Prince Alfred Pde)	26 June 2024	Chapman Environmental Services Pty Ltd
Arboricultural Impact Assessment	11 February 2022	Michael Shaw

Letter - Existing Crib Retaining Wall - 120 & 120a Prince Alfred Parade, Newport	13 September 2022	Taylor Consulting
NatHERS Certificate 000955177 (120 Prince Alfred Pde)	26 June 2024	Chapman Environmental Services Pty Ltd
NatHERS Certificate 0009565193 (120a Prince Alfred Pde)	26 June 2024	Chapman Environmental Services Pty Ltd

Any plans and / or documentation submitted to satisfy the Deferred Commencement Conditions of this consent as approved in writing by Council.

- b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.
- c) 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>
Landscape concept plan, sheet 1, issue F	21.11.2022	Interlink
Landscape concept plan, sheet 2, issue F	21.11.2022	Interlink

<b>Waste Management Plan</b>		
<b>Drawing No/Title.</b>	<b>Dated</b>	<b>Prepared By</b>
Waste Management Plan	08.02.2022	Ella and Luke Miles

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

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

**B. Add Condition No.2A - Modification of Consent - Amendments to the approved plans, to read as follows:**

(2A) The following amendments are to be made to the approved landscape plan:

A landscape plan prepared by a qualified Landscape Architect or Landscape Consultant to a scale of 1:100 or 1:200 and conforming to the Pittwater 21 Development Control Plan and relevant conditions of this Consent, must be submitted to Council's Executive Manager of Development Assessments for approval prior to issue of a Construction Certificate application. The plan shall be consistent with the approved landscape plan referenced in Condition 1A of this consent, subject to the following amendments:

- a) The removal of the Cabbage Tree Palms from the landscape plan and planting schedule;
- b) Replacement with suitable native canopy trees to offset the removal of the Cabbage Tree Palms. The canopy trees shall grow to a maximum height of 8.5m at maturity. The new trees shall be planted at a minimum pot size of 100L and grown to Australian Standard 2303:2018 Tree stock for landscape use.
- c) The landscape plan is to reflect latest approved Architectural Plans (MOD2024/0355) and nominate a Blueberry Ash (*Elaeocarpus reticulatus*) with a minimum 75L pot size within the southern setback (adjacent to the pantry for Dwelling 120).

The following amendments are to be made to the approved Architectural Plans:



d) Skylight SK2 on Sheet No. MOD101 is to be clouded red (for Walk-In-Wardrobe).

Reason: To minimise view impacts to properties located to the south of the site and to demonstrate consistency across plans.

**C. Add Condition No. 60A – Certification of Civil Works and Works ad Executed Data in accordance with Roads Act Approval, to read as follows:**

(60A) Certification of Civil Works and Works ad Executed Data in accordance with Roads Act Approval

The Applicant shall submit a certification by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) that the completed works have been constructed in accordance with this consent and the approved Section 138 and/or Construction Certificate plans. Works as Executed data (details overdrawn on a copy of the approved civil plans) certified by a registered surveyor in relation to boundaries and/or relevant easements, prepared in accordance with Council's 'Guideline for preparing Works as Executed data for Council Assets' in an approved format shall be submitted to the Council for approval prior to the issue of the Occupation Certificate and the release of any security deposits.

Reason: To ensure compliance of works with Council's specification for engineering works.

Consultant Name:

Kalinda Li – Creative Planning Solutions

In submitting this report to Council, I declare that I do not have a conflict of interest in making this recommendation.



Kalinda Li  
**Consultant Planner**