

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2023/0660
<b>Responsible Officer:</b>	Anaiis Sarkissian
<b>Land to be developed (Address):</b>	Lot 109 DP 8394, 63 Marine Parade AVALON BEACH NSW 2107
<b>Proposed Development:</b>	Modification of Development Consent N0263/14 granted for alterations and additions to a dwelling
<b>Zoning:</b>	C2 Environmental Conservation 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>	Richard John Wiseman Rowena Jane Wiseman
<b>Applicant:</b>	Kerrie Shimeld

<b>Application Lodged:</b>	14/12/2023
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Refer to Development Application
<b>Notified:</b>	22/12/2023 to 25/01/2024
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	4.3 Height of buildings: 12.9%
<b>Recommendation:</b>	Approval

### PROPOSED DEVELOPMENT IN DETAIL

The proposed modifications involve the following works:

- Lower roof ridge height
- Extend living room and deck over approved garage
- Infill void below deck
- Gable roof over garage
- Minor alterations to doors and windows
- Relocate upstairs ensuite

## ASSESSMENT INTRODUCTION

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

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

## SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - Zone C4 Environmental Living  
Pittwater Local Environmental Plan 2014 - 4.3 Height of buildings  
Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards  
Pittwater 21 Development Control Plan - D1.11 Building envelope

## SITE DESCRIPTION

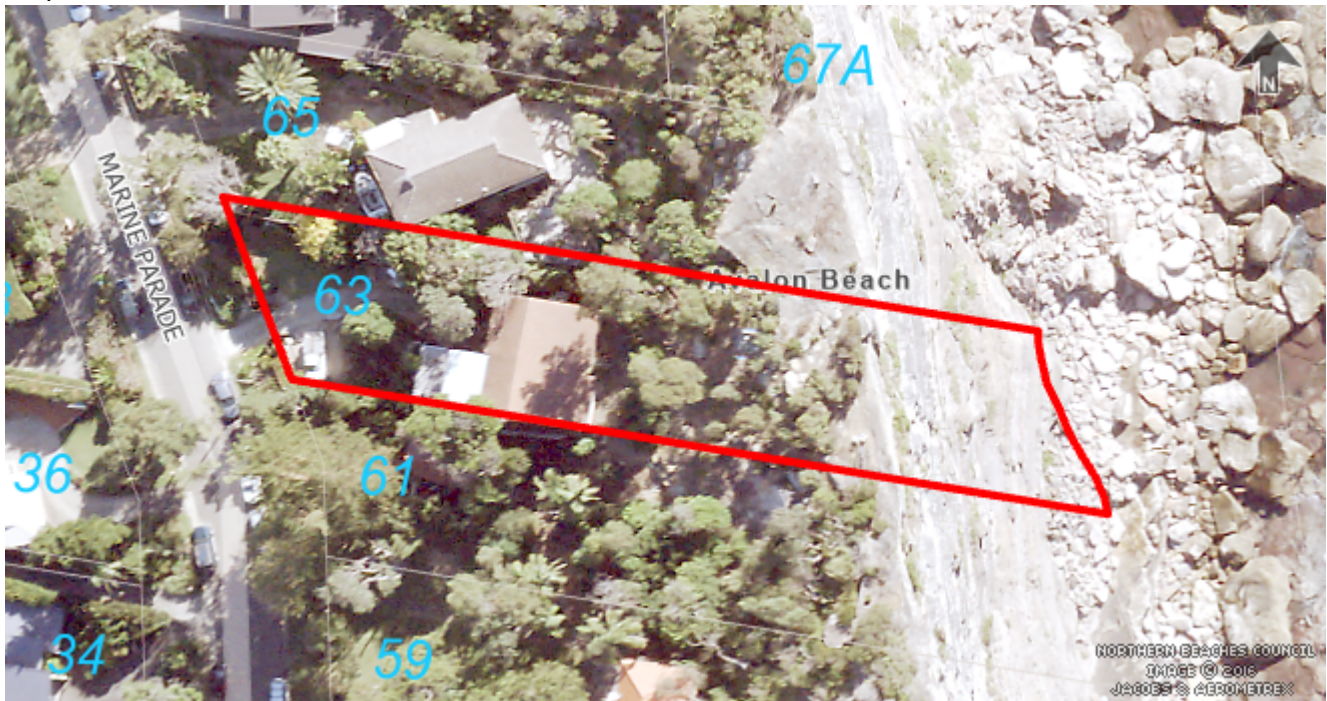
<b>Property Description:</b>	Lot 109 DP 8394 , 63 Marine Parade AVALON BEACH NSW 2107
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the eastern side of Marine Parade.</p> <p>The site is regular in shape with a frontage of 21.135m along Marine Parade and a depth of 89.915m. The site has a surveyed area of 1,644m<sup>2</sup>.</p> <p>The site is located within the C4 Environmental Living and the C2 Environmental Conservation zones. This application relates to modification works that are wholly located within the C4 zone. The site currently accommodates a two storey dwelling house with attached single carport.</p> <p>The site slopes upward from west to east over approximately 17 metres, then slopes steeply down towards the coast over approximately 42 metres.</p>

The site contains trees, lawn areas and rock landforms.

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

Adjoining and surrounding development is characterised by 1-3 storey dwelling houses varying in architectural style and design. The rear of the site directly adjoins the ocean to the east.

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:

##### **T0104/14**

Development Application for removal of three trees.  
Approved on 5 March 2014.

##### **N0263/14**

Development Application for extensions to front and rear of the dwelling to accommodate new living areas, including cover and uncovered decking, garage extension, plunge pool, reroofing.  
Approved on 4 December 2014.

##### **CC0309/15**

Construction Certificate for extensions to front and rear of the dwelling to accommodate new living areas, including cover and uncovered decking, garage extension, plunge pool, reroofing.  
Approved on 28 September 2015.

##### **MOD2019/0655**

Modification of Development Consent N0263/14 granted for alterations and additions to a dwelling.  
Approved on 25 March 2020.

### CC2020/0743

Construction Certificate for modification of Development Consent N0263/14 granted for alterations and additions to a dwelling.  
Approved on 28 July 2020.

### MOD2022/0220

Modification of Development Consent N0263/14 granted for alterations and additions to a dwelling.  
Approved on 9 August 2022.

Note: Whilst it is not clear from the records that Council holds that the consent was activated within the 5 year consent period of the original consent, it is taken that the consent was activated, given the presences of Construction Certificates and previous approved modification applications.

## 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 N0263/14, in full, with amendments detailed and assessed as follows:

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

Section 4.55(1A) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	<p><b>Yes</b></p> <p>The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons:</p> <ul style="list-style-type: none"> <li>• The proposed modifications are sited on the approved building footprint and do not extend further into the land.</li> <li>• The proposed modifications do not seek changes to the approved building footprint, including any setbacks.</li> <li>• The proposed modifications will not result in any additional impact on surrounding properties or the public domain.</li> </ul>

Section 4.55(1A) - Other Modifications	Comments
	<ul style="list-style-type: none"> <li>Subject to compliance with conditions, the proposed modifications will have no additional impact on the natural environment nor hazards which affect the site.</li> </ul>
(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>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 N0263/14 for the following reasons:</p> <ul style="list-style-type: none"> <li>The proposed modifications will maintain the form and function of the approved development.</li> <li>The proposed modifications will not substantially alter the external appearance of the building.</li> <li>The proposed modifications will not change the approved building footprint.</li> <li>The proposed modifications relate predominantly to extensions or alterations to existing building components, rather than introducing new components.</li> <li>Subject to compliance with conditions, the proposed modifications will have no additional impact on the natural environment nor hazards which affect the site.</li> <li>The proposed modifications will not result in any additional impact on surrounding properties or the public domain.</li> </ul>
(c) it has notified the application in accordance with:  (i) the regulations, if the regulations so require,  or  (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	<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>
(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>No submissions were received in relation to this application.</p>

## Section 4.15 Assessment



In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	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 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 61</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider AS 2601 - 2001: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 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</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent</p>

Section 4.15 'Matters for Consideration'	Comments
	authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a 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	<p>(i) <b>Environmental Impact</b> 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.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	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 classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

An updated Bush Fire Assessment Report was submitted with the modification application, prepared by Building Code and Bushfire Hazard Solutions dated 23 January 2024. The Report notes that since the original application, work has commenced on the neighbouring site at 61 Marine Parade, which has removed the vegetation hazard and increased the available Asset Protection Zone (APZ) to >41 metres. The increased APZ has resulted in a reduced Bushfire Attack Level (BAL) from 19 to 12.5. The recommendations of the Bush Fire Report have been included as conditions of consent.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 22/12/2023 to 25/01/2024 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

External Referral Body	Comments	
Aboriginal Heritage Office	<b>Conclusion / General Comments</b>	
	<b>Recommendation</b>	
	APPROVAL	Subject to Conditions
		<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>

## 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 (Building Sustainability Index: BASIX) 2004**

A BASIX certificate has been submitted with the application (see Certificate No. A506514 dated 8 September 2023).

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

### **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 1 Coastal Wetlands and littoral rainforest area**

##### **2.7 Development on certain land within coastal wetlands and littoral rainforests area**

- 1) The following may be carried out on land identified as “coastal wetlands” or “littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map only with development consent:
  - a) the clearing of native vegetation within the meaning of Part 5A of the Local Land Services Act 2013,
  - b) the harm of marine vegetation within the meaning of Division 4 of Part 7 of the Fisheries Management Act 1994,
  - c) the carrying out of any of the following:
    - i) earthworks (including the depositing of material on land),
    - ii) constructing a levee,
    - iii) draining the land,
    - iv) environmental protection works,
  - d) any other development

#### **Comment:**

The site is not identified as 'coastal wetlands' or 'littoral rainforests', and therefore this clause is not applicable.

##### **2.8 Development on land in proximity to coastal wetlands or littoral rainforest**

- 1) Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:
  - a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or
  - b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.

#### **Comment:**

The site not identified as as 'proximity area for coastal wetlands' or 'proximity area for littoral rainforest', and therefore this clause is not applicable.

## **Division 2 Coastal Vulnerability Area**

### **2.9 Development on land within the coastal vulnerability area**

Development consent must not be granted to development on land that is within the area identified as “coastal vulnerability area” on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:

- a) if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and
- b) the proposed development:
  - i) is not likely to alter coastal processes to the detriment of the natural environment or
  - ii) other land, and
  - iii) is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and
- c) measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazards.

#### Comment:

The site is not identified as a 'coastal vulnerability area' and therefore this clause is not applicable.

## **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 site is identified within the coastal environment area; however, consent has already been granted for development on the land. Notwithstanding, the proposed modifications are minor and are unlikely to cause an adverse impact on a) to g). The proposal is therefore considered to comply with the

requirements of this clause.

- 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:

Consent has already been granted for development on the land. Notwithstanding, the proposed modifications do not seek major changes to the design and siting of the development and are unlikely to cause an adverse impact on a) to c). The proposed modifications do not alter the approved building footprint of the development. Relevant conditions have been imposed to manage any potential impacts. As such, the proposal is therefore considered to comply with the requirements of this clause.

**Division 4 Coastal use area**

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

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

Comment:

The site is identified within the coastal use area; however, consent has already been granted for development on the land. Notwithstanding, the proposed modifications are minor and do not seek major changes to the design and siting of the development, nor do the changes increase the approved building footprint or add significant bulk and scale to the development. Therefore, the proposal is considered to comply with the requirements of this clause.

## Division 5 General

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

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

Comment:

The proposed modifications to the development consent are considered minor and do not involve changes to the approved building footprint. As such, the proposal is unlikely to cause increased risk of coastal hazards on the subject land or other land.

### 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:

Development consent has already been granted to development on the land.

As such, it is considered that the application complies with the requirements of Chapter 2 of the State Environmental Planning Policy (Resilience and Hazards) 2021.

## Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

## Pittwater Local Environmental Plan 2014

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

## Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.6m	9.6m	12.9% (1.1m)	No

## Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	No
4.6 Exceptions to development standards	N/A
5.1 Relevant acquisition authority	Yes
5.1A Development on land intended to be acquired for public purpose	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.5 Coastal risk planning	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.8 Limited development on foreshore area	Yes
7.10 Essential services	Yes

#### Detailed Assessment

#### **Zone C4 Environmental Living**

The proposed works are located on land zoned C4 Environmental Living under the Pittwater Local Environmental Plan 2014.

The proposal has been assessed against the objectives of the C4 zone and in this instance, the proposal satisfies the objectives, as detailed below.

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

#### Comment:

The proposal will continue to provide for low-impact residential development within an area that contains special ecological, scientific or aesthetic values.

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

#### Comment:

The proposal does not seek any changes to approved building footprint of the development. It is therefore satisfied that the proposal will not adversely affect those values.

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

#### Comment:

The proposal will continue to provide for residential development of a low density and scale that is integrated with the landform and landscape as the works involve minor modifications to the approved development.



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

Comment:

The proposal retains the approved 77.8% landscaped area on the site as the works do not involve removal of landscaping on the site. The proposed development does not negatively impact riparian and foreshore vegetation and wildlife corridors, and does not encroach into the C2 zone.

### 4.3 Height of buildings

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	9.6m
Percentage variation to requirement:	12.9%

Assessment of request to vary a development standard:

Whilst the modification application will result in a building height that exceeds the maximum permitted by Clause 4.3 of the Pittwater LEP 2014, the application does not strictly need to address the requirements of Clause 4.6.

The application has been made under Section 4.55 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 4.55 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.

Clause 4.6 regulates whether development consent may be granted, not whether an existing consent may be modified, and therefore does not apply to Section 4.55 modification applications. As such, the applicant is not required to submit a written request adequately addressing the matters required to be demonstrated by cl 4.6(3).

Notwithstanding that Clause 4.6 does not apply to Section 4.55 modification applications, the merits of the variation have been assessed with regard to the objectives of the height of buildings development standard 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.

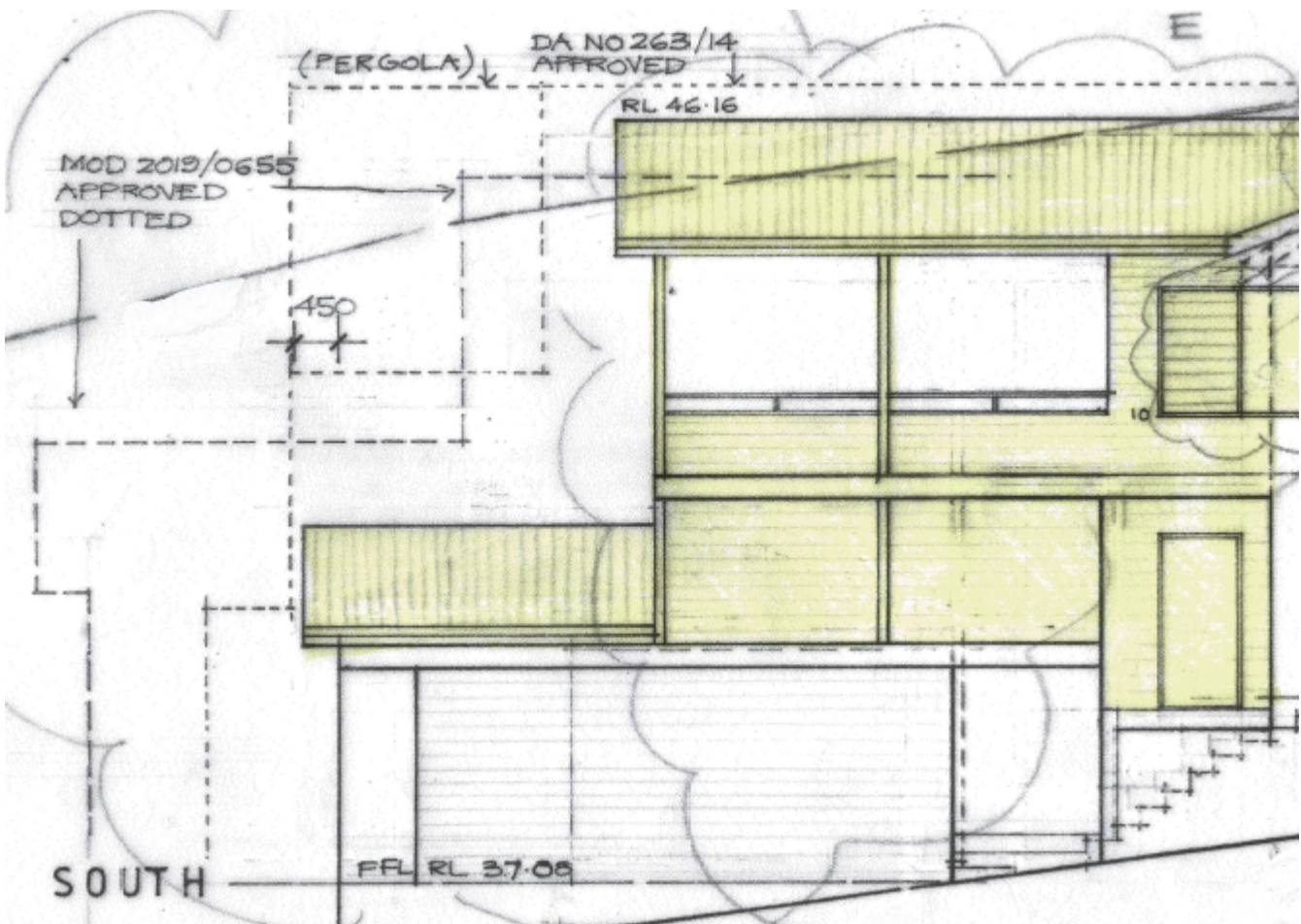
**Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case,**

Comment:

The original application approved alterations and additions to the dwelling house with a maximum building height of 10m. The two subsequent modification applications reduced the overall height of the

building, as outlined in the table below. This modification application seeks consent for a building height up to 9.6m, which is greater than the previous two modifications, however is less than the originally approved height of 10m. Additionally, the proposal as modified does not extend out as far west as the previous designs (refer plan extract below) and is therefore considered to present a built form with an overall reduced visual bulk and scale. Furthermore, the steep sloping topography of the site limits its practical use for private recreation purposes and therefore the deck and roof structure above is considered reasonable and necessary in terms of providing usable private open space that is shaded from the afternoon sun. On this basis, strict compliance with the building height standard is unreasonable and unnecessary in this case.

Application	Approved Building Height
N0263/14	10m
MOD2019/0655	9.4m
MOD2022/0220	8.6m



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

Comment:

While the proposed height of 9.6m presents a technical non-compliance of 12.9% with the maximum building height control, it represents a 4% decrease to the originally approved height of 10m.

Variation to the building height standard is justified for the following reasons:

- The dwelling orientation means that the proposed extension does not create any adverse additional shadow impact for adjoining neighbours
- The proposed building height is less than that originally approved
- The proposed development is consistent with the other low-density residential dwellings in the vicinity
- The proposed modifications do not seek to add another storey, but rather extend the existing roof and floor level
- The height breach is due to the steep sloping topography of the site
- The western aspect of the proposed deck means it requires a roof structure above to shelter from the afternoon sun
- The steep sloping topography of the site limits the location of usable private open space

**The proposed 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.**

#### 4.3 Height of buildings

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

***a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,***

Comment:

The proposal maintains consistency with the low-density residential character of the Avalon Beach locality.

***b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,***

Comment:

The proposed building is compatible with the height and scale of surrounding nearby development.

***c) to minimise any overshadowing of neighbouring properties,***

Comment:

The proposed dwelling is orientated west-east, minimising overshadowing of neighbouring properties to the north and south.

***d) to allow for the reasonable sharing of views,***

Comment:

The proposed deck extension and roof above is an unenclosed structure and is sited at the front of the property, thereby continuing to allow for the reasonable sharing of views, particularly to the east towards the ocean.

***e) to encourage buildings that are designed to respond sensitively to the natural topography,***

Comment:

The proposal has been designed appropriately to respond sensitively the natural topography of the land, being steeply sloping.

***f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items,***

Comment:

The proposal does not result in adverse visual impact on the natural environment and the site is not located in proximity to heritage conservation areas and heritage items. The proposal as modified presents a building with less bulk and scale than that originally approved.

Zone objectives

The underlying objectives of the C4 Environmental Living zone are:

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

Comment:

The proposal will continue to provide for low-impact residential development within an area that contains special ecological, scientific or aesthetic values.

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

Comment:

The proposal does not seek any changes to approved building footprint of the development. It is therefore satisfied that the proposal will not adversely affect those values.

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

Comment:

The proposal will continue to provide for residential development of a low density and scale that is integrated with the landform and landscape as the works involve minor modifications to the approved development.

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

Comment:

The proposal retains the approved 77.8% landscaped area on the site as the works do not involve removal of landscaping on the site. The proposed development does not negatively impact riparian and foreshore vegetation and wildlife corridors, and does not encroach into the C2 zone.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the C4 Environmental Living zone.

#### 4.6 Exceptions to development standards

Whilst the modification will result in a building height that contravenes the maximum permitted by Clause 4.3 of the PLEP 2014, the application does not strictly need to address the requirements of Clause 4.6.

The application has been made under Section 4.55 of the *Environmental Planning and Assessment Act 1979*, which authorises the development for which consent was granted to be modified, notwithstanding any breach of development standards. As such, no document pursuant to Section 35B of the *Environmental Planning and Assessment Regulation 2021* or Clause 4.6 is required.

The matters set out in Section 4.55(3) are addressed in the relevant sections of this report.

#### Pittwater 21 Development Control Plan

##### Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
Front building line	6.5m	12.7m	Unaltered	Yes
Rear building line	FBL	> FBL	Unaltered	Yes
Side building line	2.5m (north)	1.6m	Unaltered	Yes
	1m (south)	1.03m	Unaltered	Yes
Building envelope	3.5m (north)	Within envelope	Unaltered	Yes
	3.5m (south)	Outside envelope	Outside envelope - 68% (3.2m)	No
Landscaped area	60%	77.8% (1,279.19m <sup>2</sup> )	Unaltered	Yes

##### 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
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.2 Bushfire Hazard	Yes	Yes
B3.4 Coastline (Bluff) Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B5.15 Stormwater	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
C1.1 Landscaping	Yes	Yes



Clause	Compliance with Requirements	Consistency Aims/Objectives
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
C1.17 Swimming Pool Safety	Yes	Yes
C1.23 Eaves	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	Yes	Yes
D1.9 Side and rear building line	Yes	Yes
D1.11 Building envelope	No	Yes
D1.14 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D1.16 Fences - Flora and Fauna Conservation Areas	Yes	Yes
D1.17 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D1.20 Scenic Protection Category One Areas	Yes	Yes

### Detailed Assessment

#### **D1.11 Building envelope**

##### Description of non-compliance

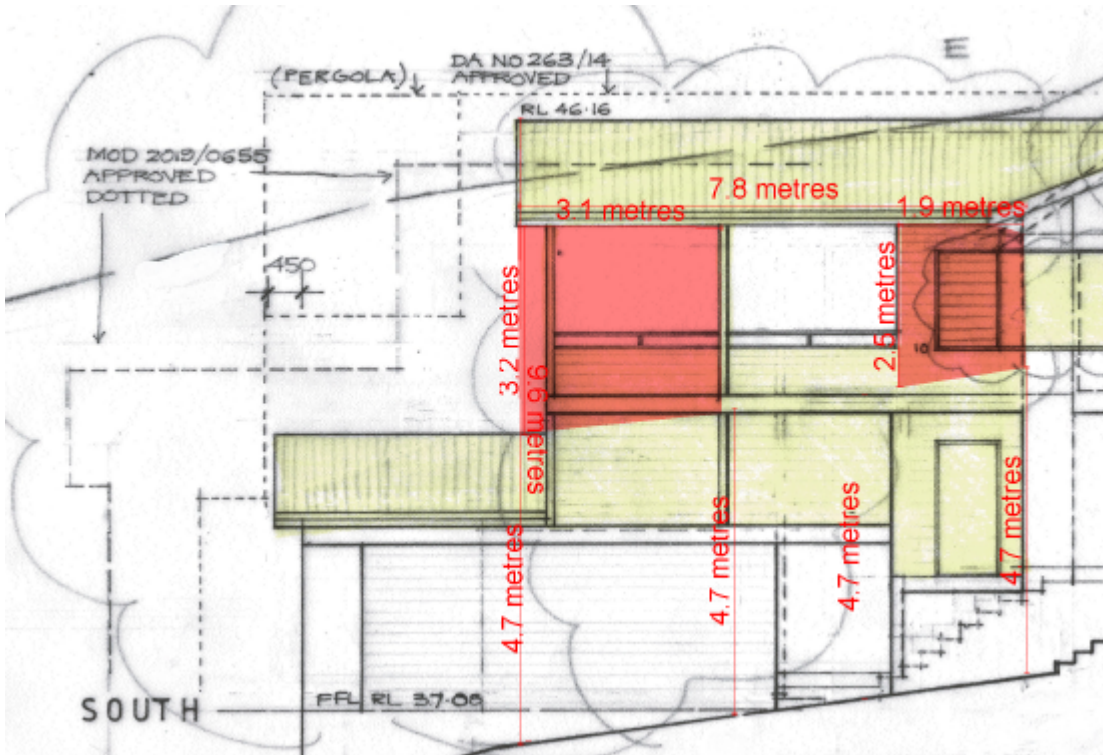
Pursuant to Section D1.11 of Pittwater 21 Development Control Plan, buildings must be sited within a building envelope determined by projecting planes at 45 degrees from a height of 3.5m above ground level (existing) at the side boundaries.

The proposed deck and lounge extension sit outside the building envelope on the southern elevation, as detailed in the figure below.

The deck extension presents an encroachment of 2.8m to 3.2m in vertical height for a horizontal length of 3.1m, resulting in a maximum variation of 68% (3.2m). The lounge extension presents an encroachment of 2m to 2.5m in vertical height for a horizontal length of 1.9m, resulting in a maximum variation of 53.2% (2.5m).

It is important to note that the breach is largely associated with the deck extension, which is an unenclosed structure. While this modification technically presents an extension of the deck approved under the second modification application (MOD2022/0220), it is a significant reduction in bulk and scale in comparison to the approved designs under the original application (N0263/14) and the first modification (MOD2019/0655) as indicated in the plan extract below. The ridge of the roof structure

has also been lowered as part of this modification, presenting an overall improved built form outcome compared with the previously approved structures. The extent of works in effect reinstate what has been previously approved. The deck structure cannot be lowered to bring the deck into compliance as the steep sloping topography of the site means that the majority of the upper floor level would breach the building envelope at this portion of the site. Furthermore, the proposal maintains the existing southern side setback and therefore does not extend the approved building footprint further.



#### Merit consideration

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

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

#### Comment:

The proposed modifications to the approved dwelling are consistent with the desired future character of the Avalon Beach locality, being a low-density residential area with a maximum of two storeys.

- ***To enhance the existing streetscapes and promote a building scale and density that is below the height of the trees of the natural environment.***

#### Comment:

The proposal sits below the originally approved building height and is sited on land that is steeply sloping. As such, the proposal has a building scale and density that is below the height of the trees of the natural environment at the highest points of the site's topography.

- ***To ensure new development responds to, reinforces and sensitively relates to spatial characteristics of the existing natural environment.***

Comment:

The proposed design amendments have been designed to respond sensitively to the spatial characteristics of the existing urban environment and sloped topography of the landscape. The proposed deck and lounge extension is located above the approved carparking structure and is an improvement to the built form outcome of previously approved designs with respect to overall visual bulk and scale.

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

Comment:

The proposal presents a design that has a reduced building height to that originally approved. While the deck presents an extension to the design approved under the latest modification application, the two previous applications approved decks and structures that extended far beyond that currently proposed and this application does not seek to extend the approved building footprint. Therefore, the proposal minimises the bulk and scale of the built form.

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

Comment:

The proposal does not detract from views and vistas to and from public and private places.

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

Comment:

The dwelling house is sited west-east and therefore the additional shadow impact of the proposed deck extension on adjoining properties to the north and south is not such that it will exacerbate the hours of existing overshadowing. Privacy screens have been conditioned along the southern edge of the front deck to mitigate potential overlooking and privacy impacts to the southern neighbour. As such, the proposal maintains a reasonable level of privacy, amenity and solar access within the development site and to residential properties.

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

Comment:

The proposal does not seek any changes to the landscaped area on the site, thereby retaining vegetation to visually reduce the built form.

## **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

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

## **RECOMMENDATION**

THAT Council as the consent authority grant approval to Modification Application No. Mod2023/0660 for Modification of Development Consent N0263/14 granted for alterations and additions to a dwelling on land at Lot 109 DP 8394,63 Marine Parade, AVALON BEACH, subject to the conditions printed below:

## Modification Summary

The development consent is modified as follows:

### MODIFICATION SUMMARY TABLE

Application Number	Determination Date	Modification description
PAN-390161 MOD2023/0660	The date of this notice of determination	Modification of Development Consent N0263/14 granted for alterations and additions to a dwelling house.  Modify Condition No.1A - Modification of Consent - Approved plans and supporting documentation Modify Condition A6 - BASIX Certificate Add Condition A9 - Compliance with other Department, Authority or Service Requirements Modify Condition C8 - Bushfire Report Recommendations Delete Condition C10 - Geotechnical Report Delete Condition C11 - Window 26 Add Condition C10 - Privacy Screen Add Condition C11 - Waste Management Plan Add Condition D16 - Waste Management During Demolition Add Condition E7 - Swimming Pool Requirements Add Condition E8 - Waste Management Confirmation
PAN-217071 MOD2022/0220	9 August 2022	Modification of Development Consent N0263/14 granted for alterations and additions to a dwelling house.  Add Condition No.1A - Modification of Consent - Approved plans and supporting documentation Add Condition C10. Geotechnical Report
MOD2019/0655	25 March 2020	Modification of Development Consent N0263/14 granted for alterations and additions to a dwelling house.  Add Condition No.1A - Modification of Consent - Approved plans and supporting documentation Add Condition C10. Pool Deck Add Condition C11. Window 26

### Modified conditions

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

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

<b>Approved Plans</b>
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Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
DWG 0319 1/5	E	Site Plan	Shimdesign	10 September 2023
DWG 0319 2/5	E	Lower Floor Plan	Shimdesign	10 September 2023
DWG 0319 3/5	E	Upper Floor Plan	Shimdesign	10 September 2023
DWG 0319 4/5	E	West Elevation; East Elevation; South Elevation	Shimdesign	10 September 2023
DWG 0319 5/5	E	North Elevation	Shimdesign	10 September 2023

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate	A506514	Shimdesign	8 September 2023
Geotechnical Report	J0152D	White Geotechnical Group	8 December 2023
Bushfire Assessment Report	240580	Building Code & Bushfire Hazard Solutions	23 January 2024
Schedule of Colours and Finishes	-	Shimdesign	n.d.

In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency with the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

#### **B. Modify Condition A6 - BASIX Certificate to read as follows:**

All commitments listed in the BASIX Certificate ref. A506514 shall be complied with.

Reason: Legislative requirement.

#### **C. Add Condition A9 - Compliance with other Department, Authority or Service Requirements to**

**read as follows:**

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
Aboriginal Heritage Office	Aboriginal Heritage Office Referral Response	21 December 2023

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au))

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

**D. Modify Condition C8 - Bushfire Report Recommendations to read as follows:**

Details in the Construction Certificate are to reflect the recommendations/requirements of the Bushfire Hazard Assessment Report prepared by Building Code & Bushfire Hazard Solutions dated 29 July 2014, and with the amended recommendations contained within the updated Bushfire Assessment Report prepared by Building Code & Bushfire Hazard Solutions dated 23 January 2024.

Reason: Bushfire safety.

**E. Delete Condition C10 - The geotechnical reports (prepared by White Geotechnical Group, dated 10th April 2014 and 16th December 2019) referenced in the Notice of Determination for NO263/14 and MOD2019/0655 is to be updated to reference the approved modification plans. Any updated recommendations of the report are to be incorporated into the development. Details demonstrating compliance are to be provided to the Certifying Authority prior to the issue of the Amended Construction Certificate.**

Deleted.

**F. Delete Condition C11 - The proposed window No. 26 is to have translucent/obscured glazing. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of a Construction Certificate.**

Deleted.

**G. Add Condition C10 - Privacy Screen to read as follows:**

A 1.65 metre privacy screen (measured from finished floor level) is to be erected for the entire length of the outermost southern edge of the deck located off the lounge room on the upper floor as shown on the approved plans. The privacy screen shall be of fixed panels or louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development.

Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: In order to maintain privacy to the adjoining / nearby property.

#### **H. Add Condition C11 - Waste Management Plan to read as follows:**

A Waste Management Plan must be prepared for this development. The Plan must be in accordance with the Development Control Plan. Details demonstrating compliance must be provided to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure that any demolition and construction waste, including excavated material, is reused, recycle or disposed of in an environmentally friendly manner.

#### **I. Add Condition D16 - Waste Management During Demolition to read as follows:**

The reuse, recycling or disposal of waste during works must be done generally in accordance with the Waste Management Plan for this development.

Details demonstrating compliance must be submitted to the Principal Certifier.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

#### **J. Add Condition E7 - Swimming Pool Requirements to read as follows:**

The Swimming Pool shall not be filled with water nor be permitted to retain water until:

(a) All required safety fencing has been erected in accordance with and all other requirements have been fulfilled with regard to the relevant legislative requirements and relevant Australian Standards (including but not limited) to:

- (i) Swimming Pools Act 1992;
- (ii) Swimming Pools Amendment Act 2009;
- (iii) Swimming Pools Regulation 2018
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools

(b) A certificate of compliance prepared by the manufacturer of the pool safety fencing, shall be submitted to the Principal Certifier, certifying compliance with Australian Standard 1926.

(c) Filter backwash waters shall be discharged to the Sydney Water sewer mains in accordance with Sydney Water's requirements. Where Sydney Water mains are not available in rural areas, the backwash waters shall be managed onsite in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system. Appropriate instructions of artificial resuscitation methods.

(d) A warning sign stating '**YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS POOL**' has been installed.

(e) Signage showing resuscitation methods and emergency contact

(f) All signage shall be located in a prominent position within the pool area.

(g) Swimming pools and spas must be registered with the Division of Local Government.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To protect human life.

**K. Add Condition E8 - Waste Management Confirmation to read as follows:**

Prior to the issue of an Occupation Certificate, evidence / documentation must be submitted to the Principal Certifier that all waste material from the development site arising from demolition and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

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

**Signed**



**Anaiis Sarkissian, Planner**

The application is determined on 22/02/2024, under the delegated authority of:



**Adam Richardson, Manager Development Assessments**