

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2023/0494
Responsible Officer:	Claire Ryan
Land to be developed (Address):	Lot 114 DP 8394, 73 Marine Parade AVALON BEACH NSW 2107
Proposed Development:	Modification of Development Consent DA2022/0084 granted for Demolition works and construction of a dwelling house, secondary dwelling and swimming pool.
Zoning:	C2 Environmental Conservation C4 Environmental Living
Development Permissible:	Yes - Zone C2 Environmental Conservation Yes - Zone C4 Environmental Living
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Lincoln John Courtney Megan Jane Lynch
Applicant:	Sean Clive Gartner

Application Lodged:	13/09/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	18/09/2023 to 02/10/2023
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks to modify Development Consent No. DA2022/0084, as follows:

- Reconfiguration of the dwelling entry and stair at the garage level,
- Decrease the northern side setback for the lower entry and secondary dwelling from 3790mm to 3700mm,
- Decrease the southern side setback to Bedroom 3 from 3500mm to 3490mm,

- Reconfiguration of the secondary dwelling including relocated entry, addition of a bin store area, and increase in floor space from 54m² to 72.4m²,
- Replacement of tiled terrace adjoining Bedroom 1 with lawn,
- Addition of an underfloor store room and garden store room,
- Reconfiguration of the roof, and
- Revision of the southern window to Bedroom 3, and the southern window to the bathroom of the secondary dwelling.

A site visit confirmed the approved and modified works have not yet been commenced.

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 - 5.1 Relevant acquisition authority

Pittwater Local Environmental Plan 2014 - 5.1A Development on land intended to be acquired for public purpose

Pittwater Local Environmental Plan 2014 - 5.4 Controls relating to miscellaneous permissible uses

Pittwater Local Environmental Plan 2014 - 7.1 Acid sulfate soils

Pittwater Local Environmental Plan 2014 - 7.2 Earthworks

Pittwater Local Environmental Plan 2014 - 7.5 Coastal risk planning

Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection

Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards

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

Pittwater Local Environmental Plan 2014 - 7.10 Essential services

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

SITE DESCRIPTION

Property Description:	Lot 114 DP 8394 , 73 Marine Parade AVALON BEACH NSW 2107
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<p>Detailed Site Description:</p>	<p>The subject site consists of one allotment located on the eastern side of Marine Parade, Avalon Beach.</p> <p>The site is irregular in shape with a frontage of 19.405 metres along Marine Parade and a maximum depth of 103.63 metres. The site has a surveyed area of 1,878m².</p> <p>The site is located partially within the C4 Environmental Living zone (western three-quarters) and partially within the C2 Environmental Conservation zone (eastern quarter) and accommodates a two-storey detached dwelling house.</p> <p>The site slopes up to the east from the street to the rear by approximately 15 metres, for the western-most three quarters of the site. The eastern-most quarter of the site is a cliff face that drops steeply away to the ocean. The site is heavily vegetated to its eastern-most half.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by generally two-storey detached dwelling houses.</p>
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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:

- N0309/17 for alterations and additions to dwelling including new basement garage, gym and workshop to the front of the existing dwelling, extension to existing first floor deck and a new

two (2) storey pavilion extension to the rear of the property with inclinator was with drawn by the Applicant on 25 October 2017.

- DA2017/1200 for alterations and additions to a dwelling house was classified as a deemed refusal and an appeal through the NSW Land and Environment Court was filed by the Applicant on 26 March 2018. The application was refused by Council's Development Determination Panel 11 April 2018. The appeal was dismissed by the NSW Land and Environment Court on 10 October 2018.
- DA2022/0084 for demolition works and construction of a dwelling house, secondary dwelling and swimming pool was approved by the Development Determination Panel on 30 August 2022.

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 DA2022/0084, in full, with amendments detailed and assessed as follows:

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

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	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 DA2022/0084, as the works amount to minor reconfiguration and aesthetic amendments only, with the only new non-compliance relating to the side setback of a bin store room.

Section 4.55 (2) - Other Modifications	Comments
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application DA2022/0084 did not require concurrence from the relevant Minister, public authority or approval body.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021, and the Northern Beaches Community Participation Plan.
(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.	No submissions were received in relation to this application.

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 (2) 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&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&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&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&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&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&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&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development,	(i) Environmental Impact The environmental impacts of the proposed development on the

Section 4.15 'Matters for Consideration'	Comments
including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact 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	No submissions were received in relation to this application.
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

A portion of 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. A Bush Fire Report was submitted with the original application that included a certificate (prepared by Bushfire Planning Services, dated 5 October 2021) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report were included as conditions of consent. This modification application is supported by an addendum letter from Bushfire Planning Services dated 3 August 2023, confirming the original recommendations remain applicable.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 18/09/2023 to 02/10/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.</p> <p>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</p>
Landscape Officer	<p>The application is for modification to development consent DA2022/0084.</p> <p>The proposed amendments are mainly contained to the footprint approved in DA2022/0084, and as such no landscape concerns are raised. Condition 49 Landscape Maintenance shall be amended as part of this modification. All other conditions remain and no further conditions are imposed.</p>
NECC (Bushland and Biodiversity)	<p>The application seeks consent to modify Development Consent DA2022/0084.</p> <p>The proposed modifications are largely contained within the existing proposed development footprint. The Arborist has confirmed that there are no additional impacts to trees and the Bushfire consultant has confirmed that the revised proposal does not adversely affect the results of the original bushfire assessment.</p> <p>No additional impacts to biodiversity and as such no objections are raised.</p>
NECC (Coast and Catchments)	<p>The modification application has been assessed in consideration of the <i>Coastal Management Act 2016</i>, State Environmental Planning Policy (Resilience & Hazards) 2021 and has also been assessed against requirements of the Pittwater LEP 2014 and Pittwater 21 DCP.</p> <p>Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development. The proposed modifications are in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>.</p> <p>State Environmental Planning Policy (Resilience & Hazards) 2021 The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021 (SEPP R & H). Hence, Clauses 2.10, 2.11 and 2.12 of the CM (R & H) apply for this DA.</p>

Internal Referral Body	Comments
	<p>Comment:</p> <p>On internal assessment, the modification application satisfies requirements under clauses 2.10, 2.11 and 2.12 of the SEPP R&H. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021.</p> <p>Pittwater LEP 2014 and Pittwater 21 DCP</p> <p>Coastline Bluff Hazard Management The subject site is also shown to be affected by Coastline Bluff/Cliff Instability Hazard on Council's Coastal Risk Planning Map in Pittwater LEP 2014. As such, the Geotechnical Risk Management Policy for Pittwater (Appendix 5, Pittwater 21 DCP) and the relevant B3.4 Coastline (Bluff) Hazard controls in P21 DCP will apply to new development of the site.</p> <p>Under this application, minor modifications are proposed on the existing building. As such, it is considered that the application does comply with the requirements of the coastal relevant clauses of the Pittwater LEP 2014 and Pittwater 21 DCP.</p> <p>Development on Foreshore Area A section of the subject property is within the foreshore building line. Part 7, Clause 7.8 –Limited development on foreshore area of the Pittwater LEP 2014 applies for any development within the foreshore area.</p> <p>The application proposes no works on the foreshores area and hence, does not require to satisfy the objectives and requirements of Part 7, Clause 7.8 of the Pittwater LEP 2014.</p>
NECC (Development Engineering)	<p>No objections are raised to the proposed modifications. No modifications to Development Engineering conditions required.</p> <p>Existing Development Engineering conditions for DA2022/0084 are considered to still be relevant and adequate.</p> <p>The proposal is therefore supported.</p>

Internal Referral Body	Comments
Parks, reserves, beaches, foreshore	Parks, Reserves, and Foreshores raise no concerns.
Property Management and Commercial	The proposal is for modifications to an existing approval. Property has no comment to make regarding the proposal as submitted.

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
Aboriginal Heritage Office	<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

The BASIX Certificate submitted with the original development application (Certificate No. 1268226M dated 17 January 2022) remains applicable to the development.

SEPP (Housing) 2021

Part 1 – Secondary Dwellings

Clause 52 – Development may be carried out with consent	
Standard	Compliance/Comment
<p>(2) Development consent must not be granted for development to which this Part applies unless—</p> <p>a) No dwellings, other than the principal dwelling and the secondary dwelling, will be located on the land, and</p> <p>b) The total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area permitted for a dwelling house on the land under another environmental planning instrument, and</p> <p>c) The total floor area of the secondary dwelling is:</p> <ol style="list-style-type: none"> i) no more than 60m², or ii) if a greater floor area is permitted for a secondary dwelling on the land under another environmental planning instrument - the greater floor area. 	<p>a) The proposal retains the principal dwelling and secondary dwelling, as approved.</p> <p>b) No maximum floor area applies to the site.</p> <p>c) The modified secondary dwelling area is proposed to be increased from 54m² to 72.4m². Clause PLEP 2014 allows for secondary dwellings to be 60m² or 25% of the total floor area of the principal dwelling, whichever is the greater. The secondary dwelling equates to less than 25% of the floor area of the principal dwelling.</p>

Clause 53 – Non-discretionary development standards—the Act, s 4.15	
Standard	Compliance/Comment
a) For a detached secondary dwelling - a minimum site area of 450m ² .	The secondary dwelling remains attached to the principal dwelling, as approved.
b) The number of parking spaces provided on the site is the same as the number of parking spaces provided on the site immediately before the development is carried out.	The development retains two parking spaces, as approved.

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

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

Comment:

The original development was supported by a geotechnical risk assessment report and a coastal engineering report. The modification application is supported by an addendum to the geotechnical report confirming that original recommendations remain applicable to the proposed modifications. This documentation demonstrates that the development is of acceptably low risk in relation to coastal damage, erosion and recession. As such, the modified development is not anticipated to result in adverse impact to the above matters.

- 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:

As demonstrated by the architectural plans and supporting reports, the modified works are designed, sited and managed so as not to result in any adverse impact.

Division 4 Coastal use area

2.11 Development on land within the coastal use area

- 1) *Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:*
 - a) *has considered whether the proposed development is likely to cause an adverse impact on the following:*
 - i) *existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - ii) *overshadowing, wind funnelling and the loss of views from public places to foreshores,*
 - iv) *foreshores,*
 - v) *the visual amenity and scenic qualities of the coast, including coastal headlands, Aboriginal cultural heritage, practices and places, cultural and built environment heritage, and*
 - b) *is satisfied that:*
 - i) *the development is designed, sited and will be managed to avoid an*
 - 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 original development was supported by a geotechnical risk assessment report and a coastal engineering report. The modification application is supported by an addendum to the geotechnical report confirming that original recommendations remain applicable to the proposed modifications. This documentation demonstrates that the development is of acceptably low risk in relation to coastal damage, erosion and recession. As such, the development is designed, sited and will be managed so as not to result in adverse impact to the above matters. The development has been reviewed by Council's Development Engineer and Coast & Estuary Officer (amongst others), who are supportive of the application, subject to conditions of consent. The proposal has been considered in relation to the coastal and built environment, bulk and scale throughout the assessment, as demonstrated within this report.

Division 5 General

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

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

Comment:

The modified development is not anticipated to result in any increased risk of coastal hazards on the subject site and adjoining sites. The proposed development has been reviewed by Council's Development Engineer and Coast & Estuary Officer, who are supportive of the application, subject to conditions of consent.

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

Chapter 4 – Remediation of Land

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

Pittwater Local Environmental Plan 2014

Is the development permissible?	Zone C2 : Yes Zone C4 : Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Zone C2 : Yes Zone C4 : Yes

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.2m	8.4m	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
5.1 Relevant acquisition authority	Yes
5.1A Development on land intended to be acquired for public purpose	Yes
5.4 Controls relating to miscellaneous permissible uses	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

5.1 Relevant acquisition authority

The eastern-most portion of the land (zoned C2 Environmental Conservation) is classified for acquisition for regional open space. No development is proposed on this land.

5.1A Development on land intended to be acquired for public purpose

The eastern-most portion of the land (zoned C2 Environmental Conservation) is classified for acquisition for regional open space. No development is proposed on this land.

5.4 Controls relating to miscellaneous permissible uses

The modified development includes a secondary dwelling with a gross floor area of 61.5m². The principal dwelling has a gross floor area of 311.7m². The floor area of the secondary dwelling equates to 19.7% of the floor area of the principal dwelling, and is therefore compliant with Clause 5.4(9)(b).

7.1 Acid sulfate soils

Clause 7.1 Acid Sulfate Soils requires Council to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. In this regard, development consent is required for the carrying out of works described on land shown on the Acid Sulfate Soils Map as being of the class specified for those works. The site is located in an area identified as Acid Sulfate Soil Class 5, as indicated on Council's Acid Sulfate Soils Planning Map. The works are not anticipated to result in risk relating to acid sulfate soils.

7.2 Earthworks

The objective of Clause 7.2 Earthworks requires development to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

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

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

Comment:

The proposal is unlikely to unreasonably disrupt existing drainage patterns and soil stability in the locality.

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

Comment:

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

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

Comment:

The excavated material will be processed according to the Waste Management Plan for the development. A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

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

Comment:

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

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

Comment:

The excavated material will be processed according to the Waste Management Plan for the development. A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

(f) the likelihood of disturbing relics

Comment:

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

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

Comment:

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

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

Comment:

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

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

Comment:

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

7.5 Coastal risk planning

Under this clause, development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:

(a) is not likely to cause detrimental increases in coastal risks to other development or properties, and

Comment:

The development has been assessed by Council's Coastal Engineers. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development is not likely to cause detrimental increases in coastal risks to other development or properties.

(b) is not likely to alter coastal processes and the impacts of coastal hazards to the detriment of the environment, and

Comment:

The development has been assessed by Council's Coastal Engineers. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development is not likely to alter coastal processes and the impacts of coastal hazards to the detriment of the environment.

(c) incorporates appropriate measures to manage risk to life from coastal risks, and

Comment:

The development has been assessed by Council's Coastal Engineers. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development incorporates appropriate measures to manage risk to life from coastal risks.

(d) is likely to avoid or minimise adverse effects from the impact of coastal processes and the

exposure to coastal hazards, particularly if the development is located seaward of the immediate hazard line, and

Comment:

The development has been assessed by Council's Coastal Engineers. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development is likely to avoid or minimise adverse effects from the impact of coastal processes and the exposure to coastal hazards.

(e) provides for the relocation, modification or removal of the development to adapt to the impact of coastal processes and coastal hazards, and

Comment:

The development has been assessed by Council's Coastal Engineers. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development provides for the relocation, modification or removal of the development to adapt to the impact of coastal processes and coastal hazards.

(f) has regard to the impacts of sea level rise, and

Comment:

The development has been assessed by Council's Coastal Engineers. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development has regard to the impacts of sea level rise.

(g) will have an acceptable level of risk to both property and life, in relation to all identifiable coastline hazards.

Comment:

The development has been assessed by Council's Coastal Engineers. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development will have an acceptable level of risk to both property and life, in relation to all identifiable coastline hazards.

7.6 Biodiversity protection

Before determining a development application for development on land to which this clause applies, this clause requires the consent authority to consider:

(a) whether the development is likely to have:

(i) any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and

(ii) any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and

(iii) any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and

(iv) any adverse impact on the habitat elements providing connectivity on the land, and

Comment:

The development has been assessed by Council's Biodiversity Team, who raised no objections to approval. Therefore, Council can be satisfied that the development will not have any adverse impact on the condition, ecological value and significance of the fauna and flora on the land; the importance of the vegetation on the land to the habitat and survival of native fauna; or the habitat elements providing connectivity on the land. Council is also satisfied that the development will not unreasonably fragment, disturb, or diminish the biodiversity structure, function, or composition of the land.

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

Comment:

The development has been assessed by Council's Biodiversity Team, who raised no objections to

approval. Therefore, Council can be satisfied that the proposal includes appropriate measures to avoid, minimise, or mitigate the impacts of the development.

Before granting development consent, this clause also requires the consent authority to be satisfied that:

- (a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or*
- (b) if that impact cannot be reasonably avoided by adopting feasible alternatives—the development is designed, sited and will be managed to minimise that impact, or*
- (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.*

Comment:

The development has been assessed by Council's Biodiversity Team, who raised no objections to approval. Therefore, Council can be satisfied that the development is designed, sited and will be managed to any significant adverse environmental impact.

7.7 Geotechnical hazards

Under Clause 7.7 Geotechnical Hazards, before determining a development application for development on land to which this clause applies, the consent authority must consider the following matters to decide whether or not the development takes into account all geotechnical risks:

- (a) site layout, including access,*
- (b) the development's design and construction methods,*
- (c) the amount of cut and fill that will be required for the development,*
- (d) waste water management, stormwater and drainage across the land,*
- (e) the geotechnical constraints of the site,*
- (f) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Comment:

The development is supported by a geotechnical risk assessment, architectural plans, and stormwater management plans that demonstrate all geotechnical risks have been taken into account. The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent.

Development consent must not be granted to development on land to which this clause applies unless:

- (a) the consent authority is satisfied that the development will appropriately manage waste water, stormwater and drainage across the land so as not to affect the rate, volume and quality of water leaving the land, and*

Comment:

The proposed development is supported by a geotechnical risk assessment and stormwater management plans that demonstrate waste water, stormwater and drainage are suitably managed on site. The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent.

(b) the consent authority is satisfied that:

- (i) the development is designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development, or*
- (ii) if that risk or impact cannot be reasonably avoided - the development is designed, sited and will be managed to minimise that risk or impact, or*
- (iii) if that risk or impact cannot be minimised - the development will be managed to mitigate that risk or*

impact.

Comment:

The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent. As such, Council can be satisfied that the proposed development has been designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development.

7.8 Limited development on foreshore area

No change is proposed under this application with reference to works beyond the foreshore building line.

7.10 Essential services

Under this clause, development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required:

- (a) the supply of water,
- (b) the supply of electricity,
- (c) the disposal and management of sewage,
- (d) stormwater drainage or on-site conservation,
- (e) suitable vehicular access.

Comment:

The subject site is supplied with the above essential services. The development (as approved and as modified) retains and relies upon these services.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Approved		Proposed	Complies
Front building line	6.5m	24m		24m	Yes
Rear building line	FSBL	FSBL*		FSBL	Yes
Side building line	N: Min. 1m	Garage Level:	Min. 3.8m	3.7m	Yes
		Lower Level:	Dwelling: Min. 3.8m	3.7m	Yes
			Stairs: Min. 1.3m	1m	Yes
		Mid Level:	Min. 1.8m	1.8m	Yes
		Upper Level:	Min. 1.5m	1.5m	Yes

	S: Min. 2.5m	Garage Level:	Min. 2.4m	0m	No
		Lower Level:	Dwelling: Min. 2.5m	2.5m	Yes
			Stairs: Min. 1.4m	1.4m	As approved
		Mid Level:	Green Roof: Min. 2.6m	2.6m	Yes
			Dwelling: Min. 3.5m	3.49m	Yes
		Upper Level:	Min. 2.5m	2.5m	Yes
Building envelope	3.5m	N: Max. 1.9m outside envelope		Max. 1.9m outside envelope	As approved
		S: Within envelope		Within envelope	Yes
Landscaped area	Min. 60% (765.5m ²)**	62.2% (793.7m ² , incl. 6% hard area)		60.9% (777.55m ² , incl. 6% hard area)	Yes

* The approved development includes a minor breach to the Foreshore Building Line (FSBL), but this is for the purpose of the swimming pool, as permitted under Clause 7.8 (2)(b) of the PLEP 2014. No change is proposed to this element.

** The subject site has an area of 1,878m². A portion of the subject site (602m²) is zoned C2 Environmental Conservation, which does not have a minimum landscaped area requirement. The landscaped area calculation is based on the portion of the site (1,276m²) to which a landscaped area control applies, in accordance with the "Split Zones" requirement of Clause D12.10 of the P21 DCP.

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
B3.4 Coastline (Bluff) Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.6 Wildlife Corridors	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.11 Secondary Dwellings and Rural Worker's Dwellings	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	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	No	Yes
D1.11 Building envelope	Yes	Yes
D1.14 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D1.17 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D1.20 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

D1.9 Side and rear building line

The modified development includes a further minor breach to the southern side boundary, for the purpose of the bin store area at the garage level. The bin store area is proposed to be located immediately at the southern side boundary, where a minimum setback of 2.5m is required. The underlying outcomes of the control are addressed as follows:

To achieve the desired future character of the Locality.

Comment:

The modified development is compliant with the requirements of Clause A4.1 Avalon Beach Locality of the P21 DCP, which details the desired future character of the site and surrounds.

The bulk and scale of the built form is minimised.

Comment:

The modified development does not make any change to the approved breach to the building envelope control, and remains of a built form, bulk and scale anticipated for the subject site.

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

Comment:

The modified development makes no change to the overall building envelope as relevant to the requirements of Clause C1.3 View Sharing of the P21 DCP.

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

Comment:

As above, the modified development development allows for suitable view sharing via its design and siting.

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

Comment:

The proposal makes no amendment to the development's approved compliance with regard to the requirements of Clauses C1.4 Solar Access and C1.5 Visual Privacy of the P21 DCP.

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

Comment:

The modified development includes a compliant landscaped area, suitably retains vegetation, and the proposal remains supported by a landscape plan that adequately demonstrates proposed planting.

Flexibility in the siting of buildings and access.

Comment:

The modified development demonstrates flexibility in the siting of the dwelling and attached secondary dwelling, without resulting in any unreasonable impacts to the subject site or adjacent sites.

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

Comment:

The modified development does not require further removal of planting (nor deletion of any approved planting), and remains compliant with the required landscaped area.

A landscaped buffer between commercial and residential zones is achieved.

Comment:

Not applicable. The subject site is within a residential zone and does not adjoin land in a commercial zone.

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. Mod2023/0494 for Modification of Development Consent DA2022/0084 granted for Demolition works and construction of a dwelling house, secondary dwelling and swimming pool. on land at Lot 114 DP 8394,73 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-368410 Mod2023/0494	The date of this notice of determination	Minor internal amendments and changes to windows. Additional Conditions: <ul style="list-style-type: none"> Condition 1A Modification of Consent - Approved Plans and Supporting Documentation Amended Conditions: <ul style="list-style-type: none"> Condition 49 Landscape Maintenance
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Modified conditions

A. Add Condition 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.

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
A-01	C	Site Plan	Gartner Trovato Architects	6 September 2023
A-02	C	Garage + Entry Plan	Gartner Trovato Architects	6 September 2023
A-03	C	Lower Level Plan	Gartner Trovato Architects	6 September 2023
A-04	C	Mid Level Plan	Gartner Trovato Architects	6 September 2023
A-05	C	Upper Level Plan	Gartner Trovato Architects	6 September 2023
A-06	C	South Elevation / North Elevation	Gartner Trovato Architects	6 September 2023
A-07	C	East Elevation / West Elevation	Gartner Trovato Architects	6 September 2023
A-08	C	Section A / Section B	Gartner Trovato Architects	6 September 2023

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Arboricultural Impact Assessment Addendum	-	Growing My Way	2 August 2023
Bushfire Risk Assessment Addendum	-	Bushfire Planning Services	3 August 2023

Geotechnical Investigation Addendum	J3808B	White Geotechnical Group	27 July 2023
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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 49 Landscape Maintenance to read as follows:

- a) If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components.
- b) Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting.
- c) If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan(s) and any conditions of consent.
- d) A maintenance activity schedule for on-going maintenance of planters on slab shall be incorporated to monitor and replenish soil levels as a result of soil shrinkage over time.
- e) The approved landscape planted areas, whether containing lawn, gardens or planters, or other shall in perpetuity remain as planting under the development consent, and shall not be replaced with any hard paved surfaces or structures.

Reason: To maintain local environmental amenity.

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

Signed



Claire Ryan, Principal Planner

The application is determined on 24/11/2023, under the delegated authority of:



Steven Findlay, Manager Development Assessments