

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2021/0198
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<b>Responsible Officer:</b>	Phil Lane
<b>Land to be developed (Address):</b>	Lot 22 DP 11552, 9 Ocean Road PALM BEACH NSW 2108
<b>Proposed Development:</b>	Modification of Development Consent DA2020/0028 granted for the construction of a dwelling house
<b>Zoning:</b>	E4 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>	John Charles Bubb Christina Veronika Ingrid Neumann-Bubb
<b>Applicant:</b>	John Charles Bubb

<b>Application Lodged:</b>	20/04/2021
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Single new detached dwelling
<b>Notified:</b>	28/04/2021 to 12/05/2021
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

### PROPOSED DEVELOPMENT IN DETAIL

The proposed modifications sought under this application involve alterations to the approved retaining walls associated with the excavation of the site to facilitate the construction of the dwelling, which as outlined in the attached submission prepared by the Consulting Geotechnical Engineers – Douglas Partners, dated 7 April 2021 are considered to be essential due to the unanticipated nature of the site and potential instability.

The proposal includes revised architectural plans to detail the necessary modifications to the retaining walls to support the site conditions at the rear of the dwelling, together with the revised structural design prepared by NB Consulting Engineers and the permanent anchor design recommended by Douglas Partners.

Additionally, it is noted that there are slight variations within the floor levels of Level 2, Level 3 and Level Ceiling Height, however the overall height (RL19.600m) and starting level (RL7.010m) remain the same.

as approved. It is also noted a variation to the rear terrace/courtyard and that Level 1 floor level increases from 15.5m overall length to the proposed length of 18.9m.

The above changes will all be assessed as part of this application.





## ASSESSMENT INTRODUCTION

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

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

## SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - 4.3 Height of buildings

Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards

Pittwater 21 Development Control Plan - B3.1 Landslip Hazard

Pittwater 21 Development Control Plan - B3.3 Coastline (Beach) Hazard

Pittwater 21 Development Control Plan - B8.1 Construction and Demolition - Excavation and Landfill

Pittwater 21 Development Control Plan - D12.13 Construction, Retaining walls, terracing and undercroft areas

Pittwater 21 Development Control Plan - D12.14 Scenic Protection Category One Areas

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 22 DP 11552 , 9 Ocean Road PALM BEACH NSW 2108
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the western side of Ocean Road.</p> <p>The site is irregular in shape with a frontage of 21.391m along Ocean Road and a depth of 64.445m along the northern side boundary and 48.095m along the southern side boundary. The site has a surveyed area of 1189m<sup>2</sup>.</p> <p>The site is located within the E4 Environmental Living zone and accommodates a three (3) storey dwelling.</p> <p>The site has a fall of over 30m from the top (rear boundary) to the bottom (front boundary) or approximately 47% sloping grade.</p> <p>The site has a mix of native and exotic species of plants,</p>

shrubs and trees with a large rock floaters approximately two thirds of the way up in the rear and hence the requirement for the retaining wall for safety issues.

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

Adjoining and surrounding development are characterised by two (2) and three (3) storey dwellings with landscaped settings. It is noted that the dwellings within this section of Ocean Road are located close to the front boundary due to the significant slope of the land leaving a limited area available for development.

Map:



#### **SITE HISTORY**

CDC2020/0235 (CDC2020-544) - Demolition of existing structures - Approved 14 April 2020

DA2020/0028 - Construction of a dwelling house approved 25 June 2020

#### **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 DA2020/0028, 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
<p>A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:</p> <p>(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and</p>	<p>The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2020/0028 for the following reasons:</p> <p>Consideration of whether a development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted, Justice Bignold established the following test in the <i>Moto Projects (No 2) Pty Ltd v North Sydney Council</i> (1999) 106 LGERA 289 where His Honours states:</p> <p><i>"[54] The relevant satisfaction required by s96(2)(a) to be found to exist in order that the modification power be available involves an ultimate finding of fact based upon the primary facts found. I must be satisfied that the modified development is substantially the same as the originally approved development.</i></p> <p><i>[55] The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is "essentially or materially" the same as the (currently) approved development.</i></p> <p><i>[56] The comparative task does not merely involve a comparison of the physical features or components of the development as currently approved and modified where that comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted)."</i></p> <p>The applicant has provided the following justification to</p>

Section 4.55 (2) - Other Modifications	Comments
	<p>support their argument that the modifications are substantially the same:</p> <p><i>"In my opinion, in terms of a "qualitative comparison", the Modification Application is substantially the same development as that which was approved.</i></p> <p><i>The works seek to provide for a raising of the rear retaining wall to support the upper slope of the site and the detached sandstone blocks and is considered to be necessary works in accordance with the recommendations of the consulting Geotechnical Engineer – Douglas Partners and which do not substantially alter the approved form of the development.</i></p> <p><i>The raising of the rear retaining wall will be largely screened from public view by the construction of the new dwelling and the use of appropriate finished finishes and materials will ensure that the works are not visually prominent in the locality.</i></p> <p><i>The proposed changes will ensure that the stability of the site and that of the surrounding neighbouring properties is appropriately achieved in accordance with the directions of the Consulting Geotechnical Engineer.</i></p> <p><i>When viewed from the public domain or from the neighbouring properties, the building will largely present the same visual impact and appearance to that originally approved.</i></p> <p><i>Similarly, the application is substantially the same development when subjected to a "quantitative comparison", as the works provide for "Construction of a dwelling house" in a location and to a form which is consistent with the consent.</i></p> <p><i>In my view, this application is substantially the same as the original application when considered in the context of the Bignold J determination and the application can be reasonably assessed by Council under S4.55 of the Act.</i></p> <p><b>Conclusion</b></p> <p><i>The test established in Moto requires both a quantitative and a qualitative assessment.</i></p> <p><i>In terms of the quantitative extent of the proposed alterations to the dwelling, the minor nature of the changes ensures that the design remains consistent</i></p>



Section 4.55 (2) - Other Modifications	Comments
	<p><i>with the approved form.</i></p> <p><i>The proposal also satisfies the qualitative assessment required by the Moto test. The modifications will result in a development which remains generally as approved, for the same purpose and with no substantive modifications to the physical appearance of the approved building.</i></p> <p><i>As the proposal will retain the dwelling and its immediate surrounds in accordance with the approved form, the proposed revisions to the approved plan relate only to the raising of the rear retaining wall.</i></p> <p><i>On the basis that the significant majority of the existing approval is unchanged, this application is appropriately made under the provisions of section 4.55 of the Act.</i></p> <p><i>The proposed modification is justified on the basis that:</i></p> <ul style="list-style-type: none"> <li><i>• The proposed works are generally consistent with the application as approved and will not comprise the amenity of the subject or neighbouring properties.</i></li> <li><i>• The proposal is "substantially" the same development, as defined by the Environmental Planning &amp; Assessment Act 1979.</i></li> </ul> <p><i>Council's support of the modification to the form of the proposed development is sought in this instance. "</i></p> <p>Reviewing the above comments and the court judgement by Justice Bignold established in the Moto Projects (No 2) Pty Ltd v North Sydney Council (1999) 106 LGERA 289 it is concurred that the proposed modification is consistent with the (original) consent and can be considered under Section 4.55 of the Act.</p>
(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 DA2020/0028 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	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Pittwater Local



Section 4.55 (2) - Other Modifications	Comments
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	Environmental Plan 2014 and Pittwater 21 Development Control 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 96 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
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 2000 (EP&A Regulation 2000)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.

Section 4.15 'Matters for Consideration'	Comments
	<p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and 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 not classified as bush fire prone land.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 28/04/2021 to 12/05/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

## REFERRALS

Internal Referral Body	Comments
Landscape Officer	The application for modification to development consent DA2020/0028 seeks to provide for raising of the rear retaining wall to support the upper slope of the site and the detached sandstone blocks and is considered to be necessary works in accordance with the recommendations of the consulting Geotechnical Engineer. The deep soil planting zone between the dwelling and the retaining wall is to be retained which provides for the inclusion of screening planting to assist in softening the visual appearance of the vertical wall, and conditions of consent shall be imposed.
NECC (Bushland and Biodiversity)	The proposed modification to DA2020/0028 will not result in any additional impacts to the biodiversity values of the site, and the development is in compliance with the relevant biodiversity planning controls.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	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	Approved subject to conditions.

## ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\*

All, Environmental Planning Instruments (SEPPs, REPs 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, REPs 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 55 - Remediation of Land

Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018.

The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.

### **SEPP (Infrastructure) 2007**

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 (Coastal Management) 2018**

The site is subject to SEPP Coastal Management (2018). Accordingly, an assessment under the SEPP has been carried out as follows:

#### **10 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 mapped within the Pittwater LEP Biodiversity area, and also the P21 DCP Littoral Rainforest area. The site is highly disturbed and impacted by vegetation clearance and weed growth. Additional weed removal and native landscaping has been conditioned to improve the local environment of the upper rear portion of the yard. In summary, the development is designed, sited and will be managed to minimise that impact.

#### **11 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:

Referral comments received from Council's Biodiversity Department supported.



## 12 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 other land, and*
  - (ii) *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*
  - (iii) *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:

At the commencement of this Policy, no Coastal Vulnerability Area Map was adopted and therefore no coastal vulnerability area has been identified. Not applicable.

## 13 Development on land within the coastal environment area

- (1) *Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:*
  - (a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
  - (b) *coastal environmental values and natural coastal processes,*

- (c) *the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
- (d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
- (e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
- (f) *Aboriginal cultural heritage, practices and places,*
- (g) *the use of the surf zone.*

Comment:

The proposed works are unlikely to cause an adverse impact upon the matters identified in this clause. The proposal is located wholly within the subject site and does not discourage public access or amenity along the foreshore area nor impact on natural foreshore processes.

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

Comment:

The proposal has been designed in such a way that it satisfies the relevant matters identified in this clause.

#### **14 Development on land within the coastal use area**

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

Comment:

The proposal is setback from the foreshore and will not impact upon the existing and safe access to and along the foreshore. The visual amenity from private and public space is not adversely effected as the modified retaining wall will be obscured by the approved three (3) storey dwelling house located to front and medium portions of the site including the adjoining three (3) storey and two (2) storey dwellings either side of the subject site.

No aboriginal heritage sites have been identified within the vicinity of the proposed development. The proposed works are not likely to cause an adverse impact upon the matters identified in this clause.

As such, it is considered that the application complies with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

**15 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 proposal is unlikely to cause increased risk of coastal hazards on that land or other land, due to its design, location and relevant reports indicating no unreasonable impacts.

**16 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:

No coastal management programs have been identified.

**17 Other development controls not affected**

Subject to clause 7, for the avoidance of doubt, nothing in this Part:

(a) permits the carrying out of development that is prohibited development under another environmental planning instrument, or

(b) permits the carrying out of development without development consent where another environmental planning instrument provides that the development may be carried out only with development consent.

Comment: Noted

**18 Hierarchy of development controls if overlapping**

If a single parcel of land is identified by this Policy as being within more than one coastal management area and the development controls of those coastal management areas are inconsistent, the development controls of the highest of the following coastal management areas (set out highest to lowest) prevail to the extent of the inconsistency:

- (a) the coastal wetlands and littoral rainforests area,
- (b) the coastal vulnerability area,
- (c) the coastal environment area,
- (d) the coastal use area.

Comment: Noted

### Coastal Management Act 2016

The subject site identified as Coastal use area under the Coastal Management Act 2016. The management objectives for the coastal use area are as follows:

- "(a) to protect and enhance the scenic, social and cultural values of the coast by ensuring that:*
- (i) the type, bulk, scale and size of development is appropriate for the location and natural scenic quality of the coast, and*
  - (ii) adverse impacts of development on cultural and built environment heritage are avoided or mitigated, and*
  - (iii) urban design, including water sensitive urban design, is supported and incorporated into development activities, and*
  - (iv) adequate public open space is provided, including for recreational activities and associated infrastructure, and*
  - (v) the use of the surf zone is considered,*
- (b) to accommodate both urbanised and natural stretches of coastline."*

Comment: The proposal is setback from the foreshore and will not impact upon the existing and safe access to and along the foreshore. The visual amenity from private and public space is not adversely effected as the modified retaining wall will be obscured by the approved three (3) dwelling house located to front and medium portions of the site. In addition, the surrounding area consists of examples of similar developments.

### 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 - 10m*	4m - 10m*	7.6m	N/A	Yes

\* Clause 4.3 (2D) Height of buildings allows for structures/buildings up to 10m

### Compliance Assessment

Clause	Compliance with Requirements
Part 1 Preliminary	Yes



Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
Part 4 Principal development standards	Yes
4.3 Height of buildings	Yes
Part 5 Miscellaneous provisions	Yes
5.10 Heritage conservation	Yes
Part 7 Additional local provisions	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.3 Flood planning	Yes
7.5 Coastal risk planning	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

#### Detailed Assessment

#### **4.3 Height of buildings**

Clause 4.3(2D) of the PLEP 2014 provides that:

*"(2D) Despite subclause (2), development on land that has a maximum building height of 8.5 metres shown for that land on the Height of Buildings Map may exceed a height of 8.5 metres, but not be more than 10.0 metres if:*

- (a) the consent authority is satisfied that the portion of the building above the maximum height shown for that land on the Height of Buildings Map is minor, and*
- (b) the objectives of this clause are achieved, and*
- (c) the building footprint is situated on a slope that is in excess of 16.7 degrees (that is, 30%), and*
- (d) the buildings are sited and designed to take into account the slope of the land to minimise the need for cut and fill by designs that allow the building to step down the slope."*

Clause 4.3(2D) is addressed as follows:

The portion of the development above the 8.5m maximum building height is minor, being only small portions of the development. The objectives of Clause 4.3 are achieved. The portion of the site being developed has a slope of 26.1 degrees or 49%, being greater than 16.7 degrees or 30%. The proposal relies on reasonable excavation given the context of the site. As such, the requirements of Clause 4.3 (2D) are met and the 10m maximum building height applies.

#### **7.7 Geotechnical hazards**

Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is consistent with the provisions of Clause 7.7 Geotechnical hazards of the Pittwater Local Environmental Plan 2014.

#### **Pittwater 21 Development Control Plan**

#### Built Form Controls

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Built Form Control	Requirement	Approved	Proposed	Complies
Front building line	6.5m*	3.195m - 4.5m (Dwelling) 2m - 3.1m (Verandah)	Unaltered	Unchanged
Rear building line	6.5m	20.005m (Dwelling) 15.8m - 25.3m (Retaining Walls)	Unaltered (Dwelling) 15.8m - 25.3m (Retaining Walls)	Yes
Side building line	2.5m ( south)	2.5m (Dwelling)	Unaltered	Yes
	1m (north)	1.9m (Dwelling) 0.7m (Verandah)** 1.3m Terrace/Courtyard	Unaltered 1.1m (Verandah) 0.8m (Terrace/Courtyard) ***	Yes Yes Yes***
Building envelope	3.5m (north)	Outside envelope	Unaltered	Unchanged
	3.5m (south)	Outside envelope	Unaltered	Unchanged
Landscaped area	60%	61.5% (730.9sqm) - (55.5% (659.6sqm) landscaping + 6% (71.3sqm)	Unaltered	Yes

\* Note the established building line is only 4.1m (average of Nos. 8 & 10 Ocean Road)

\*\* Verandah conditioned 1m side building line (DA2020/0028)

\*\*\*Terrace/Courtyard conditioned 1m side building line

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
Section A Shaping Development in Pittwater	Yes	Yes
A1 Introduction	Yes	Yes
A1.7 Considerations before consent is granted	Yes	Yes
A4 Localities	Yes	Yes
A4.12 Palm Beach Locality	Yes	Yes
Section B General Controls	Yes	Yes
B1 Heritage Controls	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3 Hazard Controls	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.3 Coastline (Beach) Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B4 Controls Relating to the Natural Environment	Yes	Yes
B4.17 Littoral Rainforest - Endangered Ecological Community	Yes	Yes
B5 Water Management	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B5.13 Development on Waterfront Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B8 Site Works Management	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	No	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
Section C Development Type Controls	Yes	Yes
C1 Design Criteria for Residential Development	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
C1.13 Pollution Control	Yes	Yes
Section D Locality Specific Development Controls	Yes	Yes
D12 Palm Beach Locality	Yes	Yes
D12.1 Character as viewed from a public place	Yes	Yes
D12.3 Building colours and materials	Yes	Yes
D12.5 Front building line	Yes	Yes
D12.6 Side and rear building line	Yes	Yes
D12.10 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D12.13 Construction, Retaining walls, terracing and undercroft areas	No	Yes
D12.14 Scenic Protection Category One Areas	Yes	Yes

#### Detailed Assessment

#### **B3.1 Landslip Hazard**

See Clause B8.1 for further detail.

#### **B3.3 Coastline (Beach) Hazard**

The site is identified within Coastline Hazard Map as being subject to Wave Inundation. A Coastline Risk Management Report prepared by Horton Coastal Engineering, dated 4 January 2020 has been prepared and submitted with the original application.

Within the report the conclusion reads as follows:

*"The proposed development would be at an acceptably low risk of damage (over a reasonable 60 year design life) from erosion/recession as it is to be founded on bedrock, and from coastal inundation and wave runup..."*

Works will be carried out in accordance with the recommendations contained within the report, together with the advice of the Structural and Geotechnical Engineers.

Given the above it is considered that the the proposal will satisfies the objective of this clause.

### **B8.1 Construction and Demolition - Excavation and Landfill**

The proposal includes excavation exceeding 9.5 metres in depth. In order to address the requirements of this clause, the Applicant submitted a Geotechnical Report(s) and the previous geotechnical conditions in the original consent (DA2020/0028) in addition to the Coastline Risk Management Report which also approved with the original application it is considered that the supporting information submitted addresses concerns relating to potential impact of excavation on land stability.

Based on the above, the proposal is considered to therefore meet the outcomes of the control and is supported on merit in this particular instance.

### **D12.13 Construction, Retaining walls, terracing and undercroft areas**

The proposed development involves significant earthworks, rather than using lightweight construction with pier and beam footings. The proposed development is acceptable in relation to the relevant outcomes of this clause, as follows:

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

Comment: The proposed development is consistent with the desired future character of the locality for the reasons detailed in the section of this report relating to Clause A4.12 Palm Beach Locality of the P21 DCP. The level of excavation included in this proposal is consistent with developments in the Whale and Palm Beach areas, due to the land's steep topography and valuable views, where higher pier and beam construction may cause greater impact than earthworks.

*"To protect and minimise disturbance to natural landforms."*

Comment: The subject site currently includes major earthworks. The proposed modified development increases the amount of excavation on site. It is considered that the resultant proposal does not unreasonably impact on natural landforms as the earthworks will maintain existing rock outcrops and the retention of trees.

*"To encourage building design to respond sensitively to natural topography."*

Comment: The proposed retaining wall, while including significant earthworks will incorporate finishes and landscaping that will minimising the impacts of the proposed retaining wall and is considered to respond to the natural topography.

The retaining walls and terracing in the rear yard will be sited behind the proposed dwelling and it is considered that the proposed finishes on the wall including landscaping will ensure that the modified proposal will address the relevant sections of PLEP, PDCP and Coastal SEPP.





**Proposed finishes on retaining with Mock Rock which painted to blend in with the natural landscape**

It is therefore considered that modified proposed retaining wall addresses concerns relating to potential impact of excavation on land stability.



Given the above it is considered that the proposed development satisfies the merit considerations of this clause and is supported.

#### **D12.14 Scenic Protection Category One Areas**

The approved development (DA2020/0028) was technically non-compliant with the control that requires screen planting to be located between structures and boundaries facing waterways. As discussed previously in this report under D12.13 Construction, Retaining walls, terracing and undercroft areas, a condition has been recommended for the proposed Landscape Plan to be amended to include locally native plantings of a height to allow sufficient screening to the front facade of the dwelling along the eastern elevation and the deep soil planting zone between the dwelling and the retaining wall is to be retained which provides for the inclusion of screening planting to assist in softening the visual appearance of the vertical wall which will also be conditioned.

Based on the above, the non-compliance is supported on merit and, subject to compliance with recommended conditions, considered to satisfy the outcomes of the control in this particular instance.

#### **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 2019**

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 2000;
- 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. Mod2021/0198 for Modification of Development Consent DA2020/0028 granted for the construction of a dwelling house on land at Lot 22 DP 11552,9 Ocean Road, PALM BEACH, subject to the conditions printed below:

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

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

#### a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
S4.55 - A01	29 March 2021	Map Architecture & Interiors
S4.55 - A02	29 March 2021	Map Architecture & Interiors
S4.55 - A03	29 March 2021	Map Architecture & Interiors
S4.55 - A04	29 March 2021	Map Architecture & Interiors
S4.55 - A05	29 March 2021	Map Architecture & Interiors

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Slope Risk Assessment	18 March 2021	Douglas Partners
Emergency Works	7 April 2021	Douglas Partners

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

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

### B. Modify Condition 2 - 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
Ausgrid	Response Ausgrid Referral
Transport NSW	Response Transport for NSW

(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.

#### **C. Modify Condition 10 - Amendments to the approved plans to read as follows:**

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

- The verandah roof and supports are to be located no closer than 1m from the northern side boundary.
- Front fences and side fences (within the front building setback) shall not exceed a maximum height of 1 metre above existing ground level.
- The courtyard/terrace are to be located no closer than 1m from the northern side boundary.

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

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

#### **D. Add Condition 34 - Aboriginal heritage sensitivity and the potential to contain Aboriginal sites to read as follows:**

According to the Due Diligence Code of Practice, any land within 20m of or in a rock shelter is considered to have Aboriginal heritage sensitivity and the potential to contain Aboriginal sites. Given the presence of these landscape features in the proposal area there is potential that the works may harm unrecorded Aboriginal sites which are protected under the NPW Act 1974. Harm to these landscape features should therefore be avoided during the construction phase of the works.

Inadvertent impacts is considered harm under the NPW Act (1974). Storing materials, parking vehicles on an Aboriginal site or area likely to contain Aboriginal sites is considered harm. During construction all workers and contractors should be made aware of their obligations to avoid harm to Aboriginal sites and areas of Aboriginal sensitivity.

Reason: Aboriginal Heritage Protection. (DACAHE01)

#### **E. Add Condition 41A - Required Additional Planting to read as follows:**

Additional planting shall be installed within the deep soil planting zone between the dwelling and the retaining wall consisting of the following:



- i) planting to comprise of native species capable of attaining a height of 3 to 4 metres at maturity,
- ii) all plants are to be installed at minimum 1 metre intervals and be of a minimum container size of 300mm at planting in a garden bed prepared with a suitable free draining soil mix and minimum 50mm depth of mulch.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

Reason: To maintain environmental amenity.

**F. Add Condition 42A - Retaining Wall Finishes to read as follows:**

The retaining wall is to be finished with an artificial rock, mock rock or synthetic rock with a minimal standard finish.

Reason: To maintain environmental amenity.

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

**Signed**



**Phil Lane, Principal Planner**

The application is determined on 18/05/2021, under the delegated authority of:



**Rodney Piggott, Manager Development Assessments**