

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2022/0220
Responsible Officer:	Julie Edwards
Land to be developed (Address):	Lot 109 DP 8394, 63 Marine Parade AVALON BEACH NSW 2107
Proposed Development:	Modification of Development Consent N0263/14 granted for alterations and additions to a dwelling
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:	Richard John Wiseman Rowena Jane Wiseman
Applicant:	Kerrie Shimeld

Application Lodged:	13/05/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	23/05/2022 to 06/06/2022
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 1.17%
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

The applications seeks approval to Modify Development Consent N0263/14 with the following changes:

- The three storey addition above the garage, including the secondary dwelling deleted and a single storey, double garage built in lieu,
- Minor internal changes - alteration to front entry door and glazing,
- The upper level reconfigured to accommodate 3 bedrooms and bathroom/ensuite layout shall be altered.
- The cantilevered deck to the west deleted and windows replacing doors,
- Main upper level covered deck not extended,

- Skillion roof over rear timber deck,
- Existing windows shall be retained along the southern elevation, with the addition of a splashback window to the kitchen,
- Previously proposed windows to the northern elevation deleted.

Consideration of Section 4.55 Modification

The relevant considerations under section 4.55(1A) of the Environmental Planning and Assessment Act, 1979, are as follows:

"(1A) Modifications involving minimal environmental impact. A consent authority may, on application (b) it is satisfied that the development to which the consent as modified relates is substantially

Comment:

The consent as proposed to be modified is substantially the same development as that for which the consent was originally granted. The proposed development retains a single residential use and does not alter the intent of the lot to be developed. The development is materially the same as originally dwelling on the site, albeit with internal reconfiguration and minor changes to the external built form.

As such, the modified application is “substantially the same development” as the originally approved development and therefore may be considered under Clause 4.55(1A).

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 - 4.6 Exceptions to development standards
 Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards

SITE DESCRIPTION

Property Description:	Lot 109 DP 8394 , 63 Marine Parade AVALON BEACH
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	NSW 2107
Detailed Site Description:	<p>The subject site consists of one allotment located on the eastern side of Marine Parade.</p> <p>The site is irregular in shape with a frontage of 21.135m along Marine Parade and a depth of 89.915m to the mean high water mark. The site has a surveyed area of 1644m².</p> <p>The developed portion of the site is located within the C4 Environmental Living zone and accommodates an existing dwelling. The rear of the site is located within the C2 Environmental Conservation zone.</p> <p>The site slopes up 11.9m from the street frontage (west) towards the rear of the site (east), and then drops sharply down to the coast. The part of the site affected by the proposed development has a slope of 28.5% of 16 degrees.</p> <p>Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by dwelling houses. The rear of the site immediately adjoins the Pacific Ocean to the east.</p> <p>Site Inspection A site inspection was conducted 4 August 2022.</p>

Map:



SITE HISTORY

Development Application N0263/14 - Extensions to front and rear of the dwelling to accommodate new living areas, including

cover and uncovered decking, garage extension, plunge pool, reroofing, was Approved 4 December 2014.

Modification MOD2019/0655 - Modification of Development Consent N0263/14 granted for alterations and additions to a dwelling, was determined 25 March 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 N0263/14, in full, with amendments detailed and assessed as follows:

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

Section 4.55(1A) - Other Modifications	Comments
<p>A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:</p>	
<p>(a) it is satisfied that the proposed modification is of minimal environmental impact, and</p>	<p>Yes The modification, as proposed in this application, is considered to be of minimal environmental impact, for the following reasons:</p> <ul style="list-style-type: none"> • The proposal will be reducing the scope of the works, • The proposed modifications will not affect compliance with major development standard and development controls (e.g. landscaped area, setbacks, building height, etc.) that were previously approved as part of the original approval. • The proposed modifications will have no additional impact on surrounding sites nor the public domain (i.e. in terms of view loss, visual privacy, solar access, visual amenity, etc.). • Subject to compliance with previously

Section 4.55(1A) - Other Modifications	Comments
	<p>imposed conditions, the proposed modifications will have no additional impact on the natural environment nor hazards which affect the site.</p>
<p>(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and</p>	<p>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 N0263/14 for the following reasons:</p> <ul style="list-style-type: none"> • The proposed modifications will not substantially alter the external appearance of the existing building. • The proposed modifications will not affect compliance with major development standard and development controls (e.g. landscaped area, setbacks, building height, etc.) that were previously approved as part of the original approval. • The proposed modifications will have no additional impact on surrounding sites nor the public domain (i.e. in terms of view loss, visual privacy, solar access, visual amenity, etc.). • Subject to compliance with previously imposed conditions, the proposed modifications will have no additional impact on the natural environment nor hazards which affect the site.
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require,</p> <p>or</p> <p>(ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and</p>	<p>The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, and the Northern Beaches Community Participation Plan.</p>
<p>(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.</p>	<p>No submissions were received in relation to this application.</p>

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55 the consent authority must take into

consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><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.</p> <p><u>Clauses 54 and 109</u> of the EP&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&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&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&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) Environmental Impact 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) 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</p>

Section 4.15 'Matters for Consideration'	Comments
	economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is 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 Development Consent N0263/14 (prepared by Building Code & Bushfire Hazard Solutions P/L, 150071 dated 29th July 2014) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. For MOD2019/0688 a letter from the bushfire consultant (prepared by Building Code & Bushfire Hazard Solutions P/L, 150071B dated 18th December 2019) stated that the section 4.55 modifications do not alter the findings and/ or recommendations made within the Bushfire Hazard Assessment Report and that they are therefore in support of the proposed section 4.55 modifications with no additional Bushfire Protection Measures other than those already detailed in the aforementioned Bushfire Hazard Assessment Report.

As the proposal is further reducing the overall size of the works the recommendations and conditions contained within of original Development Consent N0263/14 and Bushfire Hazard Assessment Report are still relevant and must be complied with.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 23/05/2022 to 06/06/2022 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 is for modification to development consent N0263/14, and includes a reduced scope of works. The proposed works under

Internal Referral Body	Comments
	this modification are upon the areas approved under development consent for MOD2019/0655, and do not impact upon the landscape outcome.
NECC (Bushland and Biodiversity)	<p>Council's Biodiversity referral team have reviewed the application for consistency against the relevant planning controls, including;</p> <ul style="list-style-type: none"> • SEPP (Resilience and Hazards) 2021 - Coastal Environment Area, • Pittwater LEP 2014 Part 7.6 Biodiversity Protection, • Pittwater DCP Part B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor. <p>The application for modification to development consent N0263/14 results in a reduced scope of works and no additional impacts to the biodiversity values of the site. Conditions applied to N0263/14 remain current, specifically conditions B5, 6, 7, 8, 9, 13 and 14.</p>
NECC (Coast and Catchments)	<p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> • Supplied plans and reports; • Coastal Management Act 2016; • State Environmental Planning Policy (Resilience and Hazards) 2021 (clauses 2.10, 2.11 & 2.12); and • Relevant LEP and DCP clauses. <p>The application meets the requirements of the relevant Environmental Planning Instruments and policies.</p> <p>The application is supported without conditions.</p>
NECC (Development Engineering)	Applicant seeks approval for modification to provide for a garage and reduction in the scope of works. No Development Engineering objection with no additional 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 (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A184304_03 dated 14

April 2022).

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

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

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

Comment:

The proposed modifications are minor in extent and will not unreasonably impact the above.

- 2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:
 - a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or
 - b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment:

The proposed development is for alterations and additions and relates largely to the developed part of the site. The proposed modifications are minor in extent and will not unreasonably impact the above.

Division 4 Coastal use area

2.11 Development on land within the coastal use area

- 1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:

- a) has considered whether the proposed development is likely to cause an adverse impact on the following:
 - i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
 - ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
 - iv) foreshores,
 - v) the visual amenity and scenic qualities of the coast, including coastal headlands, Aboriginal cultural heritage, practices and places, cultural and built environment heritage, and
- b) is satisfied that:
 - i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or
 - ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - 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 proposed modification will be reducing the scale of works and will not result in unreasonable impacts in relation to public access, natural processes, amenity, or cultural and built heritage values.

Division 5 General

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

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

Comment:

The proposed modifications are designed and sited so as to mitigate the risk of coastal hazards.

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	Mod Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	10m	Existing Dwelling - 8.6m Garage - 4.2	1.17% N/A	No Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	No
4.6 Exceptions to development standards	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

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	8.6m
Percentage variation to requirement:	1.16%

Assessment of request to vary a development standard:

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

The application has been made under Section 4.55 of the Environmental Planning and Assessment (EPA) Act 1979, which is a free standing provision that in itself authorises the development to be approved notwithstanding any breach of development standards. Section 4.55 is subject to its own stand-alone tests (such as the substantially the same test and consideration of all relevant Section 4.15 matters) and does not rely upon having a Clause 4.6 variation in order to determine the modification application.

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

Notwithstanding that Clause 4.6 does not apply to Section 4.55 modification applications, the merits of the variation have been assessed with regard to the objectives of the height of buildings development standard and the underlying objectives of the C4 Environmental Living zone. Notwithstanding that Clause 4.6 does not strictly apply, the assessment has also taken into consideration the relevant tests of the recent judgement contained within Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118.

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

Comment:

Compliance with the height of buildings development standard is considered unnecessary in this case for the following reasons:

- The proposed modification includes the retention of the existing dwelling roof,
- The reduction in the size of the proposal results in a reduction of the ridge height at the front of the dwelling from RL46.5 of the original development application to RL45.9.
- The proposal is lesser in scale and contributes considerably less bulk than the approved roof form.
- The length of the proposed upper floor level is reduced by approximately 5.4m at the front of the dwelling, significantly reducing the proportion of the roof that is above the 8.5m height plane,
- The non-compliance will result in no unreasonable amenity impacts.

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

Comment:

An assessment of the proposed modification has concluded that there are sufficient environmental planning grounds for the variation:

- The height of the proposed gable roof is lower than that of the approved roof under Development Consent N0263/14 and reduces the bulk of the roof structure,
- The non-compliance relates almost entirely to the upper level deck roof, the purpose of which is to provide weather/sun protection to the deck
- The weather protection from the roof increases the usability of the deck and the overall amenity of the dwelling.

The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

4.3 Height of buildings

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

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

character of the locality,

Comment:

The proposed development is generally consistent with the approved dwelling and maintains the desired character of the locality.

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

Comment:

The proposed modification results in a reduction to the height and scale of the approved development and will maintain the bulk and of the original dwelling on the site.

c) to minimise any overshadowing of neighbouring properties,

Comment:

The proposed change to the approved roof will result in a reduction to bulk and subsequent overshadowing of neighbouring properties.

d) to allow for the reasonable sharing of views,

Comment:

The proposed modification will not result in any unreasonable view impacts.

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

Comment:

The modification improves the response of the dwelling to the natural topography and significantly reduces the proportion of the dwelling that is non-compliant.

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

Comment:

The proposed modification will reduce the visual impact of the development.

Zone objectives

The underlying objectives of the E4 Environmental Living zone

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

Comment:

The proposed modifications relate to alterations and additions to an existing dwelling and will retain a low-impact residential development.

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

Comment:

The proposed works reducing the scale of the development and will not have an adverse impact on the above values.

- *To provide for the continuance of a limited range of existing small-scale water-related business and leisure uses.*

Comment:

The development is of an appropriate scale and density, and the changes to the upper floor respond to the landform and landscape.

- *To ensure that development, by way of its character, design, location and materials of construction, is integrated into the site and natural surroundings, complements and enhances the natural environment and has minimal visual impact.*

Comment:

The proposed modifications will not unreasonably impact riparian and foreshore vegetation or wildlife corridors.

- *To protect and enhance the natural landscape by conserving remnant bushland and rock outcrops and by encouraging the spread of an indigenous tree canopy.*

Comment:

The proposal is within the existing building footprint and will retain the natural landscaped area of the site.

Conclusion:

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

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

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

7.7 Geotechnical hazards

The applicant is to modify Development Consent N0263/14 and Mod2019/0655. A Geotechnical Assessment Report prepared by a suitably qualified geotechnical expert was submitted with the original Development consent and a revised statement with additional conditions for Mod2019/0655. These report concluded that the proposed development was acceptable from a geotechnical perspective and therefore, Council was satisfied that the development has been assessed for the geotechnical risks or significant adverse impact on the development and the land surrounding the development. The original application and this proposal was also assessed by Council's Development Engineers who raised no objections to approval, subject to conditions. A condition has been included in the consent requiring the Geotechnical Report to be updated to reference the modified plans and any recommendations to be incorporated into the development.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
Front building line	6.5m	DA - 12.6m MOD - 8.4m	Garage - 12.7m	Yes
Rear building line	6.5m	N/A - Site is subject to FBL	unaltered	Yes
Side building line	N: 2.5m	DA - 3.8m MOD - 1.6m	Skillion roof - 4m	Yes
	S: 1m	DA - 1.2m MOD - Dwelling Unaltered, Pool - 1.03mm	unaltered	Yes
Building envelope	N: 3.5m	DA - Within envelope MOD - Within envelope	Within envelope	Yes
	S: 3.5m	DA - Outside envelope MOD - Unaltered	Unaltered/ within envelope	Yes
Landscaped area	60%	DA - 71.2%	77.8% 1279.186m ²	Yes

MOD - 70.5%

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
B3.1 Landslip Hazard	Yes	Yes
B3.4 Coastline (Bluff) Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
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
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
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.23 Eaves	Yes	Yes
D1.1 Character as viewed from a public place	Yes	Yes
D1.5 Building colours and materials	Yes	Yes
D1.8 Front building line	Yes	Yes
D1.9 Side and rear building line	Yes	Yes
D1.11 Building envelope	Yes	Yes
D1.14 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D1.20 Scenic Protection Category One Areas	Yes	Yes

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 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. Mod2022/0220 for Modification of Development Consent N0263/14 granted for alterations and additions to a dwelling on land at Lot 109 DP 8394,63 Marine Parade, AVALON BEACH, subject to the conditions printed below:

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
Site Plan - D	14.4.21	Shim Design
Lower Floor Plan - D	14.4.2020	Shim Design
Upper Floor Plan - D	14.4.22	Shim Design
West Elevation, East Elevation, South - D	14.4.2020	Shim Design
North Elevation - D	14.4.2020	Shim Design

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate Certificate number: A184304	14 April 2022	shimdesign

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

d) 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. Add Condition C10. Geotechnical Report to read as follows:

The geotechnical reports (prepared by White Geotechnical Group, dated 10th April 2014 and 16th December 2019) referenced in the Notice of Determination for NO263/14 and MOD2019/0655 is to be updated to reference the approved modification plans. Any updated recommendations of the report are to be incorporated into the development.

Details demonstrating compliance are to be provided to the Certifying Authority prior to the issue of the Amended Construction Certificate.

Reason: Geotechnical safety.

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

Signed



Julie Edwards, Planner

The application is determined on 09/08/2022, under the delegated authority of:



Steven Findlay, Manager Development Assessments