

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2022/0390
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Responsible Officer:	Megan Surtees
Land to be developed (Address):	Lot 61 DP 771456, 188 McCarrs Creek Road CHURCH POINT NSW 2105 Lot PO 169846, 188 McCarrs Creek Road CHURCH POINT NSW 2105
Proposed Development:	Modification of Building Consent No.3233-87 granted for erection of additions
Zoning:	C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Rhonda Gay Thorp
Applicant:	Peter Downes Designs Pty Ltd

Application Lodged:	25/07/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	04/08/2022 to 18/08/2022
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	4.3 Height of buildings: 5.7%
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

This application seeks consent to modify Building Consent No. 3233-87 for the erection of additions to the dwelling.

The proposed modified works under this application includes:

- Increase the approved 1.8 metre privacy screen along the northern elevation of the balcony on the first floor level to 3.06m, when measured from the finished floor level of the balcony and,
- Reduce the full length of the privacy screen along the northern elevation of the balcony on the first floor level by approximately 1.15 metres and replace with a 1.0 metre high glass balustrade (when measured from the finished floor level of the balcony).

It is noted that no changes are proposed to the privacy screen on the lower ground level, which was previously approved under DA2022/0099.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - Zone C4 Environmental Living

Pittwater Local Environmental Plan 2014 - 4.3 Height of buildings

Pittwater 21 Development Control Plan - C1.5 Visual Privacy

Pittwater 21 Development Control Plan - D4.6 Side and rear building line

SITE DESCRIPTION

Property Description:	<p>Lot 61 DP 771456 , 188 McCarrs Creek Road CHURCH POINT NSW 2105</p> <p>Lot PO 169846 , 188 McCarrs Creek Road CHURCH POINT NSW 2105</p>
Detailed Site Description:	<p>The subject site is known as 188 McCarrs Creek Road, Church Point and is legally referred to as Lot 61 DP 771456. The site consists of one (1) allotment located on the western side of McCarrs Creek Road.</p> <p>The site is regular in shape with a frontage of 12.205m along McCarrs Creek Road and a depth of up to 41.01m to the Mean High Water Mark (MHWM). The site has a surveyed area of 478.1m². The site fronts McCarrs Creek, with the area beyond the MHWM being under the ownership of Crown Lands.</p> <p>The site is located within the E4 Environmental Living zone and accommodates a two storey dwelling house. To the</p>

road frontage of the site is an enclosed garage with store room below and to the rear of the site is a sea wall and an associated jetty (these works do not form part of this application).

The slope of site is measured at 47.6%, falling approximately 19.54m from the road frontage to the MMWM.

The site contains terraced gardens within the front setback area with the rear portion of the property containing minimal vegetation due to a recent landslip event and tree removal.

The site is mapped within the Geotechnical Hazard Map, Northern Beaches Bush Fire Prone Land Map, Biodiversity Map, Estuarine Hazard Map and Foreshore Building Line Map.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by dwelling houses within a bushland/landscaped setting.

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:

21 October 1977

Building Application BA A110-77 for the 'erection of a dwelling' was granted approval by Council.

17 December 1987

Building Application BA 3233-87 for the 'erection of additions' was granted approval by Council.

18 June 2020

EPA2020/128 Stop Works Order issued by Council in relation to decking works off the western elevation of the upper and lower ground floor as well as the replacement and/or installation of windows and/or doors.

25 May 2020

Building Certificate BC2020/0093 was lodged in relation to 'Alteration and additions to an existing dwelling including upper and lower balcony extension, reconstruction and change of roof pitch and internal renovations' and has yet to be determined.

18 March 2021

Tree Permit TA2021/0166 for the removal of two trees is issued, subject to replacement tree plantings.

18 March 2021

Mod2021/0079 was submitted to Council for assessment in relation to modified works to BA 3233-87. This application was approved under Manager delegation on 2 June 2021. A Construction Certificate (CC2021/1029) was obtained and submitted to Council on 26 August 2021 for the approved modified works.

29 March 2021

Emergency Order LGA2021/0028 is issued by Council in relation ensuring that the land is kept in a safe condition.

11 February 2022

DA2022/0099 was submitted to Council seeking consent for alterations and additions to a dwelling house including a boat shed and incline lift. This application was approved, subject to recommended conditions, on 7 April 2022.

11 February 2022

Mod2022/0036 was submitted to Council seeking consent to modify BA A1101-77 for alterations and additions to a dwelling house. This application was approved, subject to recommended conditions, on 31 March 2022.

4 August 2022

CC2022/0806 (Construction Certificate) and NOC2022/0911 (Notice of Commencement) was lodged with Council, relating to DA2022/0099.

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 Mod2021/0079, in full, with amendments detailed and assessed as follows:

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

Section 4.55(1A) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	<p>Yes</p> <p>The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons:</p> <p>The proposed modified works are sited entirely over the existing building footprint. As such, the proposal is considered to be of minimal environmental impact.</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>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 Mod2021/0079 for the following reasons:</p> <p>The previous modification application granted consent for alterations and additions to the dwelling, including the erection of 1.8 metre high privacy screens along the northerly and southerly outer edges of the balconies on the lower ground floor and ground floor levels.</p> <p>The proposed modified works under this current application seeks to alter the approved privacy screens along the northern elevation on the first floor level.</p> <p>In this instance, the proposed works are considered substantially the same as that which</p>

Section 4.55(1A) - Other Modifications	Comments
	was previously approved under Mod2021/0079.
(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.	See discussion on "Notification & Submissions Received" in this report.

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)(iia) – 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>

Section 4.15 'Matters for Consideration'	Comments
	<p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 62</u> and/or 64 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 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 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, 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 economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

The previous modification application (Mod2021/0079) included a Bushfire Report (prepared by Australian Bushfire Consulting Services, dated 17 May 2020, ref: 20-213). This report stated that the development conforms to the relevant specifications and requirements within Planning for Bushfire Protection. The recommendations of the Bushfire Report were included within the consent of Mod2021/0079, and these conditions remain and must be complied with.

An addendum letter or updated Bushfire Report prepared by the original bushfire consultant was not provided with this current modification application. As such, a condition of consent will be included to ensure the Bushfire Report is updated to include the modified works under this modification application.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 04/08/2022 to 18/08/2022 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 process council is in receipt of 2 submission/s from:

Name:	Address:
Mr John Smeaton	186 McCarrs Creek Road CHURCH POINT NSW 2105
Mr Andrew Tait Miss Nikki Janice Smeaton	186 McCarrs Creek Road CHURCH POINT NSW 2105

The following issues were raised in the submissions:

- Privacy
- Existing glass balustrades

The above issues are addressed as follows:

- **Privacy**

The submissions raised concerns that the removal of the condition requiring the erection of a 1.8 metre high privacy screen for the extent of the northern elevation of the first floor level balcony to be partially replaced with a 1.0 metre high glass balustrade will create unreasonable direct overlooking into the internal and external principle living areas of the dwelling.

Comment:

The concerns relating to privacy have been addressed, in detail, within this report under section C1.5 Visual Privacy. This assessment has found that the modified works, as proposed, would not result in an acceptable level of privacy between properties and, as such, a condition has been recommended to ensure the proposed 1.0 metre high glass balustrade is removed from the plans and replaced with a 1.80 metre high privacy screen (to remain consistent with **Condition 10. Amendments to the approved plans of Mod2021/0079**).

As conditioned, the proposed development results in an acceptable level of privacy.

This issue does **not** warrant reason for the refusal of this application.

- **Existing glass balustrades**

The submissions raised concerns that the balconies on the first floor level and ground floor level have been constructed with glass balustrades, which contravenes previous approvals on the subject site.

Comment:

It was observed during the site visit at the subject site that the existing balconies have been constructed with glass balustrading along the outer edges, with no privacy screens installed in accordance with Mod2021/0079. Notwithstanding, should this modification application be approved, compliance with the erection of privacy screens is required. It shall also be noted that the consent for Mod2021/0079 must still be complied with, and the appointed Certifier is to ensure that construction works on the site are in accordance with the relevant approvals.

This issue does **not** warrant reason for refusal of this application.

REFERRALS

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	The proposed modification will not result in additional impact to native vegetation or wildlife habitat.
NECC (Coast and Catchments)	<p>The modification application has been assessed in consideration of the Coastal Management Act 2016, 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>Reviewing the application and the Statement of Modification prepared by Peter Downes Pty.Ltd dated 6 July 2022, proposed modification of the approved privacy screen arrangement for the Northern side of the upper balcony of the subject property does not effect or impact on the relevant coastal processes.</p> <p>Hence the proposed modification is supported.</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 (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 Clause applies to the subject site. Council's Coast and Catchments Officer has reviewed the proposed development and have not raised concern with the proposed modified works.

- 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 Clause applies to the subject site. Council's Coast and Catchments Officer has reviewed the proposed development and have not raised concern with the proposed modified works.

Division 4 Coastal use area

2.11 Development on land within the coastal use area

- 1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:
- a) has considered whether the proposed development is likely to cause an adverse impact on the following:
 - i) existing, safe access to and along the foreshore, beach, headland or rock
 - ii) platform for members of the public, including persons with a disability,
 - iii) overshadowing, wind funnelling and the loss of views from public places to
 - iv) foreshores,
 - v) the visual amenity and scenic qualities of the coast, including coastal headlands, Aboriginal cultural heritage, practices and places, cultural and built environment heritage, and
 - b) is satisfied that:
 - i) the development is designed, sited and will be managed to avoid an adverse
 - ii) 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 Clause applies to the subject site. Council's Coast and Catchments Officer has reviewed the proposed development and have not raised concern with the proposed modified works.

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 development is unlikely to result in an increase to coastal risk 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?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.377m (Mod2021/0079)	8.99m	5.7%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No

Detailed Assessment

Zone C4 Environmental Living

1. Objectives of zone

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

Comment:

The proposed modified works are sited entirely to the existing building footprint. In this instance, the proposal provides for low-impact residential development that is unlikely to impact upon any nearby special ecological, scientific or aesthetic values.

The proposal **achieves** this objective.

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

Comment:

As above, the proposed modified works are sited entirely to the existing building footprint. Therefore, the modified works are unlikely to impact upon any special values that may be applicable to the subject site or surrounds.

The proposal **achieves** this objective.

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

Comment:

The proposed modified works retain the low density and scale of the dwelling and, as the modified works are sited entirely over the existing building footprint, will be appropriately integrated into the landform and landscape.

The proposal **achieves** this objective.

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

Comment:

As the proposed modified works are entirely located over the existing building footprint, it is unlikely to disturb riparian and foreshore vegetation or impact upon wildlife corridors.

The proposal **achieves** this objective.

4.3 Height of buildings

The proposed increase to the privacy screens will extend beyond the prescribed maximum building height under Clause 4.3 of the *Pittwater Local Environmental Plan 2014* (PLEP 2014). The screen do however sit below the roof of the dwelling, representing a technical rather than a material breach of the LEP height standard.

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

This application has been made under Section 4.55 of the Environmental Planning and Assessment Act 1979 (the 'Act'), 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 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.

Nevertheless, an assessment of the variation against the objectives of the development standard is as follows:

- (1)
(a) *to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,*

Comment:

The topography of the site is quite steep, sloping almost immediately from the front boundary line toward the water frontage. In this instance, many dwellings on the western side of McCarrs Creek Road in the immediate vicinity may exceed the maximum building height. However, the proposed privacy screen height increase is sited below the approved ridge height of the balcony. In this instance, the proposal, by virtue of its height and scale, is consistent with the desired character of the locality.

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

Comment:

As above, the proposed modified works are sited below the existing ridge height of the balcony roof. Therefore, the proposal, as conditioned, will be compatible, in terms of height and scale, with surrounding and nearby developments.

(c) to minimise any overshadowing of neighbouring properties,

Comment:

Due to the orientation of the allotment and adjoining properties, the proposed increase to the privacy screen is unlikely to cause unreasonable overshadowing upon adjoining properties.

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

Comment:

The proposed modified works allows for the reasonable sharing of views.

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

Comment:

The proposed modified works are sited entirely over the existing building footprint, with no disturbance to the natural topography of the site. In this instance, the proposed modified works have been designed to appropriately respond to the natural topography of the site.

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

Comment:

As discussed above, the proposed development is sited over the existing building footprint and will not disturb the natural topography of the site. The subject site is not located within a heritage conversation area, nor is it a heritage item.

Based on the above assessment, it is considered that the proposed modified works achieve the objectives of Cl. 4.3 Height of Buildings within the PLEP 2014 and is consistent with the Zone objectives/outcomes.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
Rear building line	Foreshore Building Line applies	15.7m	Unaltered	Yes

Side building line	Northern boundary 2.5m	0.9m	Unaltered	No (previously approved)
Building envelope	Northern boundary 3.5m	Outside envelope	Outside envelope	No (previously approved)
Landscaped area	60% (286.86m ²)	54.2% (219.4m ²)	Unaltered	No (previously approved)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.4 Church Point and Bayview Locality	Yes	Yes
C1.5 Visual Privacy	No	Yes
C1.6 Acoustic Privacy	Yes	Yes
D4.1 Character as viewed from a public place	Yes	Yes
D4.3 Building colours and materials	Yes	Yes
D4.6 Side and rear building line	No	Yes
D4.14 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

C1.5 Visual Privacy

Detailed description of non-compliance

The proposed development seeks to modify a previously approved 1.8 metre high privacy screen along the northern elevation of the first floor level balcony. The proposal seeks to increase the height of the privacy screens from 1.8 metres to between 3.4 metres and 3.0 metres for a length of 3.18 metres, then at the outer most north-western portion of the balcony, remove the approved 1.8 metre high privacy screen and replace with a 1.0 metre high glass balustrade for an approximate length of 1.15 metres.

The finished floor level of the first floor level balcony is sited slightly higher than the finished floor level of the middle level balcony at 186 McCarrs Creek Road. During a site visit at 186 McCarrs Creek Road it was observed that the north-western corner of the first floor level balcony at 188 McCarrs Creek Road has direct line of site into the main internal and external living areas of the dwelling. As such, the proposed deletion of a portion of the privacy screen to be replaced with a 1.0 metre high glass balustrade will not achieve the requirements and underlying objectives of this control.

In this instance, a condition will be recommended ensuring the outermost north-western portion of the first floor level balcony shall have a 1.80 metre high privacy screen **(which is consistent with Condition 10. Amendments to the approved plans of Mod2021/0079)**, which shall be consistent with the requirements and underlying objectives of this control. This will ensure an appropriate level of privacy and amenity is achieved between properties, while maintaining an appropriate built form that continues to allow for reasonable sharing of views.

Merit consideration

- *Habitable rooms and outdoor living areas of dwellings optimise visual privacy through good design. (S)*

Comment:

As detailed above, the principal internal and external living areas of 186 McCarrs Creek Road is sited at the mid-level of the building at RL17.350 (as indicated on approved plans N0336/10/S96/1), and the existing first floor level balcony on the subject site is RL18.320, which is approximately 1.0 metre higher than the mid-level balcony at 186 McCarrs Creek Road. In this instance, there is a greater opportunity for the occupants of 188 McCarrs Creek Road to look down directly into the internal and external principal living areas of 186 McCarrs Creek Road when standing at the north-western portion of the existing balcony. In this instance, the deletion of the privacy screen and installation of a 1.0 metre high glass balustrade would not optimise visual privacy through good design.

As detailed above, a condition will be recommended ensuring the north-western outermost portion of the first floor level balcony, for an extent of 1.15 metres, shall be a 1.80 metre high privacy screen (thus achieving consistency with **Condition 10. Amendments to the approved plans of Mod2021/0079**).

As conditioned, the proposal can achieve this underlying objective.

- *A sense of territory and safety is provided for residents. (S)*

Comment:

The proposed development provides a sense of territory and safety for residents.

As conditioned, the proposal can achieve the underlying objectives of this control. The proposal can be supported on its merits.

D4.6 Side and rear building line

The previous modification application (being Mod2021/0079) approved the variation to the northern side setback requirement. This current modification application does not seek to alter this approved setback distance. As such, an additional detailed discussion on the merits of the application against the underlying objectives of this control is not necessary, in this 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 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. Mod2022/0390 for Modification of Building Consent No.3233-87 granted for erection of additions on land at Lot 61 DP 771456, 188 McCarrs Creek Road, CHURCH POINT, Lot PO 169846, 188 McCarrs Creek Road, CHURCH POINT, 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
A2 2146-P 01 Site Plan	5.7.22	Peter Downes
A2 2146-P 02 North	5.7.22	Peter Downes
A2 2146-P 03 West	5.7.22	Peter Downes
A2 2146-P 04 Sectional Elevation - South	5.7.22	Peter Downes

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 10. Amendments to the approved plans to read as follows:

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

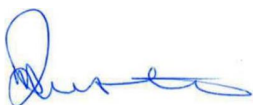
- A privacy screens to a height of 1.8 metres from the finished floor levels is to be provided along the length of the southern side of the lower ground terrace and upper ground balcony.
- The proposed 1.0 metre high glass balustrade along a portion of the northern elevation of the upper ground balcony shall be deleted from the architectural plans and be replaced with a privacy screen to a height of 1.8 metres when measured from the finished floor level of the upper ground balcony. This privacy screen shall be design and engineered to function as a balustrade as prescribed by the Building Code of Australia and National Construction Code.

These privacy screen works are to be completed prior to occupation.

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

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

Signed



Megan Surtees, Planner

The application is determined on 13/12/2022, under the delegated authority of:



Adam Richardson, Manager Development Assessments