

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2023/0109
<b>Responsible Officer:</b>	Steven Findlay
<b>Land to be developed (Address):</b>	Lot 151 DP 6937, 40 Sunrise Road PALM BEACH NSW 2108
<b>Proposed Development:</b>	Modification of Development Consent DA2021/0900 granted for Construction of a dwelling house including a swimming pool and spa
<b>Zoning:</b>	C4 Environmental Living
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	DDP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Susan Elizabeth Rothwell
<b>Applicant:</b>	Susan Elizabeth Rothwell

<b>Application Lodged:</b>	21/03/2023
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Refer to Development Application
<b>Notified:</b>	27/03/2023 to 10/04/2023
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	4.3 Height of buildings: 3%
<b>Recommendation:</b>	Approval

### EXECUTIVE SUMMARY

The proposal is to modify Development Consent No. DA2021/0900, granted for construction of a dwelling house including a swimming pool and spa. The application is required to be determined by the Development Determination Panel (DDP) due to it being a s4.55(2) modification that seeks to alter or delete conditions imposed previously by the Panel. In this instance, the relevant conditions are Conditions 1 and 17, relating to the approved plans and imposed requirements for a terrace set to be enclosed.

The proposal involves minor changes to the approved design that are largely internal and therefore do not present issues to future residents, neighbours or the natural environment.

Key issues in the assessment are the increase in building height and additional excavation involved with the proposal. The building height is related to alterations to Terrace 3, where the design is altered to include new pier and hob. The addition of the hob presents an element that is 10.3m from natural ground level, which is non-compliant with the maximum building height of 10m (via clause 2D) and presents a 3% variation on the control. The additional excavation is proposed to take place laterally into the slope, in order to add a plant/equipment room on the approved lower ground floor level.

Overall, it is considered that the proposed changes are minor in nature and do not create adverse outcomes for neighbours or the natural environment.

The modification of consent is therefore recommended for approval.

## **PROPOSED DEVELOPMENT IN DETAIL**

The proposal is to modify consent for the construction of a dwelling house, including a swimming pool and spa. Specific changes include the following:

### **Lower Ground:**

- Extending excavation south of the Laundry to form an Electrical Plant room
- Relocating spa to be within the pool
- Replacing pool concourse with lawn
- Addition of a pier to Terrace 3
- Alterations to Bedroom and Ensuite walls

### **Ground Floor:**

- Deletion of Terrace 4, incorporated into kitchen
- Addition of a pergola over Terrace 3
- Amendment of driveway levels
- Relocation of fireplace within the Dining Room
- Addition of stone cladding around lift shaft

### **First Floor:**

- Extension of planter box over enclosed Terrace 4
- Modification of Window W301 size, addition of W301c to the stair
- Addition of stone cladding around lift shaft
- Addition of a profiled hob around the flat roof over Dining Room

### **External:**

- Change of roof material from slate to copper sheeting with standing seams
- Change of flat roof over the lift to pitched roof with copper sheeting

## **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 - 7.2 Earthworks

Pittwater 21 Development Control Plan - B4.2 Flora and Fauna Conservation Category 1 and Wildlife Corridor

Pittwater 21 Development Control Plan - B8.6 Construction and Demolition - Traffic Management Plan

Pittwater 21 Development Control Plan - C1.23 Eaves

Pittwater 21 Development Control Plan - D12.10 Landscaped Area - Environmentally Sensitive Land

## SITE DESCRIPTION

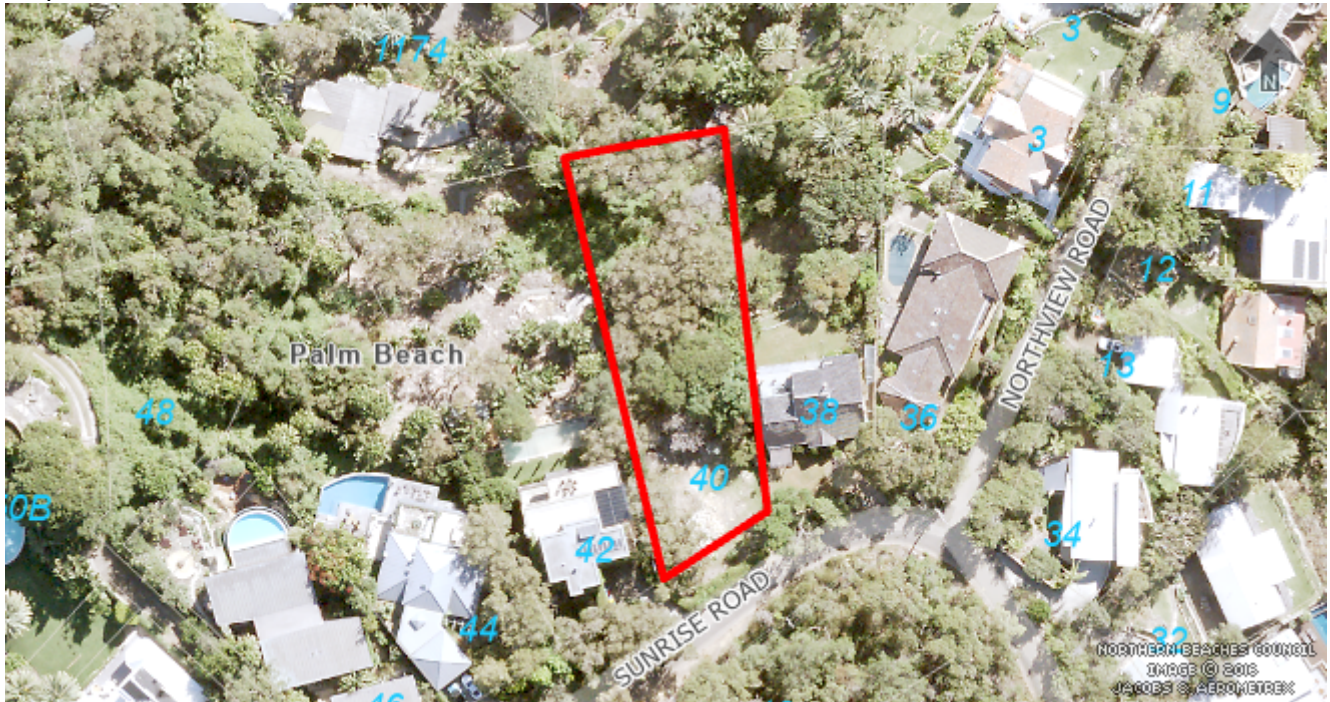
<b>Property Description:</b>	Lot 151 DP 6937 , 40 Sunrise Road PALM BEACH NSW 2108
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the northern side of Sunrise Road.</p> <p>The site is trapezoidal in shape with a frontage of 26.875m along Sunrise Road and a depth of 71.09m along the eastern side boundary. The site has a surveyed area of 1528m<sup>2</sup>.</p> <p>The site is located within the C4 Environmental Living zone and is currently a vacant lot, occupied by no developed buildings or structures.</p> <p>The site has a sloping topography, falling approximately 28 metres from the south to the north.</p> <p>The site has is heavily vegetated, featuring a range of indigenous and exotic trees and shrubs. Council records do not indicate the presence of any threatened species on</p>

site.

### Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by multi-storey dwelling houses of varying architectural styles and construction ages within an environmental 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:

- N0094/12 - Demolition of the existing dwelling
- DA2021/0790 - Construction of a dwelling house, returned on 10 June 2021
- DA2021/0877 - Construction of a dwelling house, returned on 21 June 2021
- DA2021/0900 - Construction of a dwelling house including a swimming pool and spa, approved on 19 April 2022 by NBDDP

### 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 DA2021/0900, 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:

<b>Section 4.55 (2) - Other Modifications</b>	<b>Comments</b>
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	<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 DA2021/0900 for the following reasons:</p> <ul style="list-style-type: none"> <li>• The modification retains the use of the site as a dwelling house within a low density residential setting.</li> <li>• No reductions in landscaping are proposed</li> <li>• Proposed changes are predominantly internal and do not involve changes to the building footprint</li> </ul>
(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 DA2021/0900 did not require concurrence from the relevant Minister, public authority or approval body.
(c) it has notified the application in accordance with:	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental

<b>Section 4.55 (2) - Other Modifications</b>	<b>Comments</b>
(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	Planning and Assessment Regulation 2021, and the Northern Beaches Community Participation Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	No submissions were received in relation to this application.

### Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55 (2) the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

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

<b>Section 4.15 'Matters for Consideration'</b>	<b>Comments</b>
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	<u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of

Section 4.15 'Matters for Consideration'	Comments
Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p>development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&amp;A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 61</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent 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) <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	See discussion on “Notification & Submissions Received” in this report.

Section 4.15 'Matters for Consideration'	Comments
accordance with the EPA Act or EPA Regs	
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 27/03/2023 to 10/04/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

## REFERRALS

Internal Referral Body	Comments
Environmental Health (Solid Fuel/Oil Heater)	<p><b>The proposal:</b></p> <p>Lower Ground;</p> <p>a1. Extending the excavation south of the Laundry to form an Electrical Plant Room</p> <p>a2. Relocating the Spa to be within the pool and replacing the pool concourse paving with lawn</p> <p>a3. Adding a new pier in-line with Terrace 3 over</p> <p>a4. Minor planning amendments to the Bedroom and Ensuite walls</p> <p>Ground floor;</p> <p>b1. Enclosure of Terrace 4 to be part of the Kitchen</p> <p>b2. Adding a new pergola over Terrace 3</p> <p>b3. Amendment to the driveway levels to suit council's requirements</p> <p>b4. Relocation of the fireplace within the Dining Room</p> <p>b5. Adding new stone cladding around the lift shaft</p> <p>First Floor;</p> <p>c1. Extending the western planter box over the proposed enclosure of Terrace 4 below</p> <p>c2. Modifying the window size of W301 and adding a new window W301c to the stair</p> <p>c3. Adding new stone cladding around the lift shaft</p> <p>c4. Adding a profiled hob around the flat roof over the Dining Room</p> <p>Roof Level;</p> <p>d1. Changing the roof material from slate to copper sheeting with standing seams</p> <p>d2. Replacing the flat roof over the lift with a new pitched roof with copper sheeting</p>



Internal Referral Body	Comments
	<p>A condition already applies in DA2021/0900 Installation of solid/fuel burning heaters No approval is granted for the installation of a solid/fuel burning heater. Reason: To preserve the amenity and environmental health of adjoining properties</p> <p>It is understood that the fireplace/heater is gas not a solid fuel or open wood burning fire place. Environmental Health supports the proposal without additional conditions.</p>
Landscape Officer	<p>The application is for modification to development consent DA2021/0900.</p> <p>The proposed amendments will not change the landscape outcome approved in DA2021/0900, and as per the Arboricultural Impact Assessment Addendum the modifications will not change the potential impacts to any retained trees. The original conditions remain and no further conditions are imposed.</p>
NECC (Bushland and Biodiversity)	<p>The proposal seeks approval for the modification of Development Consent DA2021/0900 granted for Construction of a dwelling house including a swimming pool and spa. The comments on this referral relate to the following applicable biodiversity controls:</p> <ul style="list-style-type: none"> <li>• Biodiversity Conservation Act 2016</li> <li>• Pittwater LEP cl. 7.6 Biodiversity Protection</li> <li>• Pittwater 21 DCP cl. B4.2 Flora and Fauna Conservation Category 1 and Wildlife Corridor</li> <li>• Pittwater 21 DCP cl. B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor.</li> </ul> <p>The following biodiversity related reports/documentation were reviewed as part of this assessment:</p> <ul style="list-style-type: none"> <li>• Arboricultural Impact Statement (Naturally Trees, March 2023)</li> </ul> <p>The propose modifications would take place in disturbed areas of the site and would be unlikely to impact on native flora and fauna.</p> <p>No native vegetation or fauna habitat would be impacted, the development is designed, sited and will be managed to avoid any significant adverse environmental impact.</p>
NECC (Water Management)	<p>Supported As the works result in minimal change to impervious area on the site,</p>

Internal Referral Body	Comments
Road Reserve	<p>the approved stormwater system remains current.</p> <p>There is low impact on existing road infrastructure assets. It is noted that no details of any work to the public road reserve verge are provided and an existing hedge will restrict safe sight distances for vehicles exiting the driveway. Sunrise Road is on the Pittwater Scenic Streets Register and the existing hedge currently obstructs views.</p> <p>Council policy guidelines require plantings and structures including retaining walls, on the nature strip must not block pedestrian or vehicle access. Hedging on the nature strip is to be planted adjacent to and against the property boundary. As such, the existing hedge is to be removed. Any works to install landscaping on the public road reserve will require Council approval.</p> <p>Development Engineer to provide comments and conditions in relation to driveway access.</p>
Strategic and Place Planning (Heritage Officer)	<p><b>HERITAGE COMMENTS</b></p> <p>Discussion of reason for referral</p> <p>The proposal has been referred to Heritage as the subject site adjoins two heritage items</p> <p><b>'Villa D'este' (house) - 3 Northview Road Palm Beach</b>  <b>C6 Sunrise Hill Heritage Conservation Area - Sunrise Road</b></p> <p>Details of heritage items affected</p> <p><b>Villa D'Este</b>  <u>Statement of Significance</u>  Villa D'este at 3 Northview Road in Palm Beach, was built in 1933 to the design of Fred Verrills as a holiday house, has historic and aesthetic significance as a rare and intact example of Spanish Mission House typical of the early Pittwater subdivisions.</p> <p><u>Physical Description</u>  The house is located on a slightly raised site screened by a short stone fence and vegetation with scenic views over Ocean Beach. The house comprises of a rendered brick two-storey building characterised by typical Spanish Mission style features. These include: the asymmetrical facade, shaped gable facade, barley-twist columns, semi-circular arches, rendered brick walls, decorative sunrise motif, wrought-iron door hardware, gabled chimney stack, arched veranda, timber shutters, front steps, timber pergola, stucco finish and decorative parapet.</p> <p><b>Sunrise Hill Heritage Conservation Area</b></p>

Internal Referral Body	Comments		
	<p><u>Statement of Significance</u> The Sunrise Hill Heritage Conservation Area includes the curtilage of a number of historic properties representing the earliest phase of residential development at Palm Beach.</p> <p><u>Physical Description</u> Conservation area includes houses at 50, 52, 54, 56, 58-60,35 and public reserve at summit of Sunrise Hill.</p>		
	<p><b>Other relevant heritage listings</b></p>		
	<p>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</p>	<p>No</p>	
	<p>Australian Heritage Register</p>	<p>No</p>	
	<p>NSW State Heritage Register</p>	<p>No</p>	
	<p>National Trust of Aust (NSW) Register</p>		
	<p>RAIA Register of 20th Century Buildings of Significance</p>	<p>No</p>	
	<p>Other</p>	<p>N/A</p>	
	<p><b>Consideration of Application</b></p>		
	<p>The proposal seeks consent for modifications to DA2021/0900. Proposed changes include a new plant room, external materials, changing the roof profile, addition of a pergola and internal layout. The conservation area is located directly to the south of the subject property and includes the road reservation outside the property. However the significant component of the conservation area in this location is the bushland reserve located opposite which is unlikely to be impacted by the proposed modifications and no concerns are raised in relation to this conservation area.</p> <p>Villa D'este is located to the north east of the subject property in Northview Road. It is built close to the road reserve. However, given the subdivision pattern, one of its lot extends to the west and eventually shares a common boundary with the subject site. However the proposed dwelling is to be located close to the road reserve with no works proposed in the rear vegetated portion of the site.</p> <p>The proposed modifications wont change the adequate physical and visual separation between the site and this item.</p> <p>Therefore Heritage raises no objections and requires no conditions.</p>		

Internal Referral Body	Comments
	<p>Consider against the provisions of CL5.10 of PLEP.</p> <p>Is a Conservation Management Plan (CMP) Required? No            Has a CMP been provided? No            Is a Heritage Impact Statement required? No            Has a Heritage Impact Statement been provided? No</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p>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.</p>
Aboriginal Heritage Office	<p>Reference is made to the proposed development at the above area and Aboriginal heritage.</p> <p>No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.</p> <p>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</p> <p>Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.</p>
Roads and Maritime Service - Roads Act 1993, s138 (Non-integrated)	<p>The modification was referred to TfNSW in accordance with s138 of the Roads Act 1993. Upon review, TfNSW has requested no requirements as the proposal is said to have a negligible impact on the classified road network.</p>

**ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)\***

All, Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs and LEPs),

Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

## **State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)**

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

A BASIX certificate has been submitted with the application (see Certificate No. 1163660S\_04, dated 14 March 2023). A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

### **SEPP (Transport and Infrastructure) 2021**

#### Ausgrid

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

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

#### Comment:

The proposal was referred to Ausgrid who raised no objections.

#### Roads and Maritime Service (RMS)

Section 2.118 - Development with frontage to classified road states:

*The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that—*

*(a) where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and*

*(b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of—*

*(i) the design of the vehicular access to the land, or*

*(ii) the emission of smoke or dust from the development, or*

*(iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land,*

and

*(c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

Comment:

No objections have been raised by transport authorities or Council in relation to the modification.

Section 2.119 - Impact of road noise or vibration on non-road development states:

*(2) Before determining a development application for development to which this clause applies, the consent authority must take into consideration any guidelines that are issued by the Secretary for the purposes of this clause and published in the Gazette.*

*(3) If the development is for the purposes of residential accommodation, the consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded—*

*(a) in any bedroom in the residential accommodation—35 dB(A) at any time between 10 pm and 7 am,*

*(b) anywhere else in the residential accommodation (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.*

Comment:

There are no concerns that the prescribed noise limits will be breached as a result of the modification.

The application was referred to Transport for NSW who did not raise any objection to the proposal.

## **SEPP (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:	10m *Clause 2D applies	9.9m	10.3m	3%	No

### Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	No
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

### Detailed Assessment

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

##### Description of non-compliance:

The PLEP allows development in the locality to reach a building height of 8.5 metres from ground level. A height of 9.9m was approved under the previous consent in accordance with Clause 2D, allowing a height of up to 10m where Council is satisfied that subclauses 2D(a) to 2D(d) are satisfied. The proposed modification seeks to increase building height for a section of Terrace 3 through the addition of a pergola and hob. The proposed height is 10.3m at the greatest extent, creating a non-compliance and a 3% variation on the control.

##### Merit assessment:

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control 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:

In line with the desired future character of the Palm Beach locality, the site maintains use as dwelling house in a low density, landscaped setting. No new storeys are proposed as a part of the modification. The height addition from the hob is minor, keeping the overall building height in line with the existing character of the street where examples exist of roof features in excess of 10 metres from ground level.

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

Comment:

The height of buildings breach from the hob is considered a minor addition to the built form that will not fundamentally alter the perception of bulk and scale when viewed from adjoining properties or public spaces. As noted above, Sunrise Road hosts existing structures on sloping sites where roof features extend beyond 10 metres from ground level. The proposal is therefore considered in line with the prevailing character of the locality from a height and scale perspective.

- (c) to minimise any overshadowing of neighbouring properties,

Comment:

Shadow diagrams supplied with the application indicate that the proposed modification will not create adverse overshadowing impacts. All surrounding dwellings receive direct sunlight consistent with the requirements of the PDCP. It is further noted that overshadowing is limited to the frontages and side passages of nearby dwellings for short periods of time.

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

Comment:

The proposal is considered to allow for a reasonable sharing of views. It is noted that the site and adjoining sites are at the upper reaches of a hillslope and enjoy views to the north that would be unaffected by the modified proposal. Land immediately south of the dwelling is undeveloped bushland and would therefore be unaffected.

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

Comment:

The development steps down with the sloping topography, responding appropriately to site conditions. With reference to the non-compliant hob, the addition is minor and will not meaningfully discourage building design that responds to topography.

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

Comment:

It is noted that the addition will be visible only from adjoining dwellings and functionally invisible from the street. It is considered that the minor addition will not have an adverse visible impact on nearby environmental features, heritage items or conservation areas.



Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of the control and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

## 7.2 Earthworks

The proposed modification involves an increase in the earthworks approved under the original consent. Excavation is proposed to be extended laterally into the hillslope in order to accommodate a plant room adjacent to the proposed laundry. Geotechnical reporting submitted with the application suggests these works are minor and can be undertaken in a manner that mitigates the associated risks to an acceptable degree. Compliance with the recommendations provided have been imposed as conditions of consent. With regard for the issues unrelated to landslip risk, Council has reviewed the proposal and found there to be no substantial risk related to the factors outlined in 7.2 Earthworks.

### Pittwater 21 Development Control Plan

#### Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
Front building line	6.5m	5.2m (garage)	unaltered	Yes
		4.9m (porch)	unaltered	Yes
		5.9m (lift)	unaltered	Yes
		6.0m (laundry)	unaltered	Yes
Rear building line	6.5m	35.0m	unaltered	Yes
Side building line	2.5m (W)	2.1m (Bed 6)	unaltered	Yes
		2.2m (formerly Terrace 4, now enclosed)	unaltered	Yes
	1m (E)	1.0m	unaltered	Yes
Building envelope	3.5m (W)	Outside envelope	Outside envelope	<b>No</b>
	3.5m (E)	Outside envelope	Outside envelope	<b>No</b>
Landscaped area	60% (916.8m <sup>2</sup> )	71% (1087m <sup>2</sup> )	72.6% (1109.3m <sup>2</sup> )	Yes

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach Locality	Yes	Yes
B1.2 Heritage Conservation - Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites	Yes	Yes

<b>Clause</b>	<b>Compliance with Requirements</b>	<b>Consistency Aims/Objectives</b>
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.2 Flora and Fauna Conservation Category 1 and Wildlife Corridor	Yes	Yes
B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.6 On-Street Parking Facilities	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
B8.6 Construction and Demolition - Traffic Management Plan	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
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
C5.1 Landscaping	Yes	Yes
C5.21 Plant, Equipment Boxes and Lift Over-Run	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
D12.14 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

#### **B4.2 Flora and Fauna Conservation Category 1 and Wildlife Corridor**

The proposal does not involve an increase in the building footprint approved by the original consent. Further, a letter was supplied by the consulting Arborist confirming that the plans do not create any notable impacts on trees to be retained as per the original consent conditions. As such, it is considered that the modified proposal will not have an impact on flora, fauna or the site's utility as a wildlife corridor.

### **B8.6 Construction and Demolition - Traffic Management Plan**

The Waste Management Plan supplied with the original application suggests that excavated material will be in excess of 100m<sup>3</sup>. It is however noted that excavated material is to be reused as fill on site. As the material will not be transported elsewhere, a traffic management plan is not required.

### **C1.23 Eaves**

The eaves are consistent with that of the approved consent, despite their technical non-compliance with the requirements of the control. It is considered that the unaltered nature of the eaves on all elevations does not require additional assessment.

### **D12.10 Landscaped Area - Environmentally Sensitive Land**

No landscape plan has been provided with the application. Notwithstanding, the proposed modification involves no expansion of the building footprint and will therefore have no impact on the proportion of landscaped open space on site.

## **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

## **PLANNING CONCLUSION**

This proposal, for a modification of consent DA2021/0900 for the construction of a dwelling house including a swimming pool and spa has been referred to the Development Determination Panel (DDP) due to the application's status as a s4.55(2) modification seeking to alter or delete conditions imposed by the panel on the original application. The conditions in question include Condition 1, relating to the approved plans and Condition 17 which imposes conditions on a terrace set to be enclosed.

No submissions have been received in relation to the proposed modification.

The critical assessment issues are the increase in building height and excavation involved with the proposal. On the former, the proposal increases the maximum height of the building in one area beyond both the approved consent and the 10m limit established by the height of buildings control in this instance. On the latter, additional excavation is proposed to accommodate a plant room on the lower ground floor.

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment.

The modified proposal has therefore been recommended for approval.

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

## **RECOMMENDATION**

THAT Council as the consent authority grant approval to Modification Application No. Mod2023/0109 for Modification of Development Consent DA2021/0900 granted for Construction of a dwelling house including a swimming pool and spa on land at Lot 151 DP 6937,40 Sunrise Road, PALM BEACH, subject to the conditions printed below:

## Modification Summary

The development consent is modified as follows:

### 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

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
DA100 - Site and Roof Plan, Issue D	13/03/2023	Susan Rothwell Architects
DA101 - Lower Ground Floor Plan, Issue E	13/03/2023	Susan Rothwell Architects
DA102 - Ground Floor Plan, Issue E	13/03/2023	Susan Rothwell Architects
DA103 - First Floor Plan, Issue E	13/03/2023	Susan Rothwell Architects
DA104 - North Elevation, Issue D	13/03/2023	Susan Rothwell Architects
DA105 - South Elevation, Issue E	13/03/2023	Susan Rothwell Architects
DA106 - East and West Elevation, Issue E	13/03/2023	Susan Rothwell Architects
DA107 - Section, Issue D	13/03/2023	Susan Rothwell Architects
DA108 - Section, Issue E	13/03/2023	Susan Rothwell Architects
DA109 - Section, Issue D	13/03/2023	Susan Rothwell Architects
DA110 - Section, Issue D	13/03/2023	Susan Rothwell Architects

<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
BASIX Certificate	14/03/2023	Andrew Spaille & Associates Pty Ltd
NatHERS Certificate	13/03/2023	Susan Rothwell Architects
Geotechnical Assessment	13/03/2023	JK Geotechnics
Addendum to Arboricultural IA and MS (letter)	17/03/2023	Naturally Trees

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.

f) The development is to be undertaken generally in accordance with the following:

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

**B. Condition 26A - Adherence to Natural Environment Consent Conditions to read as follows:**

All biodiversity-related conditions of consent under previous development applications are to be adhered to, including DA2021/0900, unless amended by these biodiversity-related conditions of consent.

Reason: To protect biodiversity values.

**C. Modify Condition 17 - Amendments to the approved plans to read as follows:**

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

a) **"Ground Floor" Windows (W202 and W203)** - Privacy screens are to be installed on the "ground floor" eastern windows labelled W202 and W203 adjoining the "garage" as shown on the approved plans. The privacy screens shall be of vertical louver style construction with 250mm long blades at a maximum 120mm spacing at a 45 degree angle, in materials that complement the design of the approved development. Alternatively, these windows shall be fitted with obscured glazing or have a minimum sill height of 1.65m above the Finished Floor Level.

b) **"Ground Floor" Windows (W211; W209 and W208)** - Privacy screens are to be installed on the "ground floor" western windows labelled W211 (adjoining the "kitchen") and W209 and W208 (adjoining the "living room") as shown on the approved plans. The privacy screens shall be of vertical louver style construction with 250mm long blades at a maximum 120mm spacing at a 45 degree angle, in materials that complement the design of the approved development. Alternatively, these windows shall be fitted with obscured glazing or have a minimum sill height of 1.65m above the Finished Floor Level.

c) **"First Floor" Window (W302)** - A Privacy screen is to be installed on the "first floor" eastern window labelled W302 (adjoining the "ensuite") as shown on the approved plans. The privacy screen shall be of vertical louver style construction with 250mm long blades at a maximum 120mm spacing at a 45 degree angle, in materials that complement the design of the approved development. Alternatively, this window shall be fitted with obscured glazing or have a minimum sill height of 1.65m above the Finished Floor Level.

d) **"First Floor" Window (W307)** - A Privacy screen is to be installed on the "first floor" western window labelled W307 (adjoining "Bed 2") as shown on the approved plans. The privacy screen shall be of vertical louver style construction with 250mm long blades at a maximum 120mm spacing at a 45 degree angle, in materials that complement the design of the approved development. Alternatively, this window shall be fitted with obscured glazing or have a minimum sill height of 1.65m above the Finished Floor Level.

e) **"Lower Ground Floor" Windows (W110 and W109)** - Privacy screens are to be installed on the "lower ground floor" western windows labelled W110 and W109 (adjoining "Bed 5 ensuite" and "Bed 6 ensuite") as shown on the approved plans. The privacy screens shall be of vertical louver style construction with 250mm long blades at a maximum 120mm spacing at a 45 degree angle, in

materials that complement the design of the approved development. Alternatively, these windows shall be fitted with obscured glazing or have a minimum sill height of 1.65m above the Finished Floor Level.

f) **"Terrace 1" Privacy Screen** - A 1.5 metre privacy screen (measured from finished floor level) is to be erected for the entire length of the outermost western and eastern edges of the "first floor" terrace labelled "Terrace 1" located off the "Bed 1 & Bed 2" as shown on the approved plans. The privacy screen shall be of vertical louver style construction with 250mm long blades at a maximum 120mm spacing at a 45 degree angle (angled from the terrace outwards), in materials that complement the design of the approved development.

g) **"Terrace 3" Privacy Screen** - A 1.5 metre privacy screen (measured from finished floor level) is to be erected for the entire length of the outermost western edge of the "ground floor" terrace labelled "Terrace 3" located off the "living room" as shown on the approved plans. The privacy screen shall be of vertical louver style construction with 250mm long blades at a maximum 120mm spacing at a 45 degree angle, in materials that complement the design of the approved development.

h) **DELETED.**

i) **"Swimming Pool Lawn" Privacy Screen** - A 1.5 metre privacy screen (measured from finished floor level) is to be erected for the entire length of the outermost western edge of the "lower ground floor" lawn area adjoining the proposed swimming pool as shown on the approved plans. The privacy screen shall be of vertical louver style construction with 250mm long blades at a maximum 120mm spacing at a 45 degree angle (angled from the lawn outwards), in materials that complement the design of the approved development.

j) **"Swimming Pool and Spa" Balustrading/fence** - The proposed swimming pool and spa is to incorporate solid balustrading/fencing for the entire length of the eastern elevation. This balustrading is to be constructed of nontransparent material or opaque glazing measured at a height of at least 1.0m above the finished floor level.

k) **Swimming Pool and OSD wall** - The exterior of the wall below the proposed swimming pool and OSD tank shall be covered in sandstone cladding or similar which uses dark, earthy and natural coloured finishes and materials of low reflectivity

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.