

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2023/0693
<b>Responsible Officer:</b>	Jordan Howard
<b>Land to be developed (Address):</b>	Lot 2 DP 23008, 46 Narrabeen Park Parade WARRIEWOOD NSW 2102
<b>Proposed Development:</b>	Modification of Development Consent DA2023/0007 granted for Alterations and additions to a dwelling house including carport
<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>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Karen Lee Steele
<b>Applicant:</b>	Karen Lee Steele
<b>Application Lodged:</b>	21/12/2023
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Refer to Development Application
<b>Notified:</b>	11/01/2024 to 25/01/2024
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

### PROPOSED DEVELOPMENT IN DETAIL

This modification application seeks approval for modifications to Development Consent DA2023/0007 granted for alterations and additions to a dwelling house including carport.

Specifically, the proposal seeks to delete Conditions 8 and 9, which relate to tree root investigation, tree root mapping, and tree protection. These conditions were imposed by Council's Landscape Officer as during the time of assessment and approval of DA2023/0007 there was a large Norfolk Island Hibiscus on the adjoining northern property (No. 48 Narrabeen Park Parade). This tree was an exempt species under the Council's Tree Preservation Order, however as it was located on the adjoining property conditions were imposed to ensure protection of this tree.

Since approval, the tree has been removed by the owner of the adjoining property, utilising the exempt

provisions to remove this tree. As such, this application seeks to delete those conditions relating to the now removed tree.

## 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 21 Development Control Plan - B6.1 Access driveways and Works on the Public Road Reserve

Pittwater 21 Development Control Plan - C1.1 Landscaping

Pittwater 21 Development Control Plan - D14.1 Character as viewed from a public place

Pittwater 21 Development Control Plan - D14.7 Front building line

Pittwater 21 Development Control Plan - D14.11 Building envelope

Pittwater 21 Development Control Plan - D14.13 Landscaped Area - Environmentally Sensitive Land

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 2 DP 23008 , 46 Narrabeen Park Parade WARRIEWOOD NSW 2102
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the north-west side of Narrabeen Park Parade.</p> <p>The site is irregular in shape with a frontage of 15.24m along Narrabeen Park Parade and a maximum depth of 45.925m. The site has a surveyed area of 794.4m<sup>2</sup>.</p> <p>The site is located within the C4 Environmental Living zone and accommodates a dwelling house The site slopes to the north-west, with a crossfall of approximately 7m.</p> <p>The site contains trees, lawn areas and garden beds. There</p>

are no details of any threatened species on the subject site.

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

Adjoining and surrounding development is characterised by dwelling houses.

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:

**Development Application No. DA2023/0007** for 'alterations and additions to a dwelling house including carport' was approved on 5 May 2023. This current modification application seeks to modify this development consent.

### **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 DA2023/0007, 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><b>Yes</b></p> <p>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"> <li>• The description of development remains the same as DA2023/0007.</li> <li>• The proposal relates to the removal of conditions pertaining to root investigation, mapping and protection of a now removed tree. With the tree removed, these conditions are obsolete.</li> </ul>
(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 DA2023/0007 for the following reasons:</p> <ul style="list-style-type: none"> <li>• The description of development remains the same as DA2023/0007.</li> <li>• The proposal does not change the built form of the development, with the proposal only requesting the removal of conditions pertaining to root investigation, mapping and protection of a now removed tree. With the tree removed, these conditions are obsolete.</li> </ul>
<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</p>	<p>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.</p>

Section 4.55(1A) - Other Modifications	Comments
of applications for modification of a development consent, and	
(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)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&amp;A Regulation 2021 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>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>



Section 4.15 'Matters for Consideration'	Comments
	<p><u>Clause 61</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider AS 2601 - 2001: The Demolition of Structures. These matters have been addressed via a condition in the original consent.</p> <p><u>Clauses 62</u> and/or <u>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. These matters have been addressed via a condition in the original 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). These matters have been addressed via a condition in the original consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The site is 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 Application (DA2023/0007), prepared by Bushfire Planning Services, dated 18 October 2022. The report stated that the bushfire attack level of the site is BAL-19 and BAL-12.5. The report stated that "subjective opinion" had been used in the vegetation analysis and that referral to the NSW RFS was at the discretion of Council. As a result, during assessment of DA2023/0007 the application was referred to the NSW Rural Fire Service for further assessment. The NSW RFS raised no objections to approval of DA2023/0007, subject to conditions. The recommendations of the Bush Fire Report, along with the conditions from the NSW RFS, were included as part of the conditions of consent of DA2023/0007.

This current modification proposal only relates to the removal of conditions pertaining to root investigation, mapping and protection of a now removed tree. These conditions were imposed by Council's Landscape Officer during the assessment of DA2023/0007 and were not imposed due to any bush fire related reasons. Considering that the proposal does not change the built form of the development, only seeking administrative condition changes that are not related to bush fire concerns, no further bush fire report has been requested and no referral has been made to the NSW RFS. Conditions requiring compliance with the recommendations of the original Bush Fire Report, along with the conditions from the NSW RFS provided during the assessment of DA2023/0007, remain included as part of the conditions of consent.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 11/01/2024 to 25/01/2024 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
Landscape Officer	The application is to modify development consent DA2023/0007, to delete conditions 8 and 9 imposed for the protection of an existing tree within adjoining property 48 Narrabeen Park Parade. The existing tree is identified as tree number 6 (Norfolk Island Hibiscus) and the property owner has utilised the exempt provisions to remove this tree. As tree 6 is now removed, development consent conditions 8. Tree Root Investigation and Tree Root Map and condition 9. Tree Protection Plan, do not now apply and shall be removed under this modification application.

## 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 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	6.4m	No change	-	Yes

#### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.10 Essential services	Yes

### Pittwater 21 Development Control Plan

#### Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
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Front building line	6.5m	4.8m (to proposed carport)	No change	<b>No</b> but approved by DA2023/0007 and unchanged
Rear building line	6.5m	9.5m	No change	Yes
Side building line	North-East 2.5m	2.5m	No change	Yes
	South-West 1m	2m	No change	Yes
Building envelope	North-East 3.5m	Outside envelope	No change	<b>No</b> but approved by DA2023/0007 and unchanged
	South-West 3.5m	Outside envelope	No change	<b>No</b> but approved by DA2023/0007 and unchanged
Landscaped area	60% (476.6m <sup>2</sup> )	54.8% (435.5m <sup>2</sup> ) + 5.7% (44.9m <sup>2</sup> ) = 60.5% (480.4m <sup>2</sup> )*	No change	Yes*

\* The assessment of DA2023/0007 concluded that the proposal met the outcomes of Clause D14.13 Landscaped Area - Environmentally Sensitive Land, allowing for up to 6% of the site area to be included in landscaped area.

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.14 Warriewood Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.2 Bushfire Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	No	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	No	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.23 Eaves	Yes	Yes
D14.1 Character as viewed from a public place	No	Yes
D14.3 Building colours and materials	Yes	Yes
D14.7 Front building line	No	Yes
D14.8 Side and rear building line	Yes	Yes
D14.11 Building envelope	No	Yes
D14.13 Landscaped Area - Environmentally Sensitive Land	No	Yes
D14.15 Fences - General	Yes	Yes
D14.18 Scenic Protection Category One Lands	Yes	Yes

#### Detailed Assessment

### **B6.1 Access driveways and Works on the Public Road Reserve**

Clause B6.1 Access driveways and Works on the Public Road Reserve prescribes a maximum driveway width of 4m at the boundary and 4.5m at the kerb. The development proposes a driveway width of 4.8m at the boundary and 3m at the kerb. This was a feature of the development as proposed in DA2023/0007 and is unchanged in this modification proposal.

During the assessment of DA2023/0007, Council's Development Engineer reviewed the proposal and raised no objection, subject to conditions. These conditions remain included and unchanged. Therefore, the outcomes of the original consent are maintained and further detailed merit assessment is not required in this instance.

### **C1.1 Landscaping**

The proposal is technically non-compliant with the landscaping requirements of this control, which require at least 60% of the front setback area to be landscaped. The proposal results in 55.2% of the front setback area being landscaped. This was a feature of the development as approved in DA2023/0007 and is unchanged in this modification proposal.

The proposed modification application does not alter this non-compliance approved under DA2023/0007. Therefore, the outcomes of the original consent are maintained and a detailed merit assessment is not required in this instance.

### **D14.1 Character as viewed from a public place**

Clause D14.1 stipulates that parking structures should not be the dominant feature when viewed from the street and should be set beyond the prescribed building setback line with a width no greater than

50% of the width of the site or 7.5m, whichever is lesser. As the site has a front boundary of 15.24m, half of which is 7.62m, 7.5m is the prescribed width. The proposed carport encroaches the front building line with a setback of 4.8m to the front boundary, representing a variation of 26.2%. The proposed carport measures 7.2m wide, which is less than the prescribed 7.5m. This was a feature of the development as approved in DA2023/0007 and is unchanged in this modification proposal.

The proposed modification application does not alter this non-compliance approved under DA2023/0007. Therefore, the outcomes of the original consent are maintained and a detailed merit assessment is not required in this instance.

#### **D14.7 Front building line**

The proposed modification application does not alter the numerically non-compliant front setback approved under DA2023/0007. Therefore, the outcomes of the original consent are maintained and a detailed merit assessment is not required in this instance.

#### **D14.11 Building envelope**

The proposed modification application does not alter the non-compliance with the building envelope approved under DA2023/0007. Therefore, the outcomes of the original consent are maintained and a detailed merit assessment is not required in this instance.

#### **D14.13 Landscaped Area - Environmentally Sensitive Land**

The assessment of DA2023/0007 concluded that the proposal met the outcomes of this Clause, allowing for up to 6% of the site area to be included in landscaped area. With this additional 6% of site area included in the landscaped area total, the proposed development has a landscaped area of 60.5% (480.4m<sup>2</sup>), compliant with the control.

This was a feature of the development as approved in DA2023/0007 and is unchanged in this modification proposal. Therefore, the outcomes of the original consent are maintained and a detailed merit assessment is not required in this instance. The proposal continues to comply with this Clause.

### **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

### **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

### **POLICY CONTROLS**

#### **Northern Beaches Section 7.12 Contributions Plan 2022**

Section 7.12 contributions were levied on the Development Application.

### **CONCLUSION**

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- Pittwater Local Environment Plan;
- Pittwater Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

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

## RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2023/0693 for Modification of Development Consent DA2023/0007 granted for Alterations and additions to a dwelling house including carport on land at Lot 2 DP 23008,46 Narrabeen Park Parade, WARRIEWOOD, subject to the conditions printed below:

## Modification Summary

The development consent is modified as follows:

### MODIFICATION SUMMARY TABLE

Application Number	Determination Date	Modification description
PAN-398960 - Mod2023/0693	The date of this notice of determination	Modification of Development Consent DA2023/0007 granted for Alterations and additions to a dwelling house including carport

	<p><u>Modified Conditions:</u></p> <p>A. Delete Condition No. 8 Tree Root Investigation and Tree Root Map</p> <p>B. Delete Condition No. 9 Tree Protection Plan</p>
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### **Modified conditions**

#### **A. Delete Condition No. 8 Tree Root Investigation and Tree Root Map**

Condition 8 is deleted.

Reason: The neighbouring tree that this condition was imposed to protect has been removed by the neighbouring property owner, rendering this condition obsolete.

#### **B. Delete Condition No. 9 Tree Protection Plan**

Condition 9 is deleted.

Reason: The neighbouring tree that this condition was imposed to protect has been removed by the neighbouring property owner, rendering this condition obsolete.

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

**Signed**



**Jordan Howard, Planner**

The application is determined on 01/02/2024, under the delegated authority of:



**Steven Findlay, Manager Development Assessments**