

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2020/0688
<b>Responsible Officer:</b>	Lashta Haidari
<b>Land to be developed (Address):</b>	Lot 2 DP 878612, 127 Riverview Road AVALON BEACH NSW 2107 Lot LIC 386878, 127 Riverview Road AVALON BEACH NSW 2107
<b>Proposed Development:</b>	Modification of Development Consent DA2018/1676 granted for alterations and additions to a dwelling house including construction of an inclinator
<b>Zoning:</b>	E4 Environmental Living
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Katherine Megan Watt
<b>Applicant:</b>	Andrew Gould

<b>Application Lodged:</b>	30/12/2020
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	15/01/2021 to 29/01/2021
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

### PROPOSED DEVELOPMENT IN DETAIL

The proposed modification application seeks approval for the removal of Tree 8 (*Corymbia gummifera*/Red Bloodwood) to provide for a concrete footing for an approved inclinator passenger lift.

### 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 - 7.8 Limited development on foreshore area

## SITE DESCRIPTION

<b>Property Description:</b>	<p>Lot 2 DP 878612 , 127 Riverview Road AVALON BEACH NSW 2107</p> <p>Lot LIC 386878 , 127 Riverview Road AVALON BEACH NSW 2107</p>
<b>Detailed Site Description:</b>	<p>The subject site is known as 127 Riverview Road, Avalon Beach and is legally referred to as Lot 2 in DP 878612</p> <p>The site consists of one (1) allotment located on the western side of Riverview Road.</p> <p>The site is an irregular battle-axe lot with a frontage of 14.595m. A right of carriageway and easement for services runs through 125 Riverview Road and ends at Riverview Road.</p> <p>The site has a depth of 62.95m along the northern boundary and 48.98m along the southern boundary. The site has a surveyed area of 1498m<sup>2</sup>.</p> <p>The site is located within the E4 Environmental Living zone and accommodates a dwelling house that is currently undergoing construction works. A boat shed and associated jetty are located at the water frontage.</p> <p>The site slopes steeply, falling by approximately 29m from east to west.</p> <p>The site contains a number of established native canopy trees, and terraced landscaped areas.</p> <p><u>Detailed Description of Adjoining/Surrounding Development</u></p>

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

- DA2018/1676: Council approved development on 13 February 2019 for the purposes of alterations and additions to a dwelling house including construction of an inclinor

## 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 DA2018/1676, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55 (2) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55 (2) - Other Modifications	Comments
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 development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2018/1676 for the following reasons:</p> <ul style="list-style-type: none"> <li>Notwithstanding the tree removal, the proposed modification does not seek to alter the approved use or built form of approved development, and therefore maintains consistency with regard to the development for which consent was originally granted.</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 DA2018/1676 did not require concurrence from the relevant Minister, public authority or approval body.
(c) it has notified the application in accordance with:  (i) the regulations, if the regulations so 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 2000, Pittwater Local Environmental Plan 2011 and Pittwater 21 Development Control Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	No submissions were received in relation to this application.

## Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 96 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.



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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 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 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 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 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p>

Section 4.15 'Matters for Consideration'	Comments
	<u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 15/01/2021 to 29/01/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

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

## REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The application relates to removal of a tree previously indicated as being retained adjacent to an approved inclinor.</p> <p>The Tree is identified in the Arborist's Tree Impact Statement</p>

Internal Referral Body	Comments
	<p>accompanying the application as Tree 8. The tree is identified in the original Arborist's report as a <i>Corymbia gummifera</i>, 10m tall.</p> <p>The Arborist's Statement confirms that due to the required location of a footing for the inclinator, significant structural roots would be required to be removed, destabilising the tree. The report confirms that no alternate location of the footing is available to due to engineering requirements.</p> <p>In this instance, removal of the tree is not objected to, subject to replanting.</p>
NECC (Bushland and Biodiversity)	<p>Council's Natural Environment Unit - Biodiversity referral team have reviewed the application for consistency against the relevant environmental legislation and controls, including:</p> <p><b>Biodiversity Conservation Act 2016 (BC Act)</b>  <b>Pittwater Local Environmental Plan (PLEP)</b>  - 7.6 Biodiversity Protection  <b>Pittwater Development Control Plan (PDCP)</b>  - B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community</p> <p>The application relates to removal of a tree previously indicated as being retained adjacent to an approved inclinator. Subject to replanting the Bushland and Biodiversity referral team find the application to be consistent against relevant environmental controls.</p>

## ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\*

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

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

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

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

Nil

## 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
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#### Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	1.84m	unchanged	N/A	Yes

#### Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.8 Limited development on foreshore area	Yes
7.10 Essential services	Yes

#### Detailed Assessment

##### 7.8 Limited development on foreshore area

The proposed modification does not seek to alter the existing approved arrangement within the foreshore area. The proposal is therefore supported.

#### Pittwater 21 Development Control Plan

##### Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
Front building line	6.5m	4.78m	unaltered	Yes
Rear building line	6.5m	5.1m	unaltered	Yes
Side building line	2.5m	20.1m	unaltered	Yes
	1m	1.08m	unaltered	Yes
Building envelope	3.5m	Within envelope	unaltered	Yes
	3.5m	Within envelope	unaltered	Yes
Landscaped area	50%	Unchanged	unaltered	Yes

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives



Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.1 Avalon Beach Locality	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B4.22 Preservation of Trees and Bushland Vegetation	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	Yes	Yes
D1.1 Character as viewed from a public place	Yes	Yes

## THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

## CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

## POLICY CONTROLS

### Northern Beaches Section 7.12 Contributions Plan 2019

Section 7.12 contributions were levied on the Development Application.

## CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Pittwater Local Environment Plan;
- Pittwater Development Control Plan; and
- Codes and Policies of Council.

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

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

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP

- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

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

## RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2020/0688 for Modification of Development Consent DA2018/1676 granted for alterations and additions to a dwelling house including construction of an inclinor on land at Lot 2 DP 878612, 127 Riverview Road, AVALON BEACH, Lot LIC 386878, 127 Riverview Road, AVALON BEACH, subject to the conditions printed below:

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

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

#### a) Modification Approved Plans

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Tree Impact Statement	24/11/2020	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.

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

### D. Add Condition No. 17A - Required planting - to read as follows:

Trees shall be planted in accordance with the following schedule:

No. of Trees Required.	Species	Location
2	Local native trees species capable of attaining a minimum height of 10 metres at maturity	Rear yard

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

Reason: To maintain environmental amenity.

**D. Add Condition No. 17B - Landscape completion certification - to read as follows:**

a) Prior to the issue of an Occupation Certificate, a landscape report prepared by a qualified horticulturalist or landscape designer shall be submitted to the Certifying Authority, certifying that the landscape works have been completed in accordance with inclusive of any conditions of consent.

Reason: To ensure that the landscape treatments are installed to provide landscape amenity.

**D. Add Condition No. 17C - Replacement of canopy trees - to read as follows:**

In addition to any replanting requirements for DA2018/1676, at least 2 locally native canopy trees are to be planted on site to replace protected trees approved for removal. Species are to either *Eucalyptus robusta*, *Angophora costata* or *Corymbia gummifera*.

Tree plantings are to be retained for the life of the development and/or for their safe natural life. Trees that die or are removed must be replaced with another locally native canopy tree.

Replacement plantings are to be certified as being completed in accordance with these conditions of consent by a qualified landscape architect, and details submitted to the Principal Certifying Authority prior to issue of any Occupation Certificate.

Reason: To establish appropriate native landscaping.

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

**Signed**



**Lashta Haidari, Principal Planner**

The application is determined on 11/02/2021, under the delegated authority of:



**Rodney Piggott, Manager Development Assessments**