

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2022/0726
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Responsible Officer:	Stephanie Gelder
Land to be developed (Address):	Lot 1 DP 1132852, 18 - 20 Sturdee Lane LOVETT BAY NSW 2105
Proposed Development:	Modification of Development Consent DA2022/1527 granted for alterations and additions to a dwelling house
Zoning:	C3 Environmental Management
Development Permissible:	Yes - Zone C3 Environmental Management No - Zone W1 Natural Waterways
Existing Use Rights:	Yes
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Fiona Robin Loader
Applicant:	James de Soyres & Associates Pty Ltd

Application Lodged:	03/01/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	10/01/2023 to 25/01/2023
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

The proposed modification works to DA2022/1527 comprise of the following:

- Replacement of retaining walls;
- Replacement of timber framed doors with aluminium framed doors;
- Replacement of timber framed windows with aluminium framed windows;
- Internal alteration to ground floor level including extension to the south;
- Internal alterations to first floor level;
- Increased side setback to second floor level;
- Replacement of glazed roof with metal roof over first floor;
- Addition of raised herb planter;
- Addition of pergola; and
- Addition of skylights.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - Zone C3 Environmental Management

Pittwater Local Environmental Plan 2014 - Zone W1 Natural Waterways

Pittwater Local Environmental Plan 2014 - 7.8 Limited development on foreshore area

Pittwater 21 Development Control Plan - D8.6 Side and rear building line

Pittwater 21 Development Control Plan - D15.12 Development seaward of mean high water mark

SITE DESCRIPTION

Property Description:	Lot 1 DP 1132852 , 18 - 20 Sturdee Lane LOVETT BAY NSW 2105
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the northern side of Sturdee Lane and southern side of Lovett Bay.</p> <p>The site is irregular in shape with a frontage of 13.33m along Sturdee Lane, and a frontage of 29.505m along Lovett Bay. The site has a surveyed area of 2538m².</p> <p>The site is located within the C3 Environmental Management zone from PLEP 2014 and accommodates a dwelling house, and a detached studio that is currently under construction as approved under DA2020/0033.</p> <p>The site slopes from the northern boundary upwards to the southern boundary over approximately 29 metres.</p>

The site contains dense vegetation to the south of the dwelling house. The vegetation includes trees, plantings, and vegetation.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by dwelling houses varying in architectural style and design.

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:

CDC0124/16

Complying Development Certificate for Rebuild Existing Ramp, Jetty & Pontoon.
Approved on 14 July 2016 by External Certifier.

PLM2018/0098

Pre-Lodgement Meeting for Alterations and additions to an existing dwelling.
Meeting held on 31 May 2018.

The meeting notes concluded: *The proposal is not acceptable in its current form. The proposed additions within the foreshore area are prohibited pursuant to the provisions of clause 7.8(2)(a) of PLEP 2014. Furthermore, the proposal is found to be inconsistent with several of Council's planning controls in relation to the visual impact of the development and resultant bulk and scale, as well as the objectives of the E3 – Environmental Management zoning. It is strongly recommended that the design is amended in accordance with the recommendations within the report, with particular regards to minimising the overall built form and introducing landscaping within the foreshore area and within the northern portion of the site in order to screen the development and integrate the built form with the landscaping.*

DA2019/0671

Development Application for Replacement of the on-site waste water treatment system.
Approved on 29 August 2019.

DA2020/0033

Development Application for Demolition works and construction of a detached studio.
Approved on 13 July 2020.

Mod2021/0040

Modification of Development Consent DA2020/0033 granted for demolition works and construction of a detached studio.
Approved on 26 April 2021.

PLM2021/0053

Pre-Lodgement Meeting for Alterations and additions to a dwelling house.
Meeting held on 18 March 2021.

The meeting notes concluded: *The proposal is considered to have merit in that it does not detract from the waterway, nor impact upon the amenity of neighbouring residential and public land. Concern is raised with respect to impact on vegetation and this has been detailed within comments provided by Council's Biodiversity Officer.*

CC2022/0088

Construction Certificate for Demolition works and construction of a detached studio.
Approved on 8 February 2022 by External Certifier.

CC2022/0341

Construction Certificate for Replacement of the on-site waste water treatment system.
Approved on 5 April 2022 by External Certifier.

DA2022/1527

Development Application for Alterations and additions to a dwelling house.
Approved on 5 November 2022.

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 DA2022/1527, in full, with amendments detailed and assessed as follows:

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

Section 4.55(1A) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	<p>Yes</p> <p>The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons:</p> <ul style="list-style-type: none"> • The proposed modified works are considered to be of minimal environmental impact, as the works are consistent with those approved under DA2022/1527. • The proposed modified works are contained within this existing approved building footprint. • The proposed modified works are consistent with approved development standard, noting that the approved building height is slightly reduced. • The proposed modified works are consistent with the approved built form controls, and the proposal remains largely compliant. • The proposed modified works result in no further encroachments into the Foreshore Building Area, or below the Mean High Water Mark.
(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 DA2022/1527 for the following reasons:</p> <ul style="list-style-type: none"> • The consent authority is 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 DA2022/1527.
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require,</p> <p>or</p> <p>(ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of</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
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)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&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&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&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

A small portion of the existing dwelling house is located below the Mean High Water Mark, and as such that is land zoned W1 Natural Waterways of Pittwater Local Environmental Plan 2014. Residential development is prohibited in the W1 zone.

Under DA2022/1527 the proposed works included works to part of the building located within the W1 zone, however the works to this part of the development constituted only roof replacement works. Under Subdivision 27 Minor building alterations (external) of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*, the following is Exempt Development:

- 2.53(c) *the repair to or replacement of a non-structural wall or roof cladding*

Therefore, and despite residential works being prohibited in the W1 zone, under the Development Application (DA2022/1527), a detailed Existing Use Rights assessment did not apply, as the exempt development provisions of the SEPP prevailed over the LEP. However, under this current modification application, the proposed works include replacement of existing windows. Under Subdivision 27 Minor building alterations (external) of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*, the following is Exempt Development:

- 2.53(b) *the replacement of an external window, glazing areas or a door (other than those on bush fire prone land)*

As the subject site is located in bush fire prone land, the works do not benefit or can be done under exempt development. Therefore, a detailed Existing Use Rights assessment is necessary for the portion of the dwelling house that is located on land zoned W1 Natural Waterways of Pittwater Local Environmental Plan 2014.

- **Does the existing use satisfy the definition of "existing use" under the *Environmental Planning and Assessment Act 1979* (the 'Act')?**

Section 4.65 of the Act defines an existing use as:

"(a) the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for this Division, have the effect of prohibiting that use, and

(b) the use of a building, work or land:

- (i) for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and*
- (ii) that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse."*

This necessarily requires the following questions to be answered:

1. Was the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for this Division, have the effect of prohibiting that use?

Comment:

Council's records indicate that a Building Certificate (BC0195/07) was approved on 20 June 2007 for , "A two storey sole occupancy timber cottage with a metal roof together with a detached timber studio". This was prior to Pittwater LEP 2014 coming into force.

2. Was the use of the building / land granted development consent before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use?

Comment:

The use of the building / land was lawfully approved by Council on 20 June 2007 in the form of a Building Certificate (BC0195/07), prior to the coming into force of Pittwater Local Environmental Plan 2014 on 27 June 2014.

3. Has the use of the building / land been carried out within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse?

Comment:

Council's records indicate that the use of the building / land has been continually used since 20 June 2007, with separate Development Applications for the subject site, that indicate use of the building / land, which is more than one year from the date on which the provision having the effect of prohibiting the use commenced.

- **What is “the land on which the existing use was carried out” for the purposes of cl 162-167 of the Environmental Planning and Assessment Regulation 2021 (“the Regulation”)?**

Meagher JA in *Steedman v Baulkham Hills Shire Council [No. 1] (1991) 87 LGERA 26* stated (at 27) the rule to be applied as follows: “if the land is rightly regarded as a unit and it is found that part of its area was physically used for the purpose in question it follows that the land was used for that purpose”.

Comment:

Having regard to the above case law, it is noted that a part of the area of the land was physically used for the purpose in question and therefore, it is considered that the land was used for that purpose and that existing use rights apply to the portion the subject site that is located with the Zone W1 Natural Waterways of Pittwater Local Environmental Plan 2014.

- **What are the planning principles that should be adopted in dealing with an application to alter enlarge or rebuild and existing use?**

The judgement in *Fodor Investments v Hornsby Shire Council (2005) NSWLEC 71*, sets out the planning principles that should be applied in dealing with development applications seeking to carry out development on the basis of existing use rights.

The following four principles adopted by the NSW Land and Environment Court in this case will have general application in dealing with development applications that rely on existing use rights:

1. How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?

While planning controls, such as height, floor space ratio and setbacks do not apply to sites with existing use rights; they have relevance to the assessment of applications on such sites. This is because the controls apply to surrounding sites and indicate the kind of development that can be expected if and when surrounding sites are redeveloped. The relationship of new development to its existing and likely future context is a matter to be considered in all planning assessments.

Comment:

The proposed works to the portion of the building in the W1 zone does not change in appearance, function, design or use. The bulk and scale of the building is unaltered, as the works are confined to the replacement of windows only.

2. What is the relevance of the building in which the existing use takes place?

Where the change of use is proposed within an existing building, the bulk and scale of that building are likely to be deemed acceptable, even if the building is out of scale with its surroundings, because it already exists. However, where the existing building is proposed for demolition, while its bulk is clearly an important consideration, there is no automatic entitlement to another building of the same floor space ratio, height or parking provision.

Comment:

The proposal is not for change of use, nor for demolition of the existing building. As such, the existing use of the dwelling house will be retained.

3. What are the impacts on adjoining land?

The impact on adjoining land should be assessed as it is assessed for all development. It is true that where, for example, a development control plan requires three hours of sunlight to be maintained in adjoining rear yards, the numerical control does not apply. However, the overshadowing impact on adjoining rear yards should be reasonable.

Comment:

The proposed modified works are not result in any unacceptable on adjoining sites.

4. What is the internal amenity?

Internal amenity must be assessed as it is assessed for all development. Again, numerical requirements for sunlight access or private open space do not apply, but these and other aspects must be judged acceptable as a matter of good planning and design. None of the legal principles discussed above suggests that development on sites with existing use rights may have lower amenity than development generally.

Comment:

The internal amenity of the dwelling house will be enhanced through the replacement of the existing windows, that will ensure appropriate protection within a bush fire prone area. Furthermore, it is considered that the internal amenity will be overall improved as result of the modified works.

Conclusion

The use has been approved under a previous environmental planning instrument and, therefore, is a lawful use. Subsequently, the use can be retained under the current environmental planning instrument (Pittwater Local Environmental Plan 2014).

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 Development Application that included a certificate (prepared by Bushfire Planning Services, dated 27 August 2021) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection.

A Bush Fire Cover Letter was submitted with the current application (prepared by Bushfire Planning Services, dated 21 December 2022), stating that the revised proposal does not adversely affect the results of the original bushfire assessment. The recommendations of the Bush Fire Cover Letter have been included as conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 10/01/2023 to 25/01/2023 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 (unsewered lands)	<p>General Comments</p> <p>Mod does not appear to change proposed wastewater load</p> <p>No changes to our previous referral Trim 2022/1527</p> <p>Recommendation</p> <p>APPROVAL - no conditions</p>
Landscape Officer	<p>The Modification documentation includes an addendum Arboricultural Report from Bluegum Tree Consultancy. The Addendum indicates that no additional impacts to trees are anticipated subject to Arboricultural supervision.</p> <p>It is recommended that amendments to existing conditions 12 and 15 be included if the Modification is to be approved.</p>
NECC (Bushland and Biodiversity)	<p>The proposal seeks approval for modifications under section 4.55 to consent granted for DA2022/1527.</p> <p>The comments on this referral relate to the following applicable controls and provisions:</p> <ul style="list-style-type: none"> • NSW Biodiversity Conservation Act 2016 • NSW Biodiversity Conservation Regulation 2017 • SEPP (Resilience and Hazards) - Coastal Environment Area • Pittwater LEP 2014 Clause 7.6 - Biodiversity Protection • Pittwater 21 DCP Clause B4.7 - Pittwater Spotted Gum Forest Endangered Ecological Community <p>The site contains Pittwater Spotted Gum Forest Endangered Ecological Community (EEC) and consequently, portions of the site are identified on the Department of Planning, Industry and Environment's Biodiversity Values Map (BV Map). Under the NSW Biodiversity Conservation Act and Regulation, any removal of native vegetation from within mapped areas will trigger the Biodiversity Offset Scheme (BOS) and the requirement for a Biodiversity Development Assessment Report (BDAR). As the submitted plans and documentation identify that works associated with the</p>

Internal Referral Body	Comments
	<p>modifications will not result in impact to native trees, including those identified on the BV Map, the BOS is not triggered and a BDAR is not required for this modification. In addition, the bushfire risk assessment report submitted with the modification application has not identified the requirement for alterations to the existing Asset Protection Zone (APZ).</p> <p>The development is designed, sited and will be managed to avoid any significant adverse environmental impact.</p>
NECC (Coast and Catchments)	No further conditions to original DA2022/1527.
NECC (Riparian Lands and Creeks)	<p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> - Supplied plans and reports; - Coastal Management Act 2016; - State Environmental Planning Policy (Resilience and Hazards) 2021; - Relevant LEP and DCP clauses; and - Northern Beaches Council Water management for development policy. <p>No objection as the modifications are minor. Comments and conditions set in the assessment for DA2022/1527 still apply.</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.A404869_04 dated 21 December 2022).

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

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

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

Comment:

The site is located in land identified as "coastal environment area". The proposed modified development is not likely to cause any adverse impacts on items listed under Clause 2.10(1)(a-g) inclusive.

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

Comment:

The proposed modified development is designed, sited, and will be managed appropriately to avoid an adverse impact to items listed under Clause 2.10(1)(a-g) inclusive.

Division 4 Coastal use area

2.11 Development on land within the coastal use area

- 1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:
 - a) has considered whether the proposed development is likely to cause an adverse impact on the following:
 - i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
 - ii)

- iii) overshadowing, wind funnelling and the loss of views from public places to
 - iv) foreshores,
 - v) the visual amenity and scenic qualities of the coast, including coastal headlands, Aboriginal cultural heritage, practices and places, cultural and built environment heritage, and
- b) is satisfied that:
- i) the development is designed, sited and will be managed to avoid an adverse
 - ii) impact referred to in paragraph (a), or
 - iii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or if that impact cannot be minimised—the development will be managed to mitigate that impact, and
- c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

The site is located in land identified as "coastal use area". The proposed modified development is unlikely to cause an adverse impact to items listed under Clause 2.11(1)(a)(i-v). The proposal has been designed, sited, and managed to avoid any adverse impacts, and it is considered that the proposed development has taken into account the surrounding coastal and built environment.

Division 5 General

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

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

Comment:

The proposed modified development is not likely to cause an increase risk of coastal hazards on the site or other land.

2.13 Development in coastal zone generally—coastal management programs to be considered

Development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land.

Comment:

There is no certified coastal management program applied to the land.

As such, it is considered that the application complies with the requirements of Chapter 2 of the State Environmental Planning Policy (Resilience and Hazards) 2021.

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b)

and (c) of this Chapter and the land is considered to be suitable for the residential land use.

Pittwater Local Environmental Plan 2014

Is the development permissible?	Zone C3 : Yes Zone W1 : No
After consideration of the merits of the proposal, is the development consistent with: aims of the LEP?	Yes
zone objectives of the LEP?	Zone C3 : Yes Zone W1 : Yes

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	10.0m	8.8m	8.7m	-	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

Zone C3 Environmental Management

The proposed development has been assessed against the objectives of the C3 Environmental Management zone of Pittwater Local Environmental Plan 2014 as detailed below:

- To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.***

Comment:

The modified proposal will protect, manage, and maintain areas with special ecological, scientific, cultural, and aesthetic values. The proposal will not result in any unacceptable impacts to the existing values.

- To provide for a limited range of development that does not have an adverse effect on those values.***

Comment:

The modified proposal comprises of the alterations to the first floor, and addition of a second floor that is considered a limited range of development that is generally within the existing building footprint, as to not result in any adverse impacts to existing values.

- ***To provide for residential development of a low density and scale integrated with the landform and landscape, and not visually prominent.***

Comment:

The modified proposal comprises of the alterations and additions to an existing dwelling house that is considered to be of low density and scale. The proposal will integrate with the existing landform, and landscape and as such will not result in a visually prominent structure.

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

Comment:

The modified proposal is not likely to impact upon the existing riparian, foreshore vegetation, and/or wildlife corridors. The proposal has been reviewed by Council's Bushland and Biodiversity Officer, Riparian Lands and Creeks, and Coast and Catchment Officer who are all supportive of the application subject to recommended conditions.

- ***To ensure the continued viability of ecological communities and threatened species.***

Comment:

The modified proposal is not likely to result in any adverse impacts as the works are largely within the existing building footprint. As such, the proposal will ensure the continued viability of ecological communities and threatened species.

Zone W1 Natural Waterways

A portion of the existing dwelling house is located within Zone W1 Natural Waterways of Pittwater Local Environmental Plan 2014 (PLEP 2014).

Dwelling houses are prohibited under Zone W1 Natural Waterways of PLEP 2014. However, as the proposed modified works present alterations to the portion of the dwelling house located within Zone W1 Natural Waterways, the proposal obtains Existing Use Rights. A detailed assessment has been undertaken under the Existing Use Rights section contained within this report.

7.8 Limited development on foreshore area

Under Clause 7.8 Limited Development on Foreshore Area, development consent must not be granted for development on land in the foreshore area except for the following purposes:

- *the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area, but only if the development will not result in the footprint of the building extending further into the foreshore area,*
- *boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).*

Comment:

The proposed modified development is for alteration of an existing building wholly in the foreshore area, but will not result in the footprint of the building extending further into the foreshore area.

Development consent must not be granted under this clause unless the consent authority is satisfied that:

- *the development will contribute to achieving the objectives for the zone in which the land is located, and*
- *the appearance of any proposed structure, from both the waterway and adjacent foreshore areas, will be compatible with the surrounding area, and*
- *the development will not cause environmental harm such as:*
 - *pollution or siltation of the waterway, or*
 - *an adverse effect on surrounding uses, marine habitat, wetland areas, fauna and flora habitats, or*
 - *an adverse effect on drainage patterns, or*
 - *the removal or disturbance of remnant riparian vegetation, and*
- *the development will not cause congestion or generate conflict between people using open space areas or the waterway, and*
- *opportunities to provide continuous public access along the foreshore and to the waterway will not be compromised, and*
- *any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land on which the development is to be carried out and of surrounding land will be maintained, and*
- *in the case of development for the alteration or rebuilding of an existing building wholly or partly in the foreshore area, the alteration or rebuilding will not have an adverse impact on the amenity or aesthetic appearance of the foreshore, and*
- *sea level rise, coastal erosion and recession, or change of flooding patterns as a result of climate change have been considered.*

Comment:

The proposed modified development is consistent with the objectives of the C3 Environmental Management zone. The appearance of the proposed modified development is compatible with the surrounding area. The proposed modified development will not cause environmental harm in relation to pollution, siltation, surrounding uses, marine habitat, wetland areas, flora or fauna habitats, drainage patterns or remnant riparian vegetation. The proposed modified development will not cause congestion or generate conflict between people using the adjacent open space or waterway. The proposed modified development retains public access along the foreshore. The proposed modified development will not result in adverse impacts to any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land. The proposed modified development will not have an adverse impact on the amenity or aesthetic appearance of the foreshore. The proposed modified development will not impact upon sea level rise, coastal erosion or recession, or change flooding patterns.

In deciding whether to grant consent for development in the foreshore area, the consent authority must consider whether and to what extent the development would encourage the following:

- *continuous public access to and along the foreshore through or adjacent to the proposed development,*
- *public access to link with existing or proposed open space,*
- *public access to be secured by appropriate covenants, agreements or other instruments*

- registered on the title to land,
- public access to be located above mean high water mark,
- the reinforcing of the foreshore character and respect for existing environmental conditions.

Comment:

The proposed modified development will not alter the ability of the public's access to and along the foreshore. The proposed modified development does not impact upon any public access. The proposed modified development is acceptable in relation to the foreshore character and the existing environmental conditions.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
Front building line	6.5m (South)	>60m	unaltered	Yes
Rear building line	Foreshore Building Line (North)	Below Foreshore Building Line	Below Foreshore Building Line	No
Side building line	2.5m (West)	15.8m	12.5m	Yes
	1m (East)	1.08m	unaltered	Yes
Building envelope	3.5m (West)	Within envelope	Within envelope	Yes
	3.5m (East)	Within envelope	Within envelope	Yes
Landscaped area	Maximum Area Not Landscaped (230m ²)	242.3m ²	unaltered	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.8 Lower Western Foreshores and Scotland Island Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.7 Estuarine Hazard - Low density residential	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B4.16 Seagrass Conservation	Yes	Yes
B4.19 Estuarine Habitat	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	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
C1.23 Eaves	Yes	Yes
D8.1 Character as viewed from a public place	Yes	Yes
D8.2 Scenic protection - General	Yes	Yes
D8.3 Building colours and materials	Yes	Yes
D8.5 Front building line	Yes	Yes
D8.6 Side and rear building line	No	Yes
D8.13 Stormwater overflow	Yes	Yes
D8.14 Parking management	Yes	Yes
D8.15 Site disturbance	Yes	Yes
D15.12 Development seaward of mean high water mark	Yes	Yes

Detailed Assessment

D8.6 Side and rear building line

The proposed rear setback is consistent with the existing dwelling house that is located below the Foreshore Building Line. A detailed assessment has been conducted under Clause 7.8 Limited development on foreshore area of Pittwater Local Environmental Plan 2014 contained within this report. Therefore, no further assessment is required under Clause D8.6 Side and rear building line of Pittwater 21 Development Control Plan, as the Foreshore Building Line takes precedence over this control.

D15.12 Development seaward of mean high water mark

The proposed modification includes the replacement of the existing windows on the first floor plan that are located below the Medium High Water Mark (MHWM), and the alteration of the first floor roof pitch whereby a portion of the roof is located below MHWM.

The applicant has provide consent from the Department of Planning and Environment (email dated 20 December 2022) in relation to the proposed modified works. This consent has been included in the recommended Condition 1.

Notwithstanding, the proposal has been assessed against the outcomes of the control, and in this instance the proposal is supportable.

Merit consideration

- ***To ensure minimal adverse impact on the water quality hydrodynamics and estuarine habitat of Pittwater.***

Comment:

The proposal, as modified will ensure there is minimal adverse impact on the water quality hydrodynamics and estuarine habitat of Pittwater.

- ***To ensure new buildings are not susceptible to flooding.***

Comment:

The proposed modified works are located well above the ground level, and as such is not susceptible to flooding.

- ***To ensure public access is maintained and provided for along the foreshore.***

Comment:

The proposal, as modified will not impact upon the existing public access along the foreshore.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

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

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any

unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

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

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

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

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2022/0726 for Modification of Development Consent DA2022/1527 granted for alterations and additions to a dwelling house on land at Lot 1 DP 1132852,18 - 20 Sturdee Lane, LOVETT BAY, subject to the conditions printed below:

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

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

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Location, Site and Site Analysis Plan - DA-01, Rev A	1 December 2022	James de Soyres & Associates
Proposed House Ground Floor Plan - DA-10, Rev A	1 December 2022	James de Soyres & Associates
Proposed House First Floor Plan - DA-12, Rev A	1 December 2022	James de Soyres & Associates
Proposed House Roof and Second Floor Plan - DA-14, Rev A	1 December 2022	James de Soyres & Associates
Proposed Roof Plan - DA-15, Rev A	1 December 2022	James de Soyres & Associates
North Elevation from Pittwater - DA-20, Rev A	1 December 2022	James de Soyres & Associates
South Elevation - DA-21, Rev A	1 December 2022	James de Soyres & Associates
West Elevation - DA-22, Rev A	1 December 2022	James de Soyres & Associates
East Elevation - DA-23, Rev A	1 December 2022	James de Soyres & Associates
Section A-A - DA-30, Rev A	1 December 2022	James de Soyres & Associates

Section B-B - DA-31, Rev A	1 December 2022	James de Soyres & Associates
Section X-X - DA-32, Rev A	1 December 2022	James de Soyres & Associates

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Arborist Report - Addendum	16 December 2022	Bluegum Tree Care and Consultancy
BASIX Certificate (No.A404869_04)	21 December 2022	James de Soyres & Associates Pty Ltd
Bushfire Report	21 December 2022	Bushfire Planning Services Pty Ltd
Crown Land Consent - Email	20 December 2022	Crown Lands
Geotechnical Assessment Cover Letter	14 December 2022	Crozier Geotechnical Consultants
Photomontage and Exterior Finishes Schedule - DA-24, Rev A	1 December 2022	James de Soyres & Associates

b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

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

B. Add Condition 7A - Adherence to Natural Environment Consent Conditions

All biodiversity-related conditions of consent under previous development applications are to be adhered to, including DA2022/1527, unless amended by these biodiversity-related conditions of consent.

Reason: To protect biodiversity values.

C. Modify Condition 12 - Project Arborist to read as follows:

a) A Project Arborist, with minimum AQF Level 5 in arboriculture, shall be engaged to provide tree protection measures in accordance with the recommendations of the Arboricultural Impact Assessment dated September 2021 prepared by Bluegum Treecare and Consultancy, the Addendum to the Arboricultural Impact Assessment dated 16 December 2022 prepared by Bluegum Treecare and Consultancy and Australian Standard 4970-2009 Protection of Trees on Development Sites. The Project Arborist is to specify and oversee all tree protection measures such as tree protection fencing, trunk and branch protection and ground protection.

b) The Project Arborist is to supervise all demolition, excavation and construction works near all trees to be retained including construction methods near the existing trees to protect tree roots, trunks, branches and canopy. Where required, manual excavation is to occur ensuring no tree root at or >25mm (Ø) is damaged by works unless approved by the Project Arborist.

c) Existing ground levels shall be maintained within the tree protection zone of trees to be retained unless authorised by the Project Arborist.

d) The Project Arborist shall be in attendance and supervise all works as nominated in the Arboricultural

Impact Assessment dated September 2021 prepared by Bluegum Treecare and Consultancy and the Addendum to the Arboricultural Impact Assessment dated 16 December 2022 prepared by Bluegum Treecare and Consultancy.

e) All tree protection measures specified must:

- i) be in place before work commences on the site, and
- ii) be maintained in good condition during the construction period, and
- iii) remain in place for the duration of the construction works.

f) The Project Arborist shall provide certification to the Principal Certifier that all recommendations listed for the protection of the existing tree(s) have been carried out satisfactorily to ensure no impact to the health of the tree(s). Photographic documentation of the condition of all trees to be retained shall be recorded including at commencement, during the works and at completion.

Note: i) A separate permit or development consent may be required if the branches or roots of a protected tree on the site or on an adjoining site are required to be pruned or removed.

ii) Any potential impact to trees as assessed by the Project Arborist will require redesign of any approved component to ensure existing trees upon the subject site and adjoining properties are preserved and shall be the subject of a modification application where applicable.

Reason: Tree protection.

D. Modify Condition 15 - Tree and Vegetation Protection to read as follows:

a) Existing trees and vegetation shall be retained and protected including:

- i) all trees and vegetation within the site, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
- ii) all trees and vegetation located on adjoining properties,
- iii) all road reserve trees and vegetation.

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with the Arboricultural Impact Assessment dated September 2021 prepared by Bluegum Treecare and Consultancy, the Addendum to the Arboricultural Impact Assessment dated 16 December 2022 prepared by Bluegum Treecare and Consultancy, and Australian Standard 4970-2009 Protection of Trees on Development Sites including the provision of temporary fencing to protect existing trees within 5 metres of development,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained unless authorised by the Project Arborist,
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with the Project Arborist,
- iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by the Project Arborist on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone without consultation with the Project Arborist including advice on root protection measures,
- vii) should either or all of v), vi) and vii) occur during site establishment and construction works, the Project Arborist shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Principal Certifier,
- viii) any temporary access to or location of scaffolding within the tree protection zone of a protected tree

or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,

ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,

x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy and shall be in accordance with Australian Standard

4373-2007 Pruning of Amenity Trees,

xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Principal Certifier must ensure that:

c) The activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites do not occur within the tree protection zone of any tree and any temporary access to or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained on the site during the construction is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

Note: All street trees within the road verge and trees within private property are protected under Northern Beaches Council development control plans except where Council's written consent for removal has been obtained. The felling, lopping, topping, ringbarking or removal of any tree(s) is prohibited.

Reason: Tree and vegetation protection.

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

Signed



Stephanie Gelder, Planner

The application is determined on 27/01/2023, under the delegated authority of:



Adam Richardson, Manager Development Assessments