

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2024/0157
Responsible Officer:	Olivia Ramage
Land to be developed (Address):	Lot 2 DP 584675, 5 Northview Road PALM BEACH NSW 2108
Proposed Development:	Modification of Development Consent DA2021/0009 granted for alterations and additions to a dwelling house
Zoning:	C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Geoffrey George Hastings Ainsworth Johanna Catherine Featherstone
Applicant:	Geoffrey George Hastings Ainsworth
Application Lodged:	29/04/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	03/05/2024 to 17/05/2024
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

The modification proposes the following amendments:

- Modification to basement (undercroft level) store room to create a cabana-like space.
- Modification to the northern side boundary retaining wall to minimise impact on the registered Aboriginal site.

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 - 5.10 Heritage conservation

Pittwater 21 Development Control Plan - B1.2 Heritage Conservation - Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites

Pittwater 21 Development Control Plan - B1.4 Aboriginal Heritage Significance

Pittwater 21 Development Control Plan - D12.6 Side and rear building line

SITE DESCRIPTION

Property Description:	Lot 2 DP 584675 , 5 Northview Road PALM BEACH NSW 2108
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the western side of Northview Road.</p> <p>The site is irregular in shape with a frontage of 17.2m along Northview Road and a depth of 48.06m. The site has a surveyed area of 1320m².</p> <p>The site is located within the C4 Environmental Living Zone under the PLEP 2014. The site is currently occupied by a two storey dwelling with an undercroft area.</p> <p>The site has a steep fall from from the eastern frontage down towards the western rear of the site.</p> <p>The site contains a number of significant canopy trees in the western rear yard and is densely vegetated in this portion.</p> <p>Detailed Description of Adjoining/Surrounding Development</p>

Adjoining and surrounding development is characterised by residential dwellings of varying sizes and styles.

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:

- **N0155/11** - Development application for Alterations and additions to a dwelling house and swimming pool - Approved by Pittwater Council on 14 December 2012. A construction certificate and notice of commencement was issued on 3 April 2013 for the above mentioned DA. However, it appears that the works were not undertaken.
- **DA2021/0009** - Development application for Alterations and additions to a dwelling house. Approved 16 March 2021.
- **Mod2023/0356** - Modification of Development Consent DA2021/0009 granted for alterations and additions to a dwelling house. A Request for Further Information letter was sent to the applicant raising concerns that the application was not substantially the same development due to the proposed pool. An Arborist Report was also requested by Council's Landscape and Biodiversity officers. Lastly, the Aboriginal Heritage Office noted that a registered Aboriginal site is recorded adjacent to the site requesting further information including a Conservation Management Plan endorsed by the Metropolitan Local Aboriginal Council. This application was subsequently withdrawn on 31 August 2023.

Application History

As mentioned above, during the assessment of Mod2023/0356, it was noted that a registered Aboriginal site is recorded adjacent to the site in proximity to the proposed works that was not previously identified at the time consent was granted under DA2021/0009. Notwithstanding, Condition 14 of this consent requires that if *any Aboriginal sites be uncovered during the carrying out of works, those works are to cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council are to be contacted.* Mod2023/0356 was subsequently

withdrawn to address the Aboriginal Heritage site and the remaining matters within the RFI letter.

As a result, Mod2024/0157 was now lodged addressing the matters within the RFI letter and included the submission of an Aboriginal Heritage Site Conservation Management Plan with endorsement from the Metropolitan Local Aboriginal Land Council. The works proposed under this application include amendments to the previously approved retaining wall to minimise the impact on the registered Aboriginal registered site.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2021/0009, 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 modification proposes changes to the approved northern retaining wall to minimise impact on the registered Aboriginal site. As such, this will result in an improved environmental impact. • The modification also proposes amendments to the basement store room to create a cabana area which is located internally within the existing dwelling and will not generate additional environmental impacts.
(b) it is satisfied that the development to which the consent as modified relates is substantially the same	The consent authority can be satisfied that the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted under DA2021/0009 for the following reasons:

Section 4.55(1A) - Other Modifications	Comments
development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	<ul style="list-style-type: none"> The proposal remains for alterations and additions to a dwelling house. The proposal largely maintains the height, setbacks and scale of the previously approved development. As such, the built form of the development remains substantially the same.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021, and the Northern Beaches Community Participation Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	No submissions were received in relation to this application.

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55 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	There are no current draft environmental planning instruments.

Section 4.15 'Matters for Consideration'	Comments
environmental planning instrument	
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)(iiiia) – 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>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 - 2001: The Demolition of Structures. This clause is not relevant to this application.</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 development). 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 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 'Matters for Consideration'	Comments
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 application has been publicly exhibited from 03/05/2024 to 17/05/2024 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	<p>The application is for modification of development consent DA2021/0009 as described in reports and as illustrated on plans. The modification proposal modification involves changes to the basement undercroft level spaces and modifications to the previously approved northern retaining wall and balcony column structure.</p> <p>A Arboricultural Impact Assessment (AIA) is submitted with the modification application and provides recommendations. It is noted that no AIA was submitted during the development application stage, however Landscape Referral in assessment required the following conditions as part of the development consent approval to ensure tree protection: 6. Pier Footing Design Near Trees to be Retained; 12. Project Arborist; 15. Tree and Vegetation Protection; and 17. Condition of Retained Vegetation - Project Arborist, and it is considered that these conditions satisfy for protection of the existing trees.</p> <p>Landscape Referral, under this modification application, shall modify condition 12 to incorporate the recommendations of the AIA report.</p>
NECC (Bushland and Biodiversity)	The comments in this referral relate to the following applicable controls and provisions:

Internal Referral Body	Comments
	<ul style="list-style-type: none"> • Biodiversity Conservation Act 2016 (BC Act) • Pittwater Local Environmental Plan (PLEP) - 7.6 Biodiversity Protection • Pittwater Development Control Plan (PDCP) - B4.17 Littoral Rainforest - Endangered Ecological Community <p>The proposal would take place in areas that have been previously disturbed and would not require the removal of any prescribed vegetation or trees.</p> <p>The development is designed, sited and will be managed to avoid any significant adverse environmental impact.</p>

External Referral Body	Comments
Aboriginal Heritage Office	<p>Reference is made to the proposed development at the above area and Aboriginal heritage.</p> <p>An Aboriginal Heritage Site Conservation Management Plan was completed by Dominic Steele Consulting Archaeology in March 2024.</p> <p>The Aboriginal Heritage Office agrees with the recommendations outlined in the report:</p> <p><i>Alterations and additions at No 5 Northview Road (DA 2021/0009)</i></p> <p>1 The approved alterations and additions at No 5 Northview Road (DA 2021/0009) will not result in harm occurring to AHIMS ID 2995 and an Aboriginal Heritage Impact Permit (AHIP) approval issued under the National Parks and Wildlife Act (1974) is not required for the development.</p> <p><i>Recommended actions for implementation before construction begins</i></p> <p>1a) AHIMS ID 2995 should be protected by fencing that is erected in locations determined by the MLALC and project builder prior to the start of future construction works. Fencing will provide protection for the rock fabric of the shelter and clearly demarcate site access and exit points and 'no-go zones.'</p> <p>1b) The interior floor space and walls within the overhang should be protected as appropriate by surface covering along with ground and root protection around the base of the existing Avocado tree.</p>

External Referral Body	Comments
	<p>1c) An Aboriginal heritage induction should be provided to contractors and managers by the MLALC and a suitably qualified archaeologist prior to commencement of construction to give understanding of the cultural and scientific significance of AHIMS ID 2995, precautions to take to avoid accidental damage to the site, and processes and procedures to follow if unexpected heritage finds are discovered.</p> <p><i>Recommended actions for implementation during future construction phases</i></p> <p>1d) The Proponent engage a representative of MLALC to monitor the construction works for the alterations and additions on the northern side of house at No 5 Northview Road.</p> <p>1e) The Proponent engage a suitably qualified archaeologist to record site works on the northern side of the house at No 5 Northview Road in the vicinity of AHIMS ID 2995 to document the change in context and setting at the Aboriginal heritage site brought about by this historical phase of development.</p> <p><i>Recommended actions for implementation after the completion of development works</i></p> <p>1f) An updated site recording for AHIMS ID 2995 is submitted to the Aboriginal Heritage Information Management System sites register at the completion of development works.</p> <p><i>Future conservation actions at AHIMS ID 2995</i></p> <p>2. To ensure long term conservation of AHIMS ID 2995 we recommend the surface rocks at the site should be removed and the floor of the shelter protected by a low impact and reversible covering. An Aboriginal Cultural Heritage Assessment Report (ACHAR) should be prepared to support an application for an AHIP for this these activities that is prepared in accordance with current assessment Aboriginal community consultation requirements.</p> <p><i>Future replacement of the sandstone retaining wall at AHIMS ID 2995</i></p> <p>3. If the sandstone block retaining wall that is located in front of the rock shelter wall is remediated or replaced the works will require an AHIP because the action may disturb/harm Aboriginal objects that may be contained within the deposits that are below the grass and retained by the wall. The design of the works to demolish and construct the new wall should be developed to minimise potential</p>

External Referral Body	Comments
	<p>minor harm that could result from the works that would have a long-term archaeological conservation benefit.</p> <p>The Aboriginal Heritage Office agrees with the conditions outlined by Metropolitan Local Aboriginal Land Council:</p> <ul style="list-style-type: none"> · When monitoring or future works is to occur, we request that a suitably qualified Archaeologist to be present as well as a representative/s of the Cultural Heritage team from Metropolitan Local Aboriginal Land Council. · All monitoring works should be overseen by both a qualified archaeologist AND a representative of Metropolitan Local Aboriginal Land Council is consulted on the archaeologist/consultancy engaged for the works.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

Division 4 Coastal use area

2.11 Development on land within the coastal use area

- 1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:
 - a) has considered whether the proposed development is likely to cause an adverse impact on the following:

- i) existing, safe access to and along the foreshore, beach, headland or rock
 - ii) platform for members of the public, including persons with a disability,
 - iii) overshadowing, wind funnelling and the loss of views from public places to
 - iv) foreshores,
 - v) the visual amenity and scenic qualities of the coast, including coastal headlands,
- Aboriginal cultural heritage, practices and places,
- cultural and built environment heritage, and
- b) is satisfied that:
 - i) the development is designed, sited and will be managed to avoid an
 - ii) adverse 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 proposed development is designed, sited and will be managed to avoid adverse impacts on the coastal use area.

Division 5 General

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

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

Comment:

The proposed development is not considered likely to cause increased risk of coastal hazards.

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:

The proposal has been reviewed against all relevant legislation and policies.

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

Chapter 4 – Remediation of Land

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

risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

Pittwater Local Environmental Plan 2014

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	10m (Pursuant to Clause 4.3(2D))	7.2m-9.7m	Unaltered	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
7.10 Essential services	Yes

Detailed Assessment

5.10 Heritage conservation

(8) Aboriginal places of heritage significance

The consent authority must, before granting consent under this clause to the carrying out of development in an Aboriginal place of heritage significance:

(a) consider the effect of the proposed development on the heritage significance of the place and any Aboriginal object known or reasonably likely to be located at the place by means of an adequate investigation and assessment (which may involve consideration of a heritage impact statement), and

(b) notify the local Aboriginal communities, in writing or in such other manner as may be appropriate, about the application and take into consideration any response received within 28 days after the notice is sent.

Comment:

The proposal is supported by an Aboriginal Heritage Site Conservation Management Plan prepared by Dominic Steele Consulting Archaeology. The report has been endorsed by the Metropolitan Local Aboriginal Land Council. Additionally, the proposal has been reviewed by the Aboriginal Heritage Office deeming it acceptable subject to the recommended conditions. As such, Council can be satisfied that the above matters have been considered.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
Front building line	6.5m	7.2m	Retaining Wall: 6.7m	Yes
Rear building line	6.5m	17m	Unaltered	Yes
Side building line	North - 2.5m	1.9m	Retaining Wall: 3.5m	Yes
	South - 1m	0.8m	Unaltered	No (As approved)
Building envelope	3.5m	Unchanged	Unaltered	Yes
	3.5m	Unchanged	Unaltered	Yes
Landscaped area	60%	65% (856m ²)	Unaltered	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach Locality	Yes	Yes
B1.2 Heritage Conservation - Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.17 Littoral Rainforest - Endangered Ecological Community	Yes	Yes
B5.15 Stormwater	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	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

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D12.1 Character as viewed from a public place	Yes	Yes
D12.3 Building colours and materials	Yes	Yes
D12.5 Front building line	Yes	Yes
D12.6 Side and rear building line	No	Yes
D12.8 Building envelope	Yes	Yes
D12.10 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D12.12 Fences - Flora and Fauna Conservation Areas	Yes	Yes
D12.13 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D12.14 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

B1.2 Heritage Conservation - Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites

This control requires the following:

Any development application involving work likely to impact the heritage significance of a heritage item, heritage conservation area, archaeological site or potential archaeological site is to be accompanied by a Statement of Heritage Impact prepared by an appropriately qualified heritage professional. Guidance on preparing a Heritage Impact Statement (Statement of Heritage Impact) is available at NSW Office of Environment & Heritage in the NSW Heritage Manual or superseding publication.

Developments in the vicinity of a heritage item, heritage conservation area, archaeological site or potential archaeological site are to be designed to respect and complement the heritage significance in terms of the building envelope, proportions, materials, colours and finishes, and building alignment.

Developments in the vicinity of a heritage item, heritage conservation area, archaeological site or potential archaeological site are to minimise the impact on the heritage significance by providing an adequate buffer zone, and maintaining and respecting significant views to and from the heritage item, heritage conservation area, archaeological site or potential archaeological site.

Comment:

The proposal is supported by an Aboriginal Heritage Site Conservation Management Plan prepared by Dominic Steele Consulting Archaeology. The report has been endorsed by the Metropolitan Local Aboriginal Land Council. Additionally, the proposal has been reviewed by the Aboriginal Heritage Office deeming it acceptable subject to the recommended conditions. As such, the proposal complies

with the requirements of this clause.

B1.4 Aboriginal Heritage Significance

This control requires the following:

If a property, the subject of a development application is identified as possibly meeting any of the criteria for being a potential Aboriginal place or containing an Aboriginal object then additional independent information on the potential heritage significance may be requested.

If a property, the subject of a development application, is in the vicinity of an identified or potential Aboriginal place of heritage significance or Aboriginal object then additional independent information on the potential heritage significance may be requested.

The additional information requested may take the form of a report prepared by a suitably qualified person as defined by the NSW Office of Environment and Heritage, as well as consultation with the NSW Office of Environment and Heritage and appropriate Aboriginal groups.

If an Aboriginal site or relic is discovered, it must be reported to the NSW Office of Environment and Heritage and all works stopped.

Development must conserve the significance of any Aboriginal place of heritage significance or Aboriginal object.

Comment:

During the assessment of Mod2023/0356, it was noted that a registered Aboriginal site is recorded adjacent to the site in proximity to the proposed works that was not previously identified at the time consent was granted under DA2021/0009. As such, further information was requested including a conservation management plan endorsed by the Metropolitan Local Aboriginal Land Council. Mod2023/0356 was subsequently withdrawn to address the Aboriginal Heritage site.

Mod2024/0157 was now lodged addressing the matters within the RFI letter and included the submission of an Aboriginal Heritage Site Conservation Management Plan with endorsement from the Metropolitan Local Aboriginal Land Council. The works proposed under this application include amendments to the previously approved retaining wall to minimise the impact on the registered Aboriginal registered site. The proposal has also been reviewed by the Aboriginal Heritage Office agreeing with the recommendations of the Aboriginal Heritage Site Conservation Management Plan and the Metropolitan Local Aboriginal Land Council. As such, the proposal is considered to satisfy this clause subject to the recommended conditions.

D12.6 Side and rear building line

No changes are proposed to the previously approved side and rear building lines.

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. Mod2024/0157 for Modification of Development Consent DA2021/0009 granted for alterations and additions to a dwelling house on land at Lot 2 DP 584675,5 Northview Road, PALM BEACH, 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-423813 Mod2024/0157	The date of this notice of determination	<p>Modification of Development Consent DA2021/0009 granted for alterations and additions to a dwelling house.</p> <p>Add Condition No.1A - Modification of Consent - Approved Plans and supporting documentation</p> <p>Add Condition No.1B - Compliance with Other Department, Authority or Service Requirements</p> <p>Modify Condition No.12 - Project Arborist</p> <p>Add Condition No.16A - Wildlife Protection</p> <p>Add Condition No.16B - Protection of Habitat Features</p> <p>Add Condition No.23 - Protection of Habitat Features</p>

Modified conditions

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

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
2004-001	C	Site Analysis and Landscape Plan	Brooke Aitken Design	13 March 2024
2004-102	B	Existing & Demo Lowerground Floor Plan	Brooke Aitken Design	13 March 2024
2004-103	B	Existing & Demo Basement Floor Plan	Brooke Aitken Design	13 March 2024
2004-106	B	Existing & Demo Elevation C	Brooke Aitken Design	13 March 2024
2004-107	B	Existing & Demo Elevation D	Brooke Aitken Design	13 March 2024
2004-109	B	Existing & Demo Section 2	Brooke Aitken Design	13 March 2024
2004-202	B	Proposed Lowerground Floor Plan	Brooke Aitken Design	13 March 2024
2004-203	B	Proposed Basement Floor Plan	Brooke Aitken Design	13 March 2024
2004-206	B	Proposed Elevation C	Brooke Aitken Design	13 March 2024
2004-207	C	Proposed Elevation D	Brooke Aitken Design	13 March 2024

2004-209	B	Proposed Section 2	Brooke Aitken Design	13 March 2024
External Colours/Finishes	-	Sheet 1	-	Undated
External Colours/Finishes	-	Sheet 2	-	Undated

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Aboriginal Heritage Site Conservation Management Plan	-	Dominic Steele Consulting Archaeology	March 2024
Arboricultural Impact Assessment Report	-	Seasoned Tree Consulting	28 March 2024

In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency with the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

B. Add Condition No.1B - Compliance with Other Department, Authority or Service Requirements to read as follows:

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
Aboriginal Heritage Office	AHO Referral Response	8 May 2024
Metropolitan Local Aboriginal Land Council	Response to Aboriginal Site Conservation Report	25 March 2024

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website www.northernbeaches.nsw.gov.au)

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

C. Modify Condition No.12 - Project Arborist to read as follows:

A Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged to provide tree protection measures in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, and the recommendations of the approved Arboricultural Impact Assessment, and in particular: sections 8 Recommendations and Mitigation Strategies; 9 Arboricultural Work Method Statement and Tree Protection Requirements; and 10 Hold Points.

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

All tree protection measures specified must: be in place before work commences on the site; be maintained in good condition during the construction period; and remain in place for the duration of the construction works. The Project Arborist shall provide certification to the Certifying Authority 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; and 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. Add Condition No.16A - Wildlife Protection to read as follows:

If construction activity associated with this development results in injury or displacement of a native mammal, bird, reptile or amphibian, a licensed wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To protect native wildlife.

E. Add Condition No.16B - Protection of Habitat Features to read as follows:

All natural landscape features, including any rock outcrops, native vegetation and/or watercourses, are to remain undisturbed during the construction works, except where affected by necessary works detailed on approved plans.

Reason: To protect wildlife habitat.

F. Add Condition No.23 - Protection of Habitat Features to read as follows:

All natural landscape features, including any rock outcrops, native vegetation, soil and/or watercourses, are to remain undisturbed except where affected by necessary works detailed on approved plans.

Reason: To protect wildlife habitat.

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

Signed



Olivia Ramage, Planner

The application is determined on 20/05/2024, under the delegated authority of:



Adam Richardson, Manager Development Assessments