

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2020/0146
Responsible Officer:	Jordan Davies
Land to be developed (Address):	Lot 1 DP 121833, 13 A Ocean Road PALM BEACH NSW 2108
Proposed Development:	Modification of Development Consent DA2019/0619 granted for construction of a swimming pool and inclinator with associated landscaping
Zoning:	E4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Michele Matthews
Applicant:	Michele Matthews
Application Lodged:	17/04/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	28/04/2020 to 12/05/2020
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

The proposed development consists of modifications to an approved development, DA2019/0617, for the construction of a swimming pool, terrace, deck and incline passenger lift.

The modifications specifically consist of:

1. The pool is reduced length and the pool fence between the pool and terrace is relocated. The spa and the towel lawn locations are swapped. The pool and pool terrace, spa and towel lawn areas are all lifted up 550mm.
2. The plant room and the WC locations are swapped.
3. The inclinator is also proposed to be extended to the ground floor / street level of the existing primary dwelling and the stairs are proposed for removal.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards

Pittwater 21 Development Control Plan - D12.1 Character as viewed from a public place

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

SITE DESCRIPTION

Property Description:	Lot 1 DP 121833 , 13 A Ocean Road PALM BEACH NSW 2108
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the western side of Ocean Road.</p> <p>The site is regular in shape with a frontage of 28m along Ocean Road and a depth of 57m. The site also has a second frontage to Sunrise Road at the top of the site. The site has a surveyed area of 986m².</p> <p>The site is located within the E4 Environmental Living zone and accommodates a two storey dwelling house at the Ocean Road frontage, and a secondary dwelling currently under construction at the top of the site accessed from the Sunrise Road Frontage.</p> <p>The site has a very steep gradient falling from Sunrise Road to Ocean Road. The elevation change is approximately 40m across the site.</p> <p>The understorey vegetation is largely cleared upon the site, with a number of small native trees located at the top and centre of the site along the boundaries. There are a number</p>

of existing sandstone rocks center of the site and an existing retaining wall above an existing shotcrete cliff behind the main dwelling house.

**Detailed Description of
Adjoining/Surrounding Development**

Adjoining and surrounding development is characterised by detached dwelling houses with ancillary development such as pools. The dwellings are sited within the steep sloping land and are surrounded by low to moderate shrubs and trees. Immediately to the north of the property is a two storey dwelling house. Immediately to the south of the property is a two storey and single storey dwelling house.

Map:



SITE HISTORY

NO567/10 Alterations and additions to the dwelling house approved by Pittwater Council on 25/08/11.
 NO328/16 Alterations and additions to the dwelling house and construction of a secondary dwelling and pool was withdrawn on 27/03/2017
 NO373/17 Construction of a secondary dwelling approved by Northern Beaches Council on 3/04/2018.
 Mod2018/0503 Modification of development consent NO373/17 for secondary dwelling approved by Northern Beaches Council on 26/09/2018.
 DA2019/0617 for Construction of a Swimming Pool, Terrace Area and Incline Passenger Lift, approved by Northern Beaches Council on 10/10/2019.

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

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

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	<p>The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2019/0617 for the following reasons:</p> <p>Proposal still involves a pool, terrace, deck and inclinator. The design is slightly modified to suit the needs of the occupants, however is substantially the same development.</p>
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application DA2019/0617 did not require concurrence from the relevant Minister, public authority or approval body.
<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 applications for modification of a development consent, and</p>	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Pittwater Local Environmental Plan 2014 and Pittwater 21 Development Control Plan.

Section 4.55 (2) - Other Modifications	Comments
(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 96 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>the original consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</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

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of 2 submission/s from:

Name:	Address:
Pikes & Verekers Lawyers	DX 521 SYDNEY NSW
Mr Hugh Rodney Cooke	13 Ocean Road PALM BEACH NSW 2108

The following issues were raised in the submissions and each have been addressed below:

- Acoustic impact of the incline passenger lift and after installation, I would expect the Acoustic Consultants to measure the noise to ensure the noise level is as stated by the applicant.
- Please ensure please ensure landscape screening (along southern boundary) is low and not higher than head height to avoid further overshadowing.
- The relocation of the spa will have the effect of replacing what was a soft landscaped, passive recreation element unlikely to be use outside of daylight hours with a permanent structure likely to be a source of noise at all hours of the day and night.
The raised pool terrace will unnecessarily elevate the outdoor entertainment area, increasing noise and light spill into neighbouring properties and requiring higher and more unsightly retaining walls within 1m of the boundary which adjoins our client's property. As a result of the raised terrace level most of the pool will be located above existing ground level.
- The clear objective of the proposed extension of the inclinor is to provide the approved "secondary dwelling" with a convenient means of access to the beach front. Inclinor station 4 is independent of the principal dwelling and would permit access along the southern side of the principal dwelling to Ocean Road.
This proposal confirms our client's fear that the secondary dwelling would be used independently of and not in conjunction with the principal dwelling as required by the definition of "secondary dwelling" under Pittwater Local Environmental Plan 2014.
- The extension of the inclinor will also remove approved landscaping which would have softened the appearance of the pool terrace from the adjoining property to the south.

The matters raised within the submissions are addressed as follows:

- Acoustic impact of the incline passenger lift and after installation, I would expect the Acoustic Consultants to measure the noise to ensure the noise level is as stated by the applicant.*
Comment:
The original development consent DA2019/0619 included a condition that prior to the issue of a Construction Certificate, an acoustic assessment prepared by suitably qualified person shall be provided to the Principle Certifying Authority demonstrating that the noise level from the incline passenger lift will not exceed 5D(b)A above background noise when measured from the nearest property boundary.

This consent condition will be maintained on the development consent as amended and will apply to the new section of incline passenger lift.
- Please ensure please ensure landscape screening (along southern boundary) is low and not higher than head height to avoid further overshadowing.*

Comment:

The proposed modification does not affect the original approved landscape plan as included in the original stamped plans and consent conditions. No additional vegetation is proposed as part of the modification application.

- *The relocation of the spa will have the effect of replacing what was a soft landscaped, passive recreation element unlikely to be use outside of daylight hours with a permanent structure likely to be a source of noise at all hours of the day and night.*

The raised pool terrace will unnecessarily elevate the outdoor entertainment area, increasing noise and light spill into neighbouring properties and requiring higher and more unsightly retaining walls within 1m of the boundary which adjoins our client's property. As a result of the raised terrace level most of the pool will be located above existing ground level.

Comment:

The proposed development has been assessed with regards to the total amount of soft landscaping provided throughout the site and there will be not overall loss in total landscaped area.

The proposed spa location is not immediately adjacent to the residential dwelling upon 18 Sunrise Road and the applicant has provided the following figure showing the proximity (both distance and height) between the spa and dwelling upon 18 Sunrise Road.

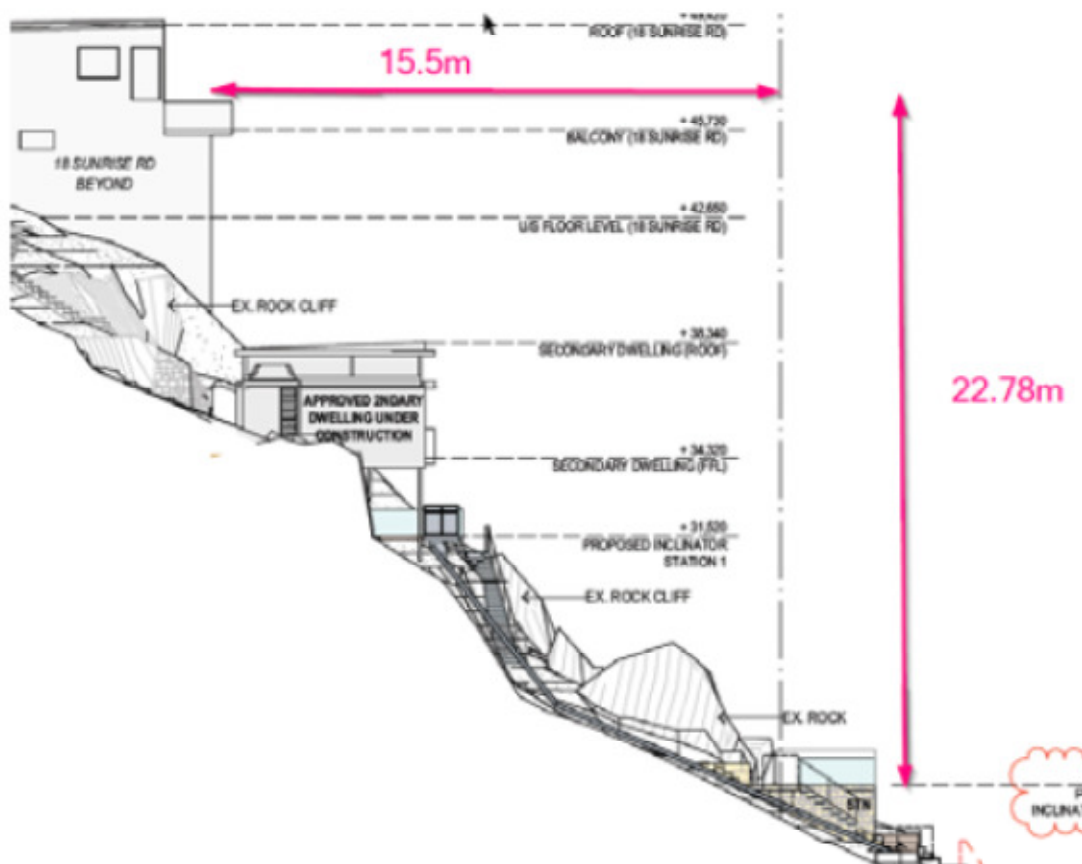


Figure 1 - Diagram provided by applicant showing proximity of the pool/spa area to 18 Sunrise Road.

The proposed amendment to the spa location is not considered to give rise to additional noise impacts due to the amended location which consists of a 2.5m shift to the north of the approved

location. The Spa maintains a compliant 1m side setback in accordance with the DCP. There is no area of usable Private Open Space immediately adjacent to the spa on the neighbouring land which would be directly impacted.

Similarly, due to the substantially elevated nature of the dwelling upon 18 Sunrise Road, a 550mm level difference is not considered to present an unreasonable visual impact given the proposed pool area sits substantially downslope of 18 Sunrise Road.

- *The clear objective of the proposed extension of the inclinator is to provide the approved "secondary dwelling" with a convenient means of access to the beach front. Inclinator station 4 is independent of the principal dwelling and would permit access along the southern side of the principal dwelling to Ocean Road.*

This proposal confirms our client's fear that the secondary dwelling would be used independently of and not in conjunction with the principal dwelling as required by the definition of "secondary dwelling" under Pittwater Local Environmental Plan 2014.

Comment:

The ability for the secondary dwelling to access Ocean Road via the incline passenger lift does not render the secondary dwelling inconsistent with the land use definition under the PLEP 2014. The incline passenger lift replaces the approved stairs as the access point to Ocean Road. The principle dwelling facing Ocean Road has two external access doors for the residents to access the incline passenger lift station No.4 to access the pool and terrace area. The layout of the incline passenger lift still allows for shared use of the incline passenger lift and not the exclusive use by the secondary dwelling.

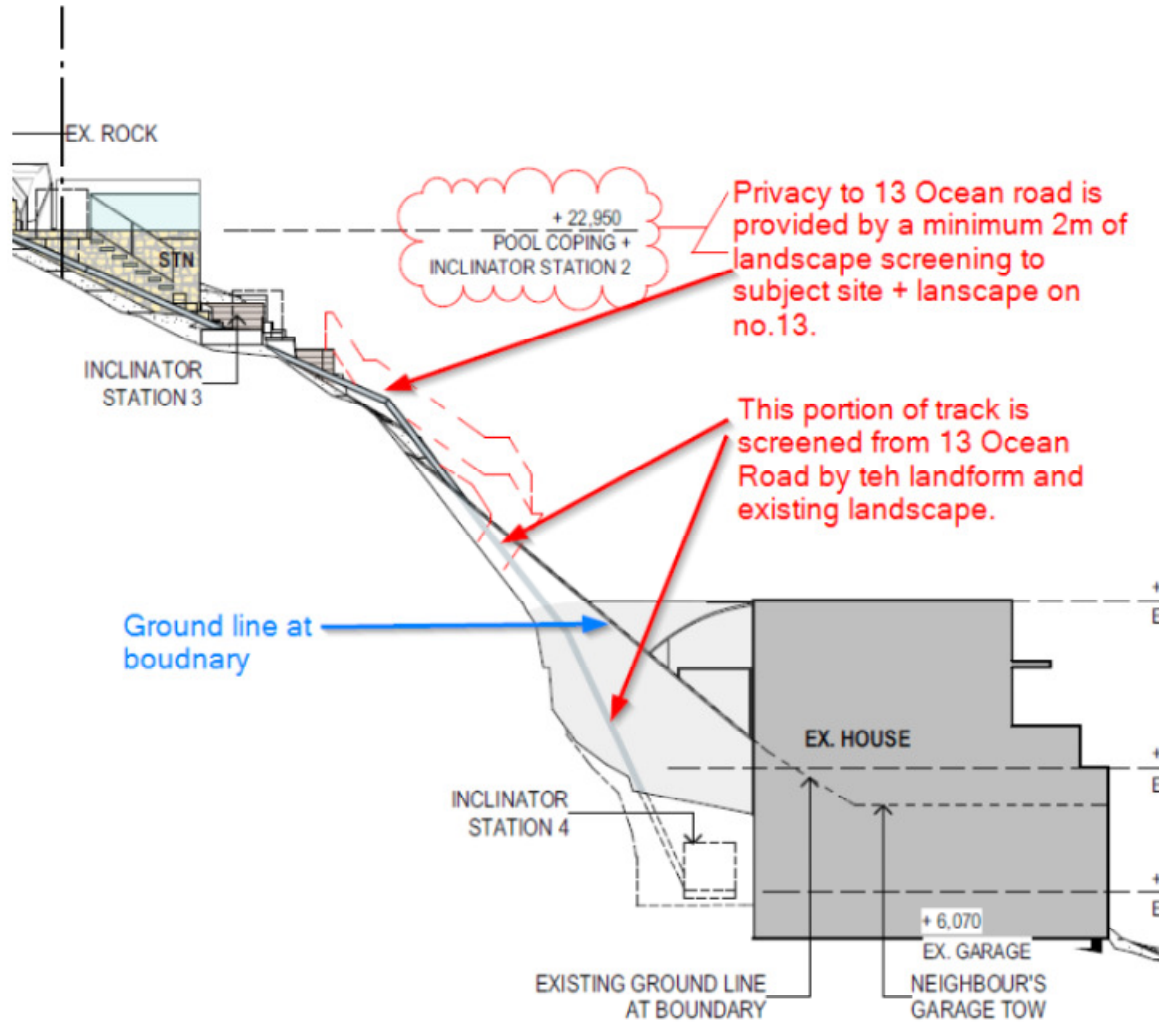
- *The extension of the inclinator will also remove approved landscaping which would have softened the appearance of the pool terrace from the adjoining property to the south.*

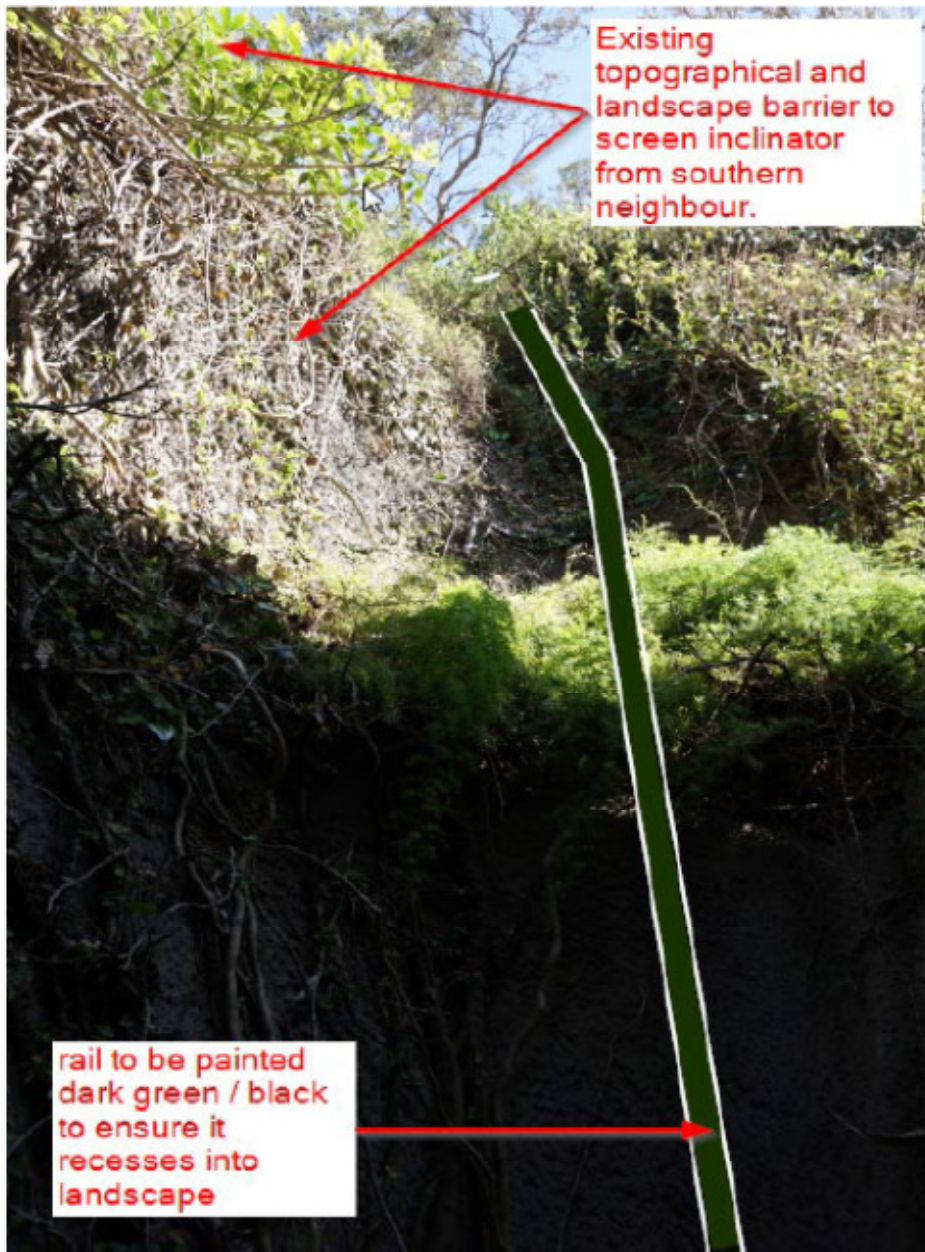
Comment:

The approved landscaping plan can still be implemented with the incline passenger lift extension. The main extension of the incline passenger lift is over the existing cliff face which is not suitable for deep soil landscape planting. The incline passenger lift will maintain landscaping around the southern edge and the applicant has provided a detailed explanation of how the new section will not be visually prominent as viewed from the south as follows:

"The proposed inclinator is able to change gradients of up to 45 degrees with a maximum gradient of 90 degrees. These properties of the proposed inclinator will enable it to closely follow the existing topography of the site and together with the dark colour for the inclinator rail minimise its visual impact from the public domain and prevent it being seen from the neighbouring property.

The extension of the inclinator rail, whilst closer to the house of the southern neighbour will be concealed by both the land form and the existing and proposed vegetation. Refer to images below."





Council is satisfied that that the proposed incline passenger lift extension will not cause additio

REFERRALS

Internal Referral Body	Comments
NECC (Development Engineering)	No Development Engineering objection to the proposed modification with no conditions.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

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

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

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

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

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 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 Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

SEPP (Infrastructure) 2007

Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

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

Comment:

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

SEPP (Coastal Management) 2018

The site is subject to SEPP Coastal Management (2018). Accordingly, an assessment under the SEPP has been carried out as follows:

10 Development on certain land within coastal wetlands and littoral rainforests area

- (1) *The following may be carried out on land identified as “coastal wetlands” or “littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map only with development consent:*
 - (a) *the clearing of native vegetation within the meaning of Part 5A of the Local Land Services Act 2013,*

- (b) *the harm of marine vegetation within the meaning of Division 4 of Part 7 of the Fisheries Management Act 1994,*
- (c) *the carrying out of any of the following:*
 - (i) *earthworks (including the depositing of material on land),*
 - (ii) *constructing a levee,*
 - (iii) *draining the land,*
 - (iv) *environmental protection works,*
- (d) *any other development.*

Comment:

The land is not within coastal wetlands or littoral rainforest area.

11 Development on land in proximity to coastal wetlands or littoral rainforest

- (1) *Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:*
 - (a) *the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or*
 - (b) *the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.*

Comment:

Not within proximity to coastal wetlands or littoral rainforest.

12 Development on land within the coastal vulnerability area

Development consent must not be granted to development on land that is within the area identified as “coastal vulnerability area” on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:

- (a) *if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and*
- (b) *the proposed development:*
 - (i) *is not likely to alter coastal processes to the detriment of the natural environment or other land, and*
 - (ii) *is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and*
 - (iii) *incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and*
- (c) *measures are in place to ensure that there are appropriate*

*responses
to, and
management
of,
anticipated
coastal
processes
and
current
and
future
coastal
hazards.*

Comment:

Not within a coastal vulnerability area.

13 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 proposal does not limit access to the foreshore area or have impact on the coastal environment within regards to biology or hydrology.

- (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 subclause (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 proposal avoids adverse impact to the issues cited in clause (1).

14 Development on land within the coastal use area

(1)

- (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) overshadowing, wind funnelling and the loss of views from public places to foreshores,
 - (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,
 - (iv) Aboriginal cultural heritage, practices and places,
 - (v) cultural and built environment heritage, and
- (b) is satisfied that:
 - (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or
 - (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - (iii) 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 proposal does not limit access, overshadow or cause loss of views from a public place to the foreshore. The proposal is located upon the escarpment, however is not considered to have an unreasonable impact upon the visual quality of the scenic landscape as the proposed pool and works are low scale compared to the surrounding dwellings upon the escarpment, set within the slope of the land and will have sufficient native landscape planting surrounding the built form to blend into the landscape. The use of natural materials are used as well as dark tones to reduce the visual impact of the development. The incline passenger lift track is proposed to be finished in dark colours to blend into the vegetation behind. The incline passenger lift track follows the topography of the land as close as practical to limit the visual impact. The proposal is not located within a heritage conservation area or identified as heritage item (for which there are a number within the locality).

As such, it is considered that the application complies with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

15 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 will not increase coastal hazards.

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

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	2.8m from existing ground level	3.3m from existing ground level	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
7.2 Earthworks	Yes
7.5 Coastal risk planning	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

7.7 Geotechnical hazards

Under Clause 7.7 Geotechnical Hazards, before determining a development application for development on land to which this clause applies, the consent authority must consider the following matters to decide whether or not the development takes into account all geotechnical risks:

- (a) site layout, including access,
- (b) the development's design and construction methods,
- (c) the amount of cut and fill that will be required for the development,
- (d) waste water management, stormwater and drainage across the land,
- (e) the geotechnical constraints of the site,
- (f) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

Comment:

The proposed development is supported by a geotechnical risk assessment, architectural plans, an excavation plan, and stormwater management plans that demonstrate all geotechnical risks have been taken into account. The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent.

Development consent must not be granted to development on land to which this clause applies unless:

- (a) the consent authority is satisfied that the development will appropriately manage waste water, stormwater and drainage across the land so as not to affect the rate, volume and quality of water leaving the land, and

Comment:

The proposed development is supported by a geotechnical risk assessment and stormwater management plans that demonstrate waste water, stormwater and drainage are suitable managed on site. The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent.

(b) the consent authority is satisfied that:

(i) the development is designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development, or

(ii) if that risk or impact cannot be reasonably avoided - the development is designed, sited and will be managed to minimise that risk or impact, or

(iii) if that risk or impact cannot be minimised - the development will be managed to mitigate that risk or impact.

Comment:

The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent. As such, Council can be satisfied that the proposed development has been designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
Front building line	6.5m	20.5m	unaltered	Yes
Rear building line	6.5m	16.3m	unaltered	Yes
Side building line	2.5m	2.5m - South	unaltered	Yes
	1m	1m - North	unaltered	Yes
Building envelope	3.5m	Within	Within	Yes
	3.5m	Within	Within	Yes
Landscaped area	60%	50.2%	50.2% Modification involves 0.7sqm increase in landscaped area	No - However slightly increased from original
Incline Passenger Lift Setback	2.5m to track 2m to outside of carriage	2.5m track 2m to outside of carriage	2.5m track 2m to outside of carriage	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
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B4.3 Flora and Fauna Habitat Enhancement Category 2 Land	Yes	Yes
B5.1 Water Management Plan	Yes	Yes
B5.8 Stormwater Management - Water Quality - Low Density Residential	Yes	Yes
B5.14 Stormwater Drainage Easements (Public Stormwater Drainage System)	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.2 Construction and Demolition - Erosion and Sediment Management	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	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
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.14 Separately Accessible Structures	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
C5.1 Landscaping	Yes	Yes
D12.1 Character as viewed from a public place	Yes	Yes
D12.3 Building colours and materials	Yes	Yes
D12.5 Front building line	Yes	Yes
D12.6 Side and rear building line	Yes	Yes
D12.8 Building envelope	Yes	Yes
D12.10 Landscaped Area - Environmentally Sensitive Land	No	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

D12.1 Character as viewed from a public place

The proposed changes as part of the modification application seek to amend the design of the pool and terrace area, as well as extension of the incline passenger lift along the southern boundary of the

property.

The height of the pool terrace and associated retaining wall is raised 550mm as part of the proposed development. The applicant has advised that this change is to limit the amount of excavation required into the site. The original submitted landscape plan included a range of locally native medium height canopy trees and vegetation screening around the built form to soften the appearance as viewed from the east, north and south of the site. The amended design does not impact the ability for the landscaping to be implemented, as shown in the original approved landscape plan. The proposed height of the landscaping is capable of softening the additional 550mm of height resulting from the modification.

The proposed incline passenger lift extension is proposed down the southern side of the site. The incline passenger lift extension is proposed in lieu of the staircase which is to be deleted as part of this modification. The incline passenger lift track closely follows the topography of the site and will be painted in a dark/recessive colour to blend into the existing landscape. It is considered that the incline passenger lift extension will not create no greater visual impact than the staircase to be deleted as part of this modification application.

Therefore, the proposed modifications to the development are supported and considered to not result in an unreasonable visual impact.

D12.10 Landscaped Area - Environmentally Sensitive Land

The proposed development was approved with a landscape area of 50.2%.

The proposed modification application alters the area proposed for the pool, terrace and spa, which attribute to hard surfaces within the site. The changes result in a 0.7sqm reduction in impervious services, and therefore, the landscape open space is improved by a minor amount.

Therefore, the proposed development does not result in further non-compliance with landscape open space and is acceptable with regards to Council's consideration of Clause D12.10 upon assessment of the amended plans.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

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

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

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

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

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

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2020/0146 for Modification of Development Consent DA2019/0619 granted for construction of a swimming pool and inclinator with associated landscaping on land at Lot 1 DP 121833, 13 A Ocean Road, PALM BEACH, subject to the conditions printed below:

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

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

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA01.01 - Site Plan - Rev C	8 April 2020	Maccormick & Associates Architects
DA02.02 - Pool Plan - Rev D	8 April 2020	Maccormick & Associates Architects
DA02.03 - Lower Ground Level - Rev A	8 April 2020	Maccormick & Associates

		Architects
DA03.01 - Elevation Street - Rev D	8 April 2020	Maccormick & Associates Architects
DA03.02 - Elevation East and South - Rev D	8 April 2020	Maccormick & Associates Architects
DA03.03 - Elevation North - Rev D	8 April 2020	Maccormick & Associates Architects
DA04.01 - Section Site - Rev D	8 April 2020	Maccormick & Associates Architects
DA04.02 - Section Terrace - Rev D	8 April 2020	Maccormick & Associates Architects
DA04.03 - Section Pool and Stair - Rev C	8 April 2020	Maccormick & Associates Architects

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Assessment, Project 85471.02	3 April 2020	Douglas Partners

c) Any plans and / or documentation submitted to satisfy the Deferred Commencement Conditions of this consent as approved in writing by Council.

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

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

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

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

Signed



Jordan Davies, Planner

The application is determined on 01/06/2020, under the delegated authority of:



Rodney Piggott, Manager Development Assessments