

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2021/0986
Responsible Officer:	Claire Ryan
Land to be developed (Address):	Lot 1 DP 202857, 7 Trentwood Park AVALON BEACH NSW 2107
Proposed Development:	Modification of Development Consent DA2019/0394 granted for Construction of 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:	James Brian Dargaville Margot Christina Dargaville
Applicant:	Stothard Projects
Application Lodged:	06/01/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	19/01/2022 to 02/02/2022
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.3 Height of buildings: 1.76%
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks to modify the dwelling house on approved Lot 1 under Development Consent DA2019/0394 as follows:

- Reconfiguration of the garage and entry;
- Reconfiguration of the middle level and addition of a laundry and living room with wet bar;
- Reconfiguration of the upper level; and
- Removal of additional trees.

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 - 1.9A Suspension of covenants, agreements and instruments
Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection
Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards
Pittwater Local Environmental Plan 2014 - 7.10 Essential services
Pittwater 21 Development Control Plan - A4.1 Avalon Beach Locality
Pittwater 21 Development Control Plan - D1.9 Side and rear building line
Pittwater 21 Development Control Plan - D1.11 Building envelope

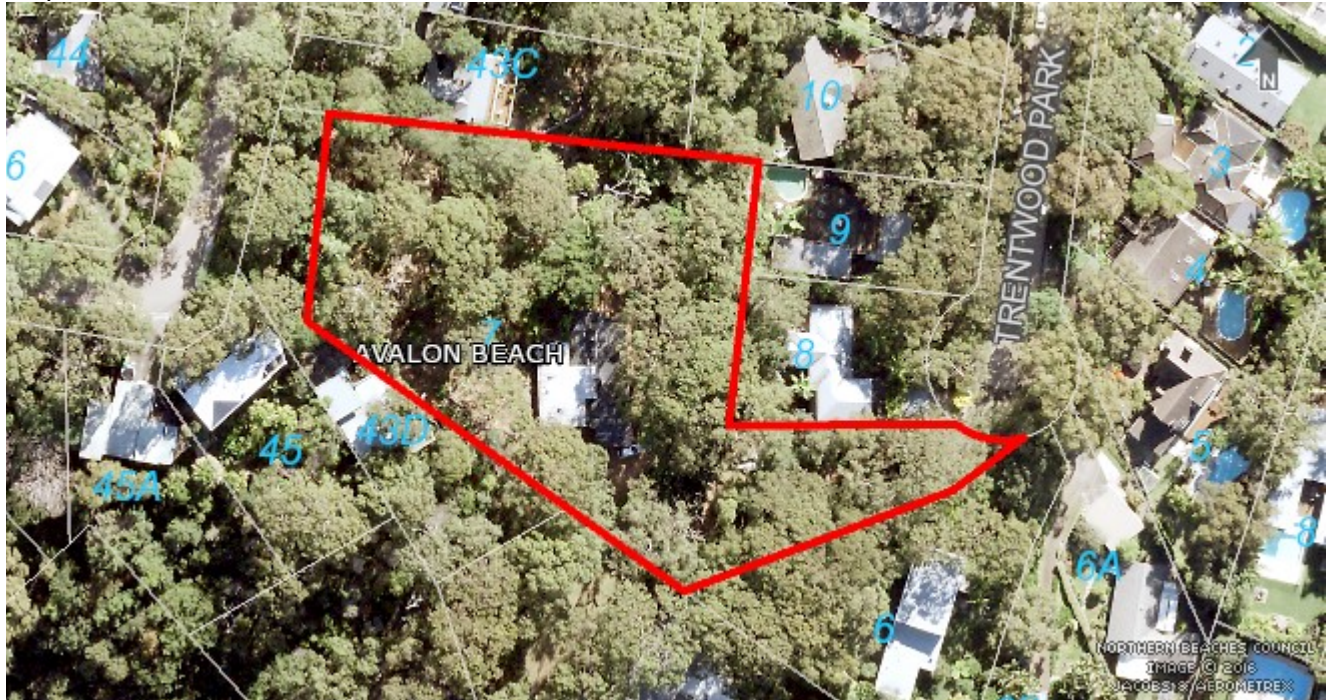
SITE DESCRIPTION

Property Description:	Lot 1 DP 202857 , 7 Trentwood Park AVALON BEACH NSW 2107
Detailed Site Description:	<p>The subject site consists of one (1) battleaxe allotment located on the eastern side of Trentwood Park, Avalon Beach.</p> <p>The site is irregular in shape with a frontage of 12.79m along the cul-de-sac of Trentwood Park and a surveyed area of 5,417sqm. The site is approved for subdivision into four lots. Approved Lot 1 (subject of this application) is 833.7sqm in area.</p> <p>The site is located within the C4 Environmental Living zone and accommodates a detached dwelling house and garage.</p> <p>The site is heavily vegetated with a slope of approximately 39m from the west (rear) to east (front).</p> <p>Detailed Description of Adjoining/Surrounding</p>

Development

Adjoining and surrounding development is characterised by detached dwelling houses. To the south of the site is heritage-listed Ruskin Rowe Heritage Conservation Area.

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:

- N0530/15 for Subdivision of one lot into three, demolition of existing detached garage and extension of existing access road to provide access to new lots was refused by Council on 10 January 2017. An appeal of the determination through the NSW Land and Environment Court was resolved (approved) on 15 November 2017 by way of conciliation conference.
- Pre-lodgement Meeting PLM2018/0179 was held on 23 August 2018 for Subdivision of one lot into 4.
- Mod2019/0169 for Modification of Development Consent N0530/15 granted for subdivision of one lot into three demolition of existing detached garage and extension of existing access road to provide access to new lots was approved by Council on 26 July 2019.
- DA2019/0393 for Subdivision of one approved lot into two was approved by Council on 1 October 2019.
- DA2019/0394 for Construction of a dwelling house was approved by Council on 13 September 2019.
- DA2019/0395 for Construction of a dwelling house was approved by Council on 7 August 2019.
- Mod2020/0344 for Modification of Development Consent N0530/15 granted for subdivision of one lot into three, demolition of existing detached garage and extension of existing access road to provide access to new lots was approved by Council on 16 December 2020.
- DA2020/0850 for Boundary Adjustment of Lots 1, 2 & 4 was withdrawn by the Applicant on 14 October 2020.
- Pre-lodgement Meeting PLM2021/0175 was held on 29 July 2021 for Subdivision of one lot into three lots.

- Mod2021/0048 for Modification of Development Consent DAN0530/15 granted for subdivision of one lot into three, demolition of existing detached garage and extension of existing access road to provide access to new lots was approved by Council on 17 February 2021.
- Subdivision Certificate SC2021/0068 for Torrens title subdivision is currently under assessment.

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 DA2019/394, 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	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 DA2019/0394, as the proposal retains the use of the site as a dwelling house, generally retains the approved configuration of the house, and does not result in materially different impacts.
(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	Development Application DA2019/0394 did not require concurrence from the relevant Minister, public authority or approval body.

Section 4.55 (2) - Other Modifications	Comments
modification of that consent, and	
(c) it has notified the application in accordance with:	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, and the Northern Beaches Community Participation Plan.
(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	
(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)	<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.

Section 4.15 'Matters for Consideration'	Comments
	<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. Additional information was requested in this case and Council received an amended Landscape Plan, amended Bushfire Report and amended Arboricultural Report on 7 February 2022.</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 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	See discussion on “Notification & Submissions Received” in

Section 4.15 'Matters for Consideration'	Comments
submissions made in accordance with the EPA Act or EPA Regs	this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

A Bush Fire Report was submitted with the original application (prepared by Australian Bushfire Protection Planners Pty Ltd dated 11 February 2019) and an addendum was submitted with this modification application (prepared by Australian Bushfire Protection Planners Pty Ltd dated 3 February 2022) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 19/01/2022 to 02/02/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 1 submission/s from:

Name:	Address:
Mr Michael Dennis Frost	8 Trentwood Park AVALON BEACH NSW 2107

The following issues were raised in the submissions:

- Plans do not address original conditions of consent requiring screening shrub planting (Condition 13 vii), and instead show screen planting that is too small on the northern boundary outside Lot 1, over the easement for services.
- Trees 13 and 25 should be retained.
- Stormwater plans contain discrepancies about point of discharge.
- The submitted Bushfire Report refers to Lot 4, not Lot 1.
- The driveway to Lot 1 presents a safety concern given the need for cars to reverse with little sight line due to planting and fencing.

The matters raised within the submissions are addressed as follows:

Screen Planting Condition

Comment:

The subject modification application provides a new landscape plan. The plan has been reviewed by Council's Landscape Officer, who has established the submitted landscape plan is in accordance with the original conditions of consent and is supportive of the proposal. The new landscape plan and modified set of conditions forms the development that is to be adhered to. Notwithstanding this, the screen planting (and access for maintenance of that planting) in the portion of land allocated to 4 is allowable under the terms of the easement in the Section 88B Instrument. The planting is of species that will achieve the height specified by the original Condition 13 vii.

Tree Removal

Comment:

Removal of Trees 13 and 25 has been assessed by Council's Landscape Officer and Bushland & Biodiversity Officer. These officers are supportive of the removal of the trees, subject to retention of Tree 27, and the planting of two additional trees.

Stormwater Plans

Comment:

Amended stormwater plans have been submitted under this modification application. The plans have been assessed by Council's Development Engineer, who is supportive of the proposal, without further conditions of consent.

Bushfire Report

Comment:

The Bushfire Report has been corrected to refer to Lot 1.

Driveway Safety

Comment:

No change to the approved driveway is proposed under this application. Existing structures along the driveway of No. 7 Trentwood Park are located such that they do not unreasonably restrict sightlines of cars existing Nos. 6 and 8 Trentwood Park. The fence in question between Nos. 7 and 8 Trentwood Park is of standard height, and is located such that cars exiting No. 8 can see adjoining driveways prior to exiting.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The application is for modification of development consent DA2019/0394.</p> <p>The following additional existing trees are proposed for removal: T13 and T25, and a Arboricultural Impact Assessment is submitted and additionally an updated Landscape Plan is submitted.</p> <p>The modified design layout of the development layout impacts both trees T13 and T25, identified as Broad-leaved White Mahogany native trees that are in decline and no objections are raised for removal, subject to tree replacement.</p> <p>An updated Landscape Plan is submitted with the modification, and no concerns are raised subject to conditions.</p> <p>Conditions of development consent DA2019/0394 as imposed by Landscape Referral shall be amended by conditions of consent under</p>

Internal Referral Body	Comments
	<p>this modification application, including:</p> <ul style="list-style-type: none"> • Condition 12 Tree Protection Plan, shall be deleted to remove reference to T13 and T25, and a new condition shall be included under the modification application, • Condition 13 Amended Landscape Plan, shall be deleted as the updated Landscape Plan satisfies the development consent DA2019/0394 condition, and a new condition shall be included under the modification application titled Landscape Completion for the proposed landscapes works as documented and subject to any imposed condition, • Condition 21 Project Arborist. shall be deleted and replaced with a new condition included under the modification application, with an additional condition added to include updated Arboricultural Impact Assessment recommendations, • Condition 22 Tree Removal, shall be deleted to remove reference to T13 and T25, as well as existing trees removed to date under development consent DA2019/0394, and a new condition shall be included under the modification application, • Condition 26 Tree and Vegetation Protection - General, shall be deleted to remove reference to T13 and T25, and a new condition shall be included under the modification application. <p><u>Assessing Officer's Comment:</u> Council's Biodiversity Officer requires retention of Tree 27 (which was approved for removal under the original development application, but is yet to be removed) in order to support the proposed modification. Conditions of consent have been modified accordingly.</p>
NECC (Bushland and Biodiversity)	<p><u>Revised Comments</u></p> <p>The original biodiversity referral stated tree #14 was to be removed, however this was incorrect. Tree #14 was previously conditioned for retention, and the tree will be retained as part of the current development design. Trees #13 and #25 have been approved for removal by the Council Landscape team as they have been assessed as being in decline. The Landscape Referral has conditioned their replacement with two 75 litre trees, thereby requiring replanting of a total of five trees within Lot 1.</p> <p>Tree #27 was approved for removal for bushfire hazard reduction purposes, however it is recommended that tree #27 is now retained due to the removal of trees #13 and #25. Therefore, based on the recommended retention of Tree #27, and the planting of an additional two advanced Eucalyptus umbra, it is considered that the proposed modification will not result in an increase in impacts to biodiversity values within Lot 1.</p> <p><u>Original Comments</u></p> <p>As highlighted in the Ecological Assessment (Cumberland Ecology 15 December 2021), the proposed development modification will exceed the BOS threshold as clearing of native vegetation for both the</p>

Internal Referral Body	Comments
	<p>modified, and approved development footprints, is required on land that is mapped on the Biodiversity Values Map (BV Map).</p> <p>They also state that although a BDAR is technically required to support the DA, the proposed modification application within Lot 1 will result in a similar impact footprint as that for the approved DA and is not considered to increase the impact on biodiversity values of the subject site.</p> <p>Council notes that the proposal requires the removal of two additional trees that are characteristic species of the Pittwater Wagstaff Spotted Gum Forest endangered ecological community and mapped within the Biodiversity Values map area. Trees #13 and #25 are Eucalyptus umbra, and were identified for retention as part of the approved subdivision development.</p> <p>As part of this assessment, Council has reviewed cl7.17 Modifications of planning approvals or activities of the Biodiversity Conservation Act 2016. Council disagrees with the Cumberland Ecology statement, and is not satisfied that the removal of two additional trees will not increase the impact on biodiversity values (cl7.17(c)). In order to address this, either a BDAR is required to be submitted, or the design is to be amended to ensure that there is no increase to the impact to biodiversity values. One other option that could be investigated (in consultation with the project Arborist and bushfire consultant), would be the retention of trees #14 and #27 instead, both of which have been previously approved for removal</p>
NECC (Development Engineering)	<p>The proposed modification appears to alter the previous location for the on-site stormwater detention (OSD) tank and the current proposal has not included a revised stormwater plan for the modifications.</p> <p>The proposed revision to the driveway grade and garage level is acceptable. The submitted geotechnical report addresses the relevant DCP controls.</p> <p>Development Engineers cannot support the proposal due to insufficient information to address stormwater management in accordance with clause B5 of the DCP.</p> <p>Amended plans received 19/01/2021</p> <p>The architectural plans have been amended to show the previously approved OSD tank which is acceptable.</p> <p>Development Engineering support the proposal with no additional or modified conditions of consent recommended.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who provided a response

External Referral Body	Comments
	stating that the proposal is acceptable without conditions of consent.
NSW Rural Fire Service – local branch (s4.14 EPAA)	The application was referred to the NSW Rural Fire Service, who are supportive of the application, subject to conditions of consent.

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 (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1255242S dated 29 November 2021). The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	50	50

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

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 who provided a response stating that the proposal is acceptable without conditions of consent.

SEPP (Coastal Management) 2018

The site is classified as being within the littoral rainforests area, according to the State Environmental Planning Policy (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 development falls under (d), being construction of a dwelling house. The modified development is in accordance with Clause 10 above.

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 modified development is satisfactorily designed and site so as not to increase risk of coastal hazards on the subject site or adjacent sites.

Pittwater Local Environmental Plan 2014

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

zone objectives of the LEP?	Yes
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Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.5m	Max. 8.65m	1.76%	No

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	No
4.6 Exceptions to development standards	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

1.9A Suspension of covenants, agreements and instruments

The proposed development involves construction of a dwelling that is not wholly consistent with the building footprint approved under Development Consent N0530/15. Clause 1.9A of the PLEP 2014 provides that any agreement, covenant or other similar instrument that restricts the carrying out of that development (such as the approved building footprint) does not apply to the extent necessary to serve the purpose of enabling development on land in any zone to be carried out in accordance with a consent granted under the Act. As such, the proposed development is acceptable. As the proposed building footprint is consistent with that submitted under the current Subdivision Certificate application (SC2021/0068), a condition of consent requiring the restriction on title be updated is not necessary.

4.6 Exceptions to development standards

The modification application will result in a building height that exceeds the maximum permitted by Clause 4.3 of the PLEP 2014. However, the application does not strictly need to address the requirements of Clause 4.6. This application has been made under Section 4.55 of the Environmental Planning and Assessment (EP&A) Act 1979, which is a free-standing provision that in itself authorises the development to be approved notwithstanding any breach of development standards. Section 4.55 is subject to its own stand-alone tests (such as substantially the same test and consideration of all relevant Section 4.15 matters) and does not rely upon having a Clause 4.6 variation in order to determine the modification application. Clause 4.6 regulates whether development consent may be granted, not whether an existing consent may be modified, and therefore does not apply to Section 4.55 modification applications. Nevertheless, an assessment of the variation is as follows:

Description of non-compliance:

Development standard:	Height of Buildings
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Requirement:	8.5m
Proposed:	8.65m
Percentage variation to requirement:	1.76%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.3 Height of Buildings, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, *Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61*, and *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*.

Clause 4.6 Exceptions to development standards:

(1) *The objectives of this clause are as follows:*

(a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
(b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

(2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

Comment:

Clause 4.3 Height of Buildings is not expressly excluded from the operation of this clause.

(3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

(a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
(b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

(4) *Development consent must not be granted for development that contravenes a development standard unless:*

(a) *the consent authority is satisfied that:*

(i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
(ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
(b) *the concurrence of the Secretary has been obtained.*

Clause 4.6 (4)(a)(i) (Justification) Assessment:

Clause 4.6 (4)(a)(i) requires the consent authority to be satisfied that the Applicant's written request, seeking to justify the contravention of the development standard, has adequately addressed the matters required to be demonstrated by Clause 4.6(3). As above, no written request is required in this case.

Clause 4.6 (4)(a)(ii) (Public Interest) Assessment:

Clause 4.6 (4)(a)(ii) requires the consent authority to be satisfied that:

(ii) *the proposed development will be in the public interest because it is consistent with the objectives of*

the particular standard and the objectives for development within the zone in which the development is proposed to be carried out

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the C4 Environmental Living zone. An assessment against these objectives is provided below.

Objectives of Development Standard

The underlying objectives of the standard, pursuant to Clause 4.3 Height of Buildings of the PLEP 2014 are addressed as follows:

a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,

Comment:

The height of buildings breach introduced under this application results from a new roof form that extends over a lower ground level, but is otherwise generally lower than that approved under DA2019/0394. This element is not inconsistent with the character of the locality.

b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,

Comment:

The proposed development is of a design, configuration and scale consistent and compatible with that of existing and approved developments in the surrounding area.

c) to minimise any overshadowing of neighbouring properties,

Comment:

The proposed development is designed and sited so as not to result in any unreasonable overshadowing to the subject site or adjoining sites.

d) to allow for the reasonable sharing of views,

Comment:

The proposed development is designed and sited so as not to result in obstruction of views to or from public or private places.

e) to encourage buildings that are designed to respond sensitively to the natural topography,

Comment:

The proposed development steps down with the slope of the land and breaches the maximum height of building to a very minor portion of roof guttering. As such, the proposed development generally follows the natural topography.

f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items,

Comment:

The subject site is not heritage listed or within a heritage conservation area. The proposed modifications to the approved development do not result in unreasonable impacts to nearby heritage items.

The proposal is consistent with the objectives of Clause 4.3 Height of Buildings.

Zone Objectives

The underlying objectives of the C4 Environmental Living zone are addressed as follows:

To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.

Comment:

The proposed development is of low impact to the ecological, scientific or aesthetic values of the land, as demonstrated throughout this report.

To ensure that residential development does not have an adverse effect on those values.

Comment:

The proposed development does not result in any adverse impact to the ecological, scientific or aesthetic values of the land, as demonstrated throughout this report.

To provide for residential development of a low density and scale integrated with the landform and landscape.

Comment:

The proposed development is of a density, form and scale consistent with that in the surrounding area, that generally follows the landform and the landscape character.

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

Comment:

Not applicable. The subject site is not classified as riparian or foreshore land.

The proposal is consistent with the objectives of the C4 Environmental Living zone.

Clause 4.6 (4)(b) (Concurrence of the Secretary) Assessment:

Clause 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted. Planning Circular PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of Buildings development standard is assumed by the delegate of Council as the development contravenes a numerical standard by less than or equal to 10%.

7.6 Biodiversity protection

Before determining a development application for development on land to which this clause applies, this clause requires the consent authority to consider:

(a) whether the development is likely to have:

- (i) any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and*
- (ii) any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and*
- (iii) any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and*
- (iv) any adverse impact on the habitat elements providing connectivity on the land, and*

Comment:

The development has been assessed by Council's Biodiversity Team, who raised no objections to approval subject to conditions of consent. Therefore, Council can be satisfied that the development will not have any adverse impact on the condition, ecological value and significance of the fauna and flora on the land; the importance of the vegetation on the land to the habitat and survival of native fauna;

or the habitat elements providing connectivity on the land. Council is also satisfied that the development will not unreasonably fragment, disturb, or diminish the biodiversity structure, function, or composition of the land.

(b) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

Comment:

The development has been assessed by Council's Biodiversity Team, who raised no objections to approval, subject to conditions of consent. Therefore, Council can be satisfied that the proposal includes appropriate measures to avoid, minimise, or mitigate the impacts of the development.

Before granting development consent, this clause also requires the consent authority to be satisfied that:

(a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or

(b) if that impact cannot be reasonably avoided by adopting feasible alternatives—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 development has been assessed by Council's Biodiversity Team, who raised no objections to approval, subject to conditions of consent. Therefore, Council can be satisfied that the development is designed, sited and will be managed to any significant adverse environmental impact.

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, 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 suitably 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.

7.10 Essential services

Under this clause, development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required:

(a) the supply of water,

(b) the supply of electricity,

(c) the disposal and management of sewage,

(d) stormwater drainage or on-site conservation,

(e) suitable vehicular access.

Comment:

The subject site is supplied with the above essential services. The approved and modified developments retain and rely upon these services.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
Front building line	6.5m	24.3m	19.9m	Yes
Rear building line	6.5m	Min. 4.3m	Retaining wall: 7.3m Dwelling: 9.7m	Yes
Side building line	2.5m (South)	2.3m	Min. 2.93m	Yes
	1m (North)	1.5m	Entry Level: 185mm	No
			Other Floors: 1.58m	Yes
Building envelope	3.5m (South)	2.4m outside envelope (41.37%)	600mm outside envelope (9.23%)	No - Improvement on Approved
	3.5m (North)	2.7m outside envelope (52%)	2.7m outside envelope (52%)	No - As Approved
Landscaped area	60% (508.86sqm)**	65% (551.5sqm)	537sqm (incl. 6% impervious - 64.4%)**	Yes

** At the time of writing the report for DA2019/0394, Lot 1 had an area of 848.1sqm, requiring a landscaped area of 508.86sqm (60%). At the time of writing this report, the area of Lot 1 has been modified by Mod2019/0169 and SC2021/0068 to be 833.7sqm, requiring a landscaped area of 500.22sqm (60%). The "Proposed" landscaped area calculation above is based on the updated site area of 833.7sqm.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.1 Avalon Beach Locality	No	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
B4.2 Flora and Fauna Conservation Category 1 and Wildlife Corridor	Yes	Yes
B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor	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
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
D1.1 Character as viewed from a public place	Yes	Yes
D1.4 Scenic protection - General	Yes	Yes
D1.5 Building colours and materials	Yes	Yes
D1.8 Front building line	Yes	Yes
D1.9 Side and rear building line	No	Yes
D1.11 Building envelope	No	Yes
D1.14 Landscaped Area - Environmentally Sensitive Land	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D1.17 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes

Detailed Assessment

A4.1 Avalon Beach Locality

The modified development includes three storeys, where the locality calls for two-storey development. However, the development involves minimal environmental impact, is set below the general tree canopy height, includes building modulation to minimise bulk, steps with the topography of the land, and provides an appropriate balance between respecting the landform and encouraging development. As such, the development achieves the intention of the desired character of the area and is acceptable in this regard.

D1.9 Side and rear building line

The modified development includes a northern side boundary setback of 185mm to the entry level, where 1m is required. The development is acceptable in relation to the relevant outcomes of this clause, as follows:

To achieve the desired future character of the Locality.

Comment:

The modified development is acceptable in the locality for the reasons detailed in the section of this report relating to Clause A4.1 Avalon Beach Locality of the P21 DCP.

The bulk and scale of the built form is minimised.

Comment:

The non-compliant side setback of 185mm is to the north-eastern corner of the dwelling only, with the remainder of the dwelling being compliant with the required side setbacks. The development is not compliant with the building envelope control, though this is acceptable for the reasons detailed in the section of this report relating to Clause D1.11 Building Envelope of the P21 DCP. The development demonstrates an acceptable building height, as demonstrated in the section of this report relating to Clause 4.6 Exceptions to Development Standards of the PLEP 2014. Additionally, the proposal includes acceptable landscaped area, as detailed in the section of this report relating to Clause D1.14 Landscaped Area of the P21 DCP. As such, the modified development is demonstrated to be of suitable bulk and scale for the site.

Equitable preservation of views and vistas to and/or from public/private places.

Comment:

The modified development is adequately sited and designed so as not to result in unreasonable impact upon views or vistas to or from public or private places.

To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.

Comment:

As with the above, the modified development is adequately sited and designed so as to result in suitable view sharing.

To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties.

Comment:

Notwithstanding the non-compliant setback, the modified development provides acceptable privacy, amenity and solar access for the subject site and adjacent sites, as detailed throughout this report.

Substantial landscaping, a mature tree canopy and an attractive streetscape.

Comment:

The modified development includes acceptable landscaped area and includes substantial landscaping, including canopy trees in order to soften the built form. The modified dwelling is not readily visible from the streetscape.

Flexibility in the siting of buildings and access.

Comment:

The modified development demonstrates suitable flexibility in siting the dwelling, while retaining adequate amenity to the site itself and adjacent sites.

Vegetation is retained and enhanced to visually reduce the built form.

Comment:

As above, the modified development includes adequate landscaped area and includes substantial landscaping, including canopy trees in order to soften the built form.

A landscaped buffer between commercial and residential zones is achieved.

Comment:

Not applicable. The subject site and adjacent sites are classified as residential zoned land.

D1.11 Building envelope

The modified development is non-compliant with the building envelope control on both the northern and southern elevations, though to an equal or lesser extent than the approved development. Where the building footprint is situated on a slope over 16.7 degrees (30%), variation to this control will be considered on a merits basis. The development is situated on land with a slope of approximately 17.7 degrees (31.91%) on the northern elevation and 18.86 degrees (34.16%) on the southern elevation. As such, the non-compliance arises due to the steep topography of the land. The development is acceptable in relation to the relevant outcomes of this clause, as follows:

To achieve the desired future character of the Locality.

Comment:

The modified development is consistent with the desired future character of the locality for the reasons detailed in the section of this report relating to Clause A4.12 Palm Beach Locality of the P21 DCP.

To enhance the existing streetscapes and promote a building scale and density that is below the height of the trees of the natural environment.

Comment:

The modified development steps down the slope of the land, away from the street level. The development includes adequate vegetation in order to screen the built form of the proposed development. The development is generally set below the height of the trees on site and in the locality.

To ensure new development responds to, reinforces and sensitively relates to spatial characteristics of the existing natural environment.

Comment:

The modified development requires some earthworks due to the steep topography of the land. The development provides a suitable balance between responding to the topography of the site and allowing for development. Additionally, the development demonstrates an acceptable building height, as demonstrated in the section of this report relating to Clause 4.6 Exceptions to Development Standards of the PLEP 2014. Finally, the proposal includes comparable setbacks, and bulk and scale to existing

and approved developments in the locality. As such, the proposal provides an adequate response and relationship to the spatial characteristics of the existing natural environment.

The bulk and scale of the built form is minimised.

Comment:

The modified dwelling is of comparable building bulk and scale to existing and approved developments in the locality. The development provides generally compliant side setbacks, with the exception of a minor encroachment to the northern side boundary. This non-compliance is acceptable for the reasons detailed in the section of this report relating to Clause D1.9 Side and Rear Building Line of the P21 DCP. The proposal is acceptable in relation to the required landscaped area, indicating that the proposed dwelling does not include too large a building footprint for the site. The proposed development steps with the topography of the land. The proposal includes generous modulation and articulation to reduce the visual impact of the built form. Finally, the proposal includes adequate vegetation in order to screen the built form of the proposed development. As such, the proposal demonstrates acceptable bulk and scale.

Equitable preservation of views and vistas to and/or from public/private places.

Comment:

The modified development adequately preserves views and vistas to and from public and private places.

To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to neighbouring properties.

Comment:

The modified development is appropriately designed so as to provide a reasonable level of privacy, amenity and solar access for the subject site and adjacent sites.

Vegetation is retained and enhanced to visually reduce the built form.

Comment:

The submitted plans demonstrate adequate retention and provision of vegetation in order to visually reduce the built form.

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 2021

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. Mod2021/0986 for Modification of Development Consent DA2019/0394 granted for Construction of a dwelling house on land at Lot 1 DP 202857,7 Trentwood Park, AVALON BEACH, subject to the conditions printed below:

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

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

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
01 Site Plan Issue F	19 November 2021	Stothard Projects
02 Garage Level Floor Plan Issue F	19 November 2021	Stothard Projects
03 Middle Level Issue F	19 November 2021	Stothard Projects
04 Upper Level Issue F	19 November 2021	Stothard Projects

05 Elevations Issue F	19 November 2021	Stothard Projects
06 Elevations issue F	19 November 2021	Stothard Projects
07 Section/Schedules Issue F	19 November 2021	Stothard Projects
08 Sections Issue F	19 November 2021	Stothard Projects
09 Roof Plan Issue F	19 November 2021	Stothard Projects
10 Driveway Cut & Fill Plan Issue F	19 November 2021	Stothard Projects
11 Driveway Gradient Issue F	19 November 2021	Stothard Projects
21 Garage Level with Site Plan	19 November 2021	Stothard Projects
22 Middle Level with Site Plan	19 November 2021	Stothard Projects
23 Upper Level with Site Plan	19 November 2021	Stothard Projects

Engineering Plans		
Drawing No.	Dated	Prepared By
SW1 Site Stormwater Management Plan	21 July 2020	Barrenjoey Consulting Engineers

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. 1255242S	29 November 2021	Energi Thermal Assessors
NatHERS Certificate No. 6852602	29 November 2021	Energi Thermal Assessors
Ecological Assessment	15 December 2021	Cumberland Ecology
Geotechnical Investigation J1457C	14 December 2021	White Geotechnical Group
Bushfire Protection Assessment - Addendum	3 February 2022	Australian Bushfire Protection Planners
Revised Abridged Arboricultural Impact Assessment	6 February 2022	Tree Wise Men

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
Landscape Plan Revision C	1 February 2022	Contour Landscape Architecture

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

B. Modify Condition 12 Tree Protection Plan to read as follows:

A Tree Protection Plan shall be issued to the Certifying Authority documenting the extent and alignment of tree protection fencing to the following existing trees required to be retained and protected during all construction stages:

- within Lot 1: T3, T5, T12, T14, T21, T27, T28, T30, T30A, and T32;
- within road reserve: T1; and
- within adjoining property: T15, T15A, T16, T22, T23, T24, T36, T37, and T38.

Reason: To protection existing trees not impacted by the development.

C. Delete Condition 13 Amended Landscape Plan

D. Modify Condition 21 Project Arborist to read as follows:

A Project Arborist with AQZ Level 5 qualification in arboriculture/horticulture is to be appointed to supervise and certify tree protection measures and construction works in the vicinity of all existing trees identified within this consent for retention and protection, with the following works to be reviewed, inspected and certified by the Project Arborist, including as scheduled in the Arboricultural Impact Assessment prepared by Tree Wise Men, section 5.1 Arborist Involvement, and in accordance with the Abridged Arboricultural Impact Assessment dated 6 February 2022.

a) All construction activity shall be in accordance with the following general protection guidelines:

- i) all tree protection shall be in accordance with AS4970- 2009 Protection of Trees on Development Sites,
- ii) removal of existing tree roots greater than 25mm is not permitted without consultation with a AQF Level 5 Arborist,
- iii) existing ground levels shall remain unaltered under the tree protection zone of trees to be retained, unless authorised by a AQF Level 5 Arborist,
- iv) any tree roots exposed during excavation with a diameter greater than 25mm within the tree protection zone must be assessed by an Arborist. Details including photographic evidence of any works undertaken shall be submitted by an AQF Level 5 Arborist to the Certifying Authority,
- v) all structures are to bridge tree roots greater than 25mm diameter unless directed by a AQF Level 5 Arborist on site,

b) Specifically the following works shall be undertaken:

- i) the Project Arborist shall locate and approve all required footings and/or piers within the tree protection zone,
- ii) the Project Arborist shall monitor any excavation, machine trenching or compacted fill placed within the tree protection zone of all trees to be retained,
- iii) if excavation is required it should be carried out under the supervision of the Project Arborist to identify roots critical to tree stability,
- iv) where the Project Arborist identifies roots to be pruned within or at the outer edge of the TPZ, they should be pruned with a final cut to undamaged wood, as directed by the Project Arborist,
- v) pruning cuts should be made with sharp tools such as secateurs, pruners, handsaws or chainsaws, as directed by the Project Arborist,
- vi) pruning wounds shall be dressed as directed by the Project Arborist,

c) Activities listed below are excluded from the tree protection zone, unless directed and supervised by the Project Arborist:

- i) machine excavation including trenching,
- ii) excavation for silt fencing,
- iii) construction material storage,
- iv) dumping of waste,
- v) placement of fill,
- vi) soil level changes,
- vii) temporary or permanent installation of utilities and signs,

viii) physical damage to the tree.

Certification reports and photographic documentation of development works shall be recorded and issued to the Certifying Authority, including as listed in the Arboricultural Impact Assessment prepared by Tree Wise Men, section 5.1.3, and in accordance with the Abridged Arboricultural Impact Assessment dated 6 February 2022.

Reason: To ensure the protection of the existing landscape amenity.

E. Modify Condition 22 Tree Removal to read as follows:

This consent approves the removal of the following tree(s) within the property (as recommended and identified in the Arboricultural Impact Assessment prepared by Tree Wise Men, dated August 2017, and the Abridged Arboricultural Impact Assessment dated 6 February 2022):

- T11, T17A, T18, and T26.
- T27 is not approved for removal.

A qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

Reason: To enable authorised development works.

F. Modify Condition 26 Tree and Vegetation Protection - General to read as follows:

a) Existing trees and vegetation shall be retained and protected as follows:

- i) all trees and vegetation within the site nominated in the Arboricultural Impact Assessment prepared by Tree Wise Men, dated August 2017, and the Abridged Arboricultural Impact Assessment dated 6 February 2022, including T3, T5, T12, T14, T21, T27, T28, T30, T30A, and T32, and excluding exempt trees and palms under the relevant planning instruments of legislation,
- ii) all trees and vegetation located on adjoining properties, including T15, T15A, T16T22, T23, T24, T36, T37, and T38.
- iii) all road reserve trees and vegetation, including T1.

b) Tree protection shall be generally undertaken as follows:

- i) all tree protection shall be in accordance with AS4970- 2009 Protection of Trees on Development Sites,
- ii) removal of existing tree roots greater than 25mm is not permitted without consultation with a AQF Level 5 Arborist,
- iii) existing ground levels shall remain under the tree protection zone of trees to be retained, unless authorised by AQF Level 5 Arborist,
- iv) any tree roots exposed during excavation with a diameter greater than 25mm within the tree protection zone must be assessed by an AQF Level 5 Arborist. Details including photographic evidence of works undertaken shall be submitted to the Certifying Authority,
- v) to minimise the impact on trees and vegetation to be retained and protected, 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, vi) no tree roots greater than 25mm diameter are to be cut from protected trees unless authorised by a AQF Level 5 Project Arborist on site,
- vii) all structures are to bridge tree roots greater than 25mm diameter unless directed by a AQF Level 5 Arborist on site,
- viii) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with a AQF Level 5 Arborist, including advice on root protection measures,

ix) should either or all of vi), vii) and viii) occur during site establishment and construction works, a AQF Level 5 Arborist shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,

x) 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 AS 4970-2009,

xi) tree pruning to enable construction shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2009 Pruning of Amenity Trees.

c) All protected trees are to be retained for the life of the development, or for their safe natural life. Trees that die or are removed by approval must be replaced with a locally native canopy tree.

Reason: to retain and protect significant planting on development and adjoining sites.

G. Add Condition 20A Amendments to the Approved Plans to read as follows:

Tree 27 is to be retained. The alfresco area to the western end of the upper level (including associated roofing) is to be reduced to the south so as not to encroach upon the tree protection zone of Tree 27. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure development minimises unreasonable impacts upon surrounding land.

H. Add Condition Condition 40A Landscape Completion to read as follows:

Landscaping is to be implemented in accordance with the approved Landscape Plan, and inclusive of the following conditions:

- i) all tree planting shall be a minimum planting size of 75 litres, and shall meet the requirements of Natspec - Specifying Trees;
- ii) all tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight, or where the proposed tree locations may otherwise be positioned to minimise any significant loss of views;
- iii) all tree planting shall have a minimum individual area of 3 metres x 3 metres of soil area, and shall be located a minimum of 5 metres from existing and proposed built structures, or minimum of 3 metres where pier and beam footings are used;
- iv) two replacement Eucalyptus umbra (Broad-leaved White Mahogany) shall be planted within the property;
- v) all tree planting shall comply with the principles of Appendix 5 of Planning for Bush Fire Protection 2006.

Prior to the issue of an Occupation Certificate, details (from a landscape architect or landscape designer) shall be submitted to the Certifying Authority, certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: Environmental amenity.

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

Signed



Claire Ryan, Principal Planner

The application is determined on 02/03/2022, under the delegated authority of:



Phil Lane, Acting Development Assessment Manager