

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2023/0438
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<b>Responsible Officer:</b>	Brittany Harrison
<b>Land to be developed (Address):</b>	Lot 3 DP 29283, 87 Alexandra Crescent BAYVIEW NSW 2104
<b>Proposed Development:</b>	Modification of Development Consent DA2020/0820 granted for alterations and additions to a dwelling house
<b>Zoning:</b>	C4 Environmental Living
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Arnaud Diemont Jane Louise Diemont
<b>Applicant:</b>	Lindsay Little & Associates Pty Ltd

<b>Application Lodged:</b>	23/08/2023
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Refer to Development Application
<b>Notified:</b>	29/08/2023 to 12/09/2023
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	4.3 Height of buildings: 5.5%
<b>Recommendation:</b>	Approval

### PROPOSED DEVELOPMENT IN DETAIL

This Section 4.55 (1A) Modification Application seeks to modify consent no. DA2020/0820 and the subsequent modification applications Mod2022/0174 and Mod2022/0657, in the following ways:

- Internal lift (lower-ground to first floor) re-located from the south to the north of the dwelling;
- First floor extension including roof by approximately 1100mm north to incorporate new lift position;
- Minor internal reconfigurations and addition of new walls in cellar/store (lower ground floor) to accommodate works.

## ASSESSMENT INTRODUCTION

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

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

## SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - Zone C4 Environmental Living  
 Pittwater Local Environmental Plan 2014 - 4.3 Height of buildings  
 Pittwater Local Environmental Plan 2014 - 7.2 Earthworks  
 Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards  
 Pittwater 21 Development Control Plan - D4.5 Front building line  
 Pittwater 21 Development Control Plan - D4.6 Side and rear building line

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 3 DP 29283 , 87 Alexandra Crescent BAYVIEW NSW 2104
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the southern side of Alexandra Crescent at the end of the cul de-sac.</p> <p>The site is irregular in shape with a curved frontage of 14.745m along Alexandra Crescent and a depth of 27.335m along the western boundary and 35.91m along the eastern boundary. The site has a surveyed area of 696m<sup>2</sup>.</p> <p>The site is located within the C4 Environmental Living zone under the provisions of the <i>Pittwater Local Environmental Plan 2014</i> and accommodates a two (2) storey dwelling house and carport.</p> <p>The site topography slopes steeply from the south to the</p>

north with an approximate fall by 14.0m. The site consists of retaining walls, native trees and various shrubs.

### Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by one (1) and two (2) storey dwelling houses of various architectural designs with a landscaped setting.

Map:



### SITE HISTORY

The land has been used for residential purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

#### **N0573/06**

Development Application for the alterations and additions to the existing dwelling.  
Determined on 26 October 2006 by Delegated Authority.

#### **DA2020/0820**

Development Application for the alterations and additions to a dwelling house.  
Determined on 11 December 2020 by Delegated Authority.

#### **Mod2022/0174**

Modification of Development Consent DA2020/0820 granted for alterations and additions to a dwelling house.  
Determined on 7 September 2022 by Delegated Authority.

#### **Mod2022/0657**

Modification of Development Consent DA2020/0820 granted for alterations and additions to a dwelling house.

Determined on 20 January 2023 by Delegated Authority.

**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 **DA2020/0820**, in full, with amendments detailed and assessed as follows:

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

Section 4.55(1A) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	<p><b>Yes</b></p> <p>The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons:</p> <ul style="list-style-type: none"> <li>• The previously approved internal lift (lower-ground to first floor) is to be relocated from the south to the north of the dwelling house.</li> <li>• Slight extension to the first floor including the roof by approximately 1100mm towards the north to accommodate new lift position.</li> <li>• Construct new retaining walls in cellar/store.</li> <li>• The modification will still require excavation works but will further reduce the overall extent of approved earthworks underneath the footprint of the dwelling.</li> </ul>
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted	The consent authority can be satisfied that the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted under <b>DA2020/0820</b> for the following reasons:

<b>Section 4.55(1A) - Other Modifications</b>	<b>Comments</b>
and before that consent as originally granted was modified (if at all), and	<ul style="list-style-type: none"> <li>• The internal lift will involve minor internal reconfigurations in the dwelling;</li> <li>• Minor changes to front facade of dwelling house, which will not significantly alter the overall appearance of the build or intended use of the development.</li> <li>• The extension of the roof will maintain the existing Ridge Level (despite a building height non-compliance), majority of setbacks are to remain the same.</li> <li>• No further changes to other approved works.</li> </ul>
(c) it has notified the application in accordance with:  (i) the regulations, if the regulations so require,  or  (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021, and the Northern Beaches Community Participation Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on “Notification & Submissions Received” in this report.

### Section 4.15 Assessment

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

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

<b>Section 4.15 'Matters for Consideration'</b>	<b>Comments</b>
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&amp;A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 61</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&amp;A Regulation 2021 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 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah/Manly/Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p>

Section 4.15 'Matters for Consideration'	Comments
	(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 29/08/2023 to 12/09/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

## REFERRALS

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	<p><b><i>Supported, subject to conditions.</i></b></p> <p>The proposal seeks approval for Section 4.55 (1A) modification of Development Consent No. DA202/0820 for alterations and additions to a dwelling house.</p> <p>The comments on this assessment relate to the following provisions and controls:</p> <ul style="list-style-type: none"> <li>• NSW Biodiversity Conservation Act 2016</li> <li>• Pittwater LEP 2014 - Clause 7.6 Biodiversity Protection</li> <li>• Pittwater 21 DCP - Clause B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community</li> </ul> <p>Portions of the site are identified on the Department of Planning and</p>

Internal Referral Body	Comments
	<p>Environment's Biodiversity Values Map (BV Map). Under the NSW Biodiversity Conservation Act 2016, any removal of native vegetation from within mapped areas will trigger the Biodiversity Offset Scheme (BOS) and the requirement for a Biodiversity Development Assessment Report (BDAR). However, the submitted plans and documentation indicate that the proposed works are located outside of the BV Map area and therefore will not trigger entry into the BOS. The modifications proposed are internal and as such take place within the original proposed construction footprint. No modifications to impacts on native vegetation are proposed.</p> <p>Conditions set in the previous Natural Environment Referral Response - Biodiversity (01/10/2020) still apply.</p>

### **ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)\***

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

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

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

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

#### **SEPP (Building Sustainability Index: BASIX) 2004**

A BASIX certificate has been submitted with the application (see Certificate No. A378343\_05 dated 8 August 2023).

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

#### **SEPP (Resilience and Hazards) 2021**

##### **Chapter 4 – Remediation of Land**

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

#### **Pittwater Local Environmental Plan 2014**



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

#### Principal Development Standards

Development Standard	Requirement	Approved	Proposed
Height of Buildings	8.5m	6.3m (Lift Overrun)	Lift Overrun: 8.3m Roof Extension: 8.97m

#### Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	No
5.10 Heritage conservation	Yes
5.21 Flood planning	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

##### Zone C4 Environmental Living

The C4 - Environmental Living zone objectives are addressed below:

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

#### Comment

The modified works include a further reduction in the amount of excavation needed to facilitate the development. Therefore, providing for a low-impact residential development in comparison to the previous approvals under DA2020/0820, Mod2022/0174 and Mod2022/0657.

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

#### Comment

Portions of the site are identified on the Department of Planning and Environment's Biodiversity Values Map (BV Map). The proposed works indicate that they are located outside of the BV Map area and therefore, will not trigger entry into the BOS. The modifications proposed will

take place in previously disturbed areas of the site.

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

Comment

Despite the building height non-compliance, the proposal maintains a low density design of a low scale that utilises materials to aid in the integration of the immediate landform and landscape.

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

Comment

Councils Biodiversity Officer has reviewed the proposal and supports the modifications. Conditions were included within DA2020/0820 and Mod2022/0174 to ensure that the impacts to native wildlife corridors are minimised, these conditions are still relevant.

### 4.3 Height of buildings

Description of Non-Compliance

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	8.97m
Percentage variation to requirement:	5.5%

Assessment of request to vary a development standard:

Whilst the modification application will result in a building height that exceeds the maximum permitted by Clause 4.3 of the Pittwater LEP 2014, the application does not strictly need to address the requirements of Clause 4.6.

The application has been made under Section 4.55 of the Environmental Planning and Assessment (EPA) 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 the 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. As such, the applicant is not required to submit a written request adequately addressing the matters required to be demonstrated by cl 4.6(3).

Notwithstanding that Clause 4.6 does not apply to Section 4.55 modification applications, the merits of the variation have been assessed with regard to the objectives of the height of buildings development standard and the underlying objectives of the C4 Environmental Living zone. Notwithstanding that Clause 4.6 does not strictly apply, the assessment has also taken into consideration the relevant tests of the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

**Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case,**

Comment

The proposed development includes relocating the internal lift (lower-ground to first floor) from the south (rear) to the north (front) of the dwelling. The re-location of the elevator will result in a first floor extension towards the north of 1100mm, with part of this area to be over 8.5m in height. The extension will follow the existing Roof Ridge Level (RL 82.06) and will be designed to look generally similar to the existing façade. No detrimental visual or amenity impacts will occur as a result of this minor amendment.

**There are sufficient environmental planning grounds to justify contravening the development standard,**

Comment

The proposed re-location of the subject lift will eliminate the need for significant excavation underneath the dwelling house, further reducing environmental impact and geotechnical risk to the site. No impacts to landscaping will occur, with the amendments taking place within the footprint of the dwelling.

The building height non-compliance is a result of the northern extension to facilitate the re-location of the lift, with this extension being situated over previously disturbed ground/historical excavation works.

**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.**

4.3 Height of buildings

(1) The objectives of this clause are 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 proposed amendment will not alter the existing character of the dwelling house or streetscape, despite the resultant non-compliance. The dwelling house with the accompanying modifications will continue to be situated below tree canopy height and will present a design that is situated within a landscaped setting. No significant vegetation will be removed to facilitate the new modifications, and the extent of excavation shall be reduced.

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

Comment

The dwelling house consists of a Roof Ridge of RL82.06, similar to that of surrounding properties on the high side of Alexandra Crescent. The northern extension to the first floor will maintain this RL, despite resulting in a non-compliance to building height. The overall design of the house will remain generally the same, with the amendments not resulting in any additional rooms or storeys. It can be considered that the dwelling house will maintain its compatibility with the height and scale of surrounding development.

***c) to minimise any overshadowing of neighbouring properties,***

Comment

The proposed amendments will not significantly alter solar access to the subject site or adjoining properties. Solar Access is considered to remain compliant with the relevant requirements under the P21DCP.

***d) to allow for the reasonable sharing of views,***

Comment

The proposed amendments are not considered to detrimentally impact upon existing view corridors. In addition, no submissions have been received in regard to view loss.

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

Comment

The proposed amendments reduce the extent of excavation works previously approved, resulting in a design that better responds to 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 a heritage item, does not adjoin a heritage item and is not located within a heritage conservation area. The amendments will not impact upon the natural environment.

Zone Objectives

The underlying objectives of the C4 Environmental Living zone have been addressed under 'Zone C4 Environmental Living', elsewhere in this report.

Conclusion

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

**Clause 4.6 (4)(b) (Concurrence of the Secretary) assessment:**

cl. 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted.

Comment

The subject application is made under Section 4.55 of the EPA Act. As such, Clause 4.6 does not strictly apply and the concurrence of the Secretary is not required to be obtained.

**7.2 Earthworks**

The objective of Clause 7.2 - 'Earthworks' requires development to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

In this regard, before granting development consent for earthworks, Council must consider the following matters:

***(a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality of the development***

Comment

The proposal is unlikely to unreasonably disrupt existing drainage patterns and soil stability in the locality.

***(b) the effect of the proposed development on the likely future use or redevelopment of the land***

Comment

The proposal will not unreasonably limit the likely future use or redevelopment of the land.

***(c) the quality of the fill or the soil to be excavated, or both***

Comment

The excavated material will be processed according to the Waste Management Plan under DA2020/0820.

***(d) the effect of the proposed development on the existing and likely amenity of adjoining properties***

Comment

The proposed earthworks will not result in unreasonable amenity impacts on adjoining properties. Conditions have been included in the recommendation of this report to limit impacts during excavation/construction.

***(e) the source of any fill material and the destination of any excavated material***

Comment

The excavated material will be processed according to the Waste Management Plan under DA2020/0820.

***(f) the likelihood of disturbing relics***

Comment

The development was referred to the Aboriginal Heritage Office (AHO) in previous applications, in which conditions were provided and included in the original consent (DA2020/0820). These conditions are still relevant. As no new areas on site will contain excavation outside of already disturbed areas or outside the building footprint of the house, the application did not need to be referred again to the AHO.

***(g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area***

Comment

The site is not located in the vicinity of any watercourse, drinking water catchment or environmentally sensitive areas.

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

Comment

Conditions were included in the original consent (DA2020/0820) that will minimise the impacts of the development. These conditions are still relevant.

***(i) the proximity to and potential for adverse impacts on any heritage item, archaeological site or heritage conservation area.***

Comment

The site is not a heritage item, in the vicinity of a heritage item or in a conservation area or archaeological site.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of PLEP 2014, Pittwater 21 DCP and the objectives specified in s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

## **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 an amended geotechnical risk assessment that demonstrates geotechnical risks have been taken into account.

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 an amended geotechnical risk assessment. Stormwater was reviewed under previous applications by Council's Development Engineer with any conditions made remaining relevant.

***(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

It is considered 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 Northern Boundary	Carpport: Nil Storage Extension: 5.5m	No Change No Change  Proposed Modifications: > 6.5m	<b>No</b> (As Previously Approved)  Yes
Rear Building Line	6.5m Southern Boundary	Lift Overrun: 7.9m	Proposed Modifications: > 6.5m	Yes
Side Building Line	2.5m Eastern Boundary	External Stairs: 0.2m Garage: Nil	No Change No Change  Internal Lift: 3.9m	<b>No</b> (As Previously Approved)  Yes
	1.0m Western Boundary	Garage: 3.7m Walkway: 5.4m Storage: 3.8m	No Change No Change No Change	Yes
Building Envelope	3.5m Eastern Elevation	Proposed Works: Within Envelope	No Change	Yes
	3.5m Western Elevation	Proposed Works: Within Envelope	No Change	Yes
Landscaped Area	60.0%	48.1% (334.8m) 53.1% (370m <sup>2</sup> - with allowable 6.0% variation)	No Change	<b>No</b> (As Previously Approved)

### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.4 Church Point and Bayview Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	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
C1.13 Pollution Control	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D4.1 Character as viewed from a public place	Yes	Yes
D4.2 Scenic protection - General	Yes	Yes
D4.3 Building colours and materials	Yes	Yes
D4.5 Front building line	No	Yes
D4.6 Side and rear building line	No	Yes

#### Detailed Assessment

#### **D4.5 Front building line**

Clause D4.5 Front building line requires a front setback of of 6.5m.

The subject site exhibits a previously approved non-compliant front setback of nil to the northern boundary, and will not be assessed further.

The proposed modifications under this application are located in excess of the required 6.5m front setback, and exhibit compliance with the requirements.

#### **D4.6 Side and rear building line**

Clause D4.6 Side and rear building line prescribes a side setback of 2.5m to one side and 1.0m to the other. For this assessment, the 2.5m side building line is applied to the eastern boundary and the 1.0m side building line applied to the western boundary.

The subject site exhibits a previously approved non-compliant side setback of 0.2m to the eastern boundary. As the modified works will not alter this numerical non-compliance, a detailed merit assessment is not required, in this instance.



## **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

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

## **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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

## **POLICY CONTROLS**

### **Northern Beaches Section 7.12 Contributions Plan 2022**

Section 7.12 contributions were levied on the Development Application.

## **CONCLUSION**

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

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

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

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

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPs
- 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. Mod2023/0438

for Modification of Development Consent DA2020/0820 granted for alterations and additions to a dwelling house on land at Lot 3 DP 29283,87 Alexandra Crescent, BAYVIEW, subject to the conditions printed below:

## Modification Summary

The development consent is modified as follows:

### MODIFICATION SUMMARY TABLE

Application Number	Determination Date	Modification description
PAN-358915 MOD2023/0438	The date of this notice of determination	Modification of Development Consent DA2020/0820 granted for alterations and additions to a dwelling house.  Add Condition No.1C - Modification of Consent - Approved Plans and supporting documentation.  Add Condition No. 15D - Adherence to Natural Environment Consent Conditions.
PAN-285776 MOD2022/0657	30 January 2023	Modification of Development Consent DA2020/0820 granted for alterations and additions to a dwelling house.  Add Condition No.1B - Modification of Consent - Approved Plans and supporting Documentation.  Modify Condition No. 11 - Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans.  Add Condition No. 15C - Works located within site boundary.
PAN-211163 MOD2022/0174	7 September 2022	Modification of Development Consent DA2020/0820 granted for alterations and additions to a dwelling house.  Add Condition No.1A - Modification of Consent - Approved Plans and supporting Documentation.  Amend Condition No. 11 - Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plan.  Amend Condition No. 13 - Submission Roads Act Application for Civil Works in the Public Road.  Add Condition No. 15A - External Finishes to Roof.

		<p>Add Condition No. 15B - External Colours and Materials.</p> <p>Amend Condition No. 18 - Project Arborist.</p> <p>Add Condition No. 25A - Protection of Rock and Sites of Significance.</p> <p>Add Condition 25B - Condition of Trees.</p> <p>Add Condition No. 29A - Condition of Retained Vegetation - Project Arborist.</p>
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### **Modified Conditions**

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

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

<b>Approved Plans</b>				
<b>Plan Number</b>	<b>Revision Number</b>	<b>Plan Title</b>	<b>Drawn By</b>	<b>Date of Plan</b>
A02 F	Issue F	Site Analysis Plan	Lindsay Little & Associates Pty Ltd.	31 July 2023
A03 G	Issue G	Carport Plan	Lindsay Little & Associates Pty Ltd.	31 July 2023
A04 F	Issue F	Lower Ground Floor Plan	Lindsay Little & Associates Pty Ltd.	31 July 2023
A05 F	Issue F	Ground Floor Plan	Lindsay Little & Associates Pty Ltd.	31 July 2023
A06 F	Issue F	First Floor Plan	Lindsay Little & Associates Pty Ltd.	31 July 2023
A07 F	Issue F	North Elevation	Lindsay Little & Associates Pty Ltd.	31 July 2023
A08 F	Issue F	West Elevation	Lindsay Little & Associates Pty Ltd.	31 July 2023
A10 F	Issue F	East Elevation	Lindsay Little & Associates Pty Ltd.	31 July 2023
A11 F	Issue F	Section AA	Lindsay Little & Associates Pty Ltd.	31 July 2023
EP-01E	Issue E	Excavation Plan	Lindsay Little & Associates Pty Ltd.	31 July 2023

<b>Approved Reports and Documentation</b>	
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Document Title	Version Number	Prepared By	Date of Document
87 Alexandra Crescent, Bayview - Comments on Updates to Plans (Ref. J2784F)	-	White Geotechnical Group	15 August 2023
BASIX Certificate (No. A378343_05)	-	LEECH HARMON ARCHITECTS	8 August 2023

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

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

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

**B. Add Condition No. 15D - Adherence to Natural Environment Consent Conditions to read as follows:**

All biodiversity-related conditions of consent under previous development applications are to be adhered to, including DA2020/0820, unless amended by these biodiversity-related conditions of consent.

Reason: To protect biodiversity values.

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

**Signed**



**Brittany Harrison, Planner**

The application is determined on 01/11/2023, under the delegated authority of:



**Adam Richardson, Manager Development Assessments**