

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2021/0276
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<b>Responsible Officer:</b>	Dean Pattalis
<b>Land to be developed (Address):</b>	Lot 4 DP 14882, 154 Cabarita Road AVALON BEACH NSW 2107
<b>Proposed Development:</b>	Modification of Development Consent N0832/01 granted for demolition of existing dwelling and construction of a new dwelling, inground swimming pool and front fence
<b>Zoning:</b>	E4 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>	Greig Witney Tracey Helen Witney
<b>Applicant:</b>	Greig Witney

<b>Application Lodged:</b>	20/05/2021
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	27/05/2021 to 10/06/2021
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	1
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

### PROPOSED DEVELOPMENT IN DETAIL

The application seeks approval to modify consent N0832/01 for the demolition of the existing dwelling and construction of a new dwelling, inground swimming pool and front fence.

The modification seeks the retrospective approval for works that have been part completed.

The works are as follows:

- **First Floor:** a reverse-sloped roof over the existing outdoor living area to replace the previously approved flat vergola-style roof. The leading edge of the as built roof is raised approximately 200mm above the previously approved vergola-style roof level.

Section 4.55 of the Environmental Planning & Assessment Act enables Council to approve works which have already been carried out as part of an application to modify a development consent. As a result, Section 4.55 enables Council to assess on its merits the Modification Application seeking approval for the continued use of retrospective development.

## 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 - 4.3 Height of buildings

Pittwater 21 Development Control Plan - C1.3 View Sharing

Pittwater 21 Development Control Plan - D1.5 Building colours and materials

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 4 DP 14882 , 154 Cabarita Road AVALON BEACH NSW 2107
<b>Detailed Site Description:</b>	<p>The subject site consists of 1 allotment located on the northern side of Cabarita Rd, Avalon Beach.</p> <p>The site is regular in shape with a frontage of 13.20m along Cabarita Road and the secondary frontage facing George Street, as well as a depth of 87.65m. The site has a surveyed area of 1188m<sup>2</sup>.</p> <p>The site is located within the E4 Environmental Living zone pursuant to the Pittwater Local Environmental Plan 2014 and accommodates an existing two storey dwelling rendered brick dwelling with an attached garage.</p> <p>The site experiences a fall of approximately 30m sloping</p>

north towards George Street.

The site contains significant vegetation and is located within a biodiversity conservation area with predominant native canopy trees covering the Cabarita Road frontage.

### Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by similar low density residential development of two and three storey dwellings in a heavily 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:

- **N0832/01** - Demolition of existing dwelling and construction of a new dwelling, inground swimming pool and front fence was approved on the 22 November 2002.
- **EPA2020/0360** - On the 17 February 2021 Northern Beaches Council issued a Order in relation to the roof framing constructed off the northern elevation of the outdoor living area on the first floor not being in accordance with the plans approved by the Development Consent N0832/01 issued by Pittwater Council on 29 November 2002 or the Construction CCC037/03 issued on 23 July 2003.

### 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 N0832/01, 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> <p>The original development application sought consent for the demolition of an existing dwelling and construction of a new dwelling, inground swimming pool and front fence.</p> <p>The modifications do not change the overall building height, streetscape appearance, car parking, drainage or landscape outcomes. As there is no significant change to the setbacks or overall built form controls, the spatial relationship of the proposed works to adjoining properties is maintained with a complimentary and compatible streetscape presentation.</p> <p>As the proposed modification is not considered to increase the scope of the works to an extent that an unreasonable adverse impact will be incurred to the amenity or desired future character of the locality, Council can be satisfied that the modified works are of minimal environmental impact.</p>
(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	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 N0832/01 for the following reasons:



Section 4.55(1A) - Other Modifications	Comments
originally granted and before that consent as originally granted was modified (if at all), and	<p>The original development application sought consent for the demolition of an existing dwelling and construction of a new dwelling, inground swimming pool and front fence.</p> <p>As the proposed modification is not considered to increase the scope of the works to an extent that an unreasonable adverse impact will be incurred to the amenity or desired future character of the locality, Council can be satisfied that the proposed works are substantially the same as those already approved under N0832/01.</p>
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require,</p> <p>or</p> <p>(ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and</p>	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Pittwater Local Environment Plan 2014 and Pittwater 21 Development Control 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:

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

Section 4.15 'Matters for Consideration'	Comments
	13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;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&amp;A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&amp;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&amp;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&amp;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	<p>(i) <b>Environmental Impact</b></p> <p>The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater</p>

Section 4.15 'Matters for Consideration'	Comments
the natural and built environment and social and economic impacts in the locality	<p>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> <p>(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.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 27/05/2021 to 10/06/2021 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 Christopher Lee Baker	152 Cabarita Road AVALON BEACH NSW 2107

One submission has been received by the owners of 152 Cabarita Rd, Avalon Beach, and the following concerns were raised:

- ***As-built structure inconsistent with approved plans***
- ***View Loss***
- ***Visual continuity and consistency with the pattern of buildings***
- *Concern was raised in regards to the already partially constructed roof being inconsistent with the approved plans.*

Comment:

Section 4.55 of the EP&A Act to modify a development consent enables Council to approve, as part of an application to modify a development consent, works which have already been or partially carried out. As a result, section 4.55 enables Council to assess on its merits the Modification Application seeking approval for the remaining construction and continued use of retrospective development, in this case the roof above the outdoor living area.

In summary, the concern raised does not warrant refusal of the application.

- *The adjoining property owner has raised concern with regards to loss of views from their property to the Careel Bay Marina resulting from the proposed development.*

Comment:

As referenced elsewhere within this report under *Clause C1.3 View Sharing*, the modified works are considered to result in a very minor view impact upon upslope properties to the rear of the subject site and achieves consistency with the relevant objectives of this control and the planning principles outlined within the NSW Land and Environment Court Case of *Tenacity Consulting Pty Ltd Vs Warringah Council* (2004) NSWLEC 140.

In summary, the concern raised does not warrant refusal of the application.

- *Concern has been raised that the proposed reverse-sloped roof is inconsistent with the existing pattern of buildings within the streetscape.*

Comment:

The replacement of the previously approved vergola roofing with a colourbond roofing will continue to sit comfortably with adjoining and surrounding multi storey residential development and on balance, the proposal is considered consistent with the desired future character of the Avalon Beach locality.

As the modified works do not alter previously approved built form controls including setback, with the minor increase in roof height well below the ridge height of the existing dwelling resulting in a proposal that is considered reasonable in this context.

In summary, the concern raised does not warrant refusal of the application.

## REFERRALS

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	<p>The proposed modifications do not involve any additional biodiversity impacts including removal of prescribed trees or vegetation or impacts to biodiversity values mapped within the site.</p> <p>As such, Council's Biodiversity referrals team raise no objections to the application.</p>
NECC (Coast and Catchments)	The proposed modifications do not involve any of the coastal related provisions and hence recommended for approval.
NECC (Riparian Lands and	This application has been assessed against relevant legislation and



Internal Referral Body	Comments
Creeks)	<p>policy relating to waterways, riparian areas, and groundwater.</p> <p>This application is recommended for approval as it is unlikely to have an adverse effect on the integrity and resilience of the biophysical, ecological and hydrological environment of Careel Bay.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
Aboriginal Heritage Office	<p>No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.</p> <p>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</p>

## ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\*

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

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

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

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

### SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

### SEPP (Infrastructure) 2007

#### Ausgrid

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

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

Comment:

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

### **SEPP (Coastal Management) 2018**

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

#### **13 Development on land within the coastal environment area**

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

Comment:

The proposed development is not considered likely to cause an adverse impact on the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment, coastal environmental values and natural coastal processes, the water quality of the marine estate, native vegetation and fauna and their habitats, public open space or aboriginal cultural heritage.

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

- will be managed to minimise that impact, or
- (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment:

The development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1).

#### **14 Development on land within the coastal use area**

(1)

- (a) has considered whether the proposed development is likely to cause an adverse impact on the following:
- (i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
  - (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
  - (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,
  - (iv) Aboriginal cultural heritage, practices and places,
  - (v) cultural and built environment heritage, and
- (b) is satisfied that:
- (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or
  - (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
  - (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and
- (c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

The proposed development is not considered likely to cause an adverse impact on safe access to and along the foreshore, overshadowing, wind funnelling and the loss of views from public places to foreshores, the visual amenity and scenic qualities of the coast, including coastal headlands, or cultural and built environment heritage.

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

#### **15 Development in coastal zone generally—development not to increase risk of coastal hazards**

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

Comment:

The proposed development is not considered likely to cause increased risk of coastal hazards on that land or other land.

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

#### Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	7.1m	7.35m	-	Yes

#### Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	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

### 4.3 Height of buildings

#### Building Height

The site is subject to an 8.5m height control which is the vertical distance from Australian Height Datum (AHD) to the highest point of the building pursuant to the definition of building height under Clause 4.3 WLEP 2011. In the circumstances of this assessment, it is important to note that the site has been excavated to a depth of up to approximately 5m below AHD.

In this regard, it is noted that the building height definition in the standard instrument states as follows: building height (or height of building) means:

- (a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or
- (b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

The definition was amended by in the Standard Instrument LEP by adding (b), as a result of caselaws in the LEC Court, including the case *Bettar v Council of the City of Sydney [2014] NSWLEC 1070*, *Stamford Property Services Pty Ltd v City of Sydney & Anor [2015] NSWLEC 1189* and *Nicola v Waverley Council [2020] NSWLEC 1599* where it is made apparent that the measure of existing building height should relate to the levels and natural topography of the site, and not relate to artificially modified levels (such as those achieved through excavation).

Therefore, in measuring the "natural" ground level of the site (AHD levels), reliance must be placed on the Site Survey and upon known levels of the site which can be relied on to interpolate the natural slope of the land. In the circumstances of this case, it is evident that the natural landform in the front portion of the site would be naturally higher in the vicinity of the front of the building where the outdoor living area and as-built roofline is located. This is further evidenced by the gradient and levels of the surrounding properties.

Therefore, for the purpose of this assessment, the relevant ground levels to accurately determine the height of the building are extrapolated from survey points around the perimeter of the site as detailed on the original architectural plans accompanying the application. In measuring the building height using this methodology, the as built roofing development would comply with the building height standard of 8.5m at 7.35m.

## **Pittwater 21 Development Control Plan**

### Built Form Controls

There is no change to the previously approved built form controls.

### Compliance Assessment

<b>Clause</b>	<b>Compliance with Requirements</b>	<b>Consistency Aims/Objectives</b>
A1.7 Considerations before consent is granted	Yes	Yes
A4.1 Avalon Beach Locality	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B4.15 Saltmarsh Endangered Ecological Community	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.12 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
D1.5 Building colours and materials	No	Yes
D1.17 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D1.20 Scenic Protection Category One Areas	Yes	Yes

### Detailed Assessment



### C1.3 View Sharing

#### Merit consideration

One submission was received from the south-west adjoining site (152 Cabarita Rd) raising concerns of the increase roofline impact on existing view lines.

It is noted that an on-site view impact assessment could not be conducted for this application due to NSW Department of Health Orders in relation to COVID-19 restrictions affecting Greater Sydney.

As a result, images taken by the objector at No. 152 Cabarita Road have been relied upon for the purposes of this view loss assessment.

The development is considered against the underlying Outcomes of the Control as follows:

- *A reasonable sharing of views amongst dwellings.*

#### Comment:

In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140, are applied to the proposal.

#### **1. Nature of the views affected**

*"The first step is the assessment of the views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured".*

#### Comment to Principle 1:

Views from No. 152 Cabarita Rd are unobstructed views that include the foreshore area, the marina as well as the land-water interface to the north-west towards Stokes Point and to north-east towards Palm Beach. The nature of views affected from No.152 are an area of water views of Careel Bay. It is important to note these views are whole views and are generally unobstructed by existing vegetation or residential development.

#### **2. What part of the affected property are the views obtained**

*"The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic".*

#### Comment to Principle 2:

The views to the north-east towards the proposed development are obtained over a rear boundary and can be viewed from standing or sitting positions from the north-facing balcony and also the living room on the upper floor of the dwelling. Standing views are also obtained from

ground floor areas including the garden and bedrooms which are partially obstructed by existing development and vegetation.

The views are shown in Figures 1, 2, 3 and 4 below.

***Image 1: standing view from upper level balcony (source No. 152 Cabarita Road)***



***Image 2: standing view from upper level living room (source No. 152 Cabarita Road)***





***Image 3: standing view from kitchen (source No. 152 Cabarita Road)***





***Image 4: standing view from master bedroom (source No. 152 Cabarita Road)***





### 3. Extent of impact

*“The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating”.*

#### Comment to Principle 3:

As noted above, the whole views towards the north will be generally unaffected as the proposed development will be located to the north-east. A small amount of views at the water's edge will be affected from the upper floor balcony over the side boundary, however the land-water interface will be retained.

The ridge height of the proposed works on the subject site as per the approved plans is RL12.105 which is below the ridge height of the existing dwelling, whilst the FFL of the affected balcony at No.152 is located upslope of the proposed roof, reflecting the retention of standing views from the upper floor balcony and living area. Given standing views are retained and front facing views to the north are unaffected, the qualitative extent of the view loss is considered to be very **minor**.

### 4. Reasonableness of the proposal that is causing the impact



*“The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.”*

#### Comment to Principle 4:

The modified works do not alter any relevant built form controls including setback and building envelope, with only a minor increase in height to the approved roof of 200mm, which remains below the ridge height of the existing dwelling. In the view of above, and the Tenacity Planning Principal, it is considered that the modified proposal and the consequent minor view loss is reasonable in these circumstances.

- *Views and vistas from roads and public places to water, headland, beach and/or bush views are to be protected, maintained and where possible, enhanced.*

#### Comment:

The proposed development will not impact upon views and vistas from roads and public places.

- *Canopy trees take priority over views.*

#### Comment:

The proposed development does not involve the removal of any canopy trees.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of this control and the planning principles outlined within the NSW Land and Environment Court Case of Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

### **D1.5 Building colours and materials**

A schedule of finishes and materials has not been provided with this application. The Statement of Environmental Effects (SEE) states that the colour of the proposed and partly installed roofing is Woodland Grey with a Colorbond steel coating. This colour is considered consistent with the external colours and materials listed in the control.

### **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 2019**

Section 7.12 contributions were levied on the Development Application.

### **CONCLUSION**

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

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

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

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

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

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

### **RECOMMENDATION**

THAT Council as the consent authority grant approval to Modification Application No. Mod2021/0276 for Modification of Development Consent N0832/01 granted for demolition of existing dwelling and construction of a new dwelling, inground swimming pool and front fence on land at Lot 4 DP 14882,154 Cabarita Road, 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**

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
DA04-B (First Floor Plan)	06 September 2002	Patrick Nicholas Design
DA05-A (Elevations)	31 August 2001	Patrick Nicholas Design
DA06-A1 (Elevations)	25 June 2003	Patrick Nicholas Design
DA07-A1 (Elevations)	25 June 2003	Patrick Nicholas Design
DA08-A1 (Section A-A)	25 June 2003	Patrick Nicholas Design
DA09-A (Section B-B)	31 August 2001	Patrick Nicholas Design
DA12-A (Section C-C)	30 August 2001	Patrick Nicholas Design

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

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

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

**Signed**



**Dean Pattalis, Planner**

The application is determined on 19/07/2021, under the delegated authority of:



**Catriona Shirley, Acting Development Assessment Manager**