

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2023/0481
Responsible Officer:	Stephanie Gelder
Land to be developed (Address):	Lot 4 DP 1240491, 104 A Wakehurst Parkway ELANORA HEIGHTS NSW 2101
Proposed Development:	Modification of Development Consent DA2018/1412 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:	Aaron Luke Kendall
Applicant:	Shaun James Thodey

Application Lodged:	20/09/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	26/09/2023 to 10/10/2023
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

The proposed modification works to DA2018/1412 comprise of the following:

Garage Level Plan:

- Revised entryway;
- Plant room and wine cellar to the rear of the garage;
- Ensuite to guest room enlarged;
- Powder room;
- Relocation of stairs to level 1;
- New lift connection;

Level 1 Plan:

- Revised front façade presentation;
- Reconfiguration to make this the bedroom level. 3 bedrooms including the master with WIR and ensuite;
- Rumpus room;
- Bathroom;
- Lift connection;

Level 2 Plan:

- Reconfiguration to create the main living level with kitchen, lounge and dining space;
- Rear facing deck to the enlarged;
- The approved front facing planted roof to be replaced with new terraces;
- Proposed study/spare bedroom;
- Bathroom; and
- Lift connection.

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 21 Development Control Plan - C1.4 Solar Access

Pittwater 21 Development Control Plan - C1.19 Incline Passenger Lifts and Stairways

SITE DESCRIPTION

Property Description:	Lot 4 DP 1240491 , 104 A Wakehurst Parkway ELANORA HEIGHTS NSW 2101
Detailed Site Description:	<p>The subject site consists of one (1) battle-axe allotment located on the northern side of Wakehurst Parkway.</p> <p>The site is regular in shape with a southern front boundary of 15.24m and a depth of 78.77m. The site has a surveyed area of 1187.6m².</p> <p>The site is located within the C4 Environmental Living zone from PLEP 2014 and accommodates a vacant allotment.</p> <p>The site slopes from the front southern boundary steeply upwards to the rear northern boundary over approximately 38 metres.</p> <p>The site contains dense vegetation. There are no details of any threatened species on the subject site.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by one and two storey dwelling houses varying in architectural style and design.</p>

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:

N0432/04

Development Application for Demolition of existing structures, subdivision of 2 lots into 4 lots and driveway construction.

Approved on 31 May 2005.

DA2018/1412

Development Application for Construction of a dwelling house.

Approved on 1 April 2019.

SC2019/0018

Subdivision Certificate for Torrens Title Subdivision.

Approved on 16 July 2019.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

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

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2018/1412, in full, with amendments detailed and assessed as follows:

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

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	<p>Consideration of whether a development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted, Justice Bignold established the following test in the <i>Moto Projects (No 2) Pty Ltd v North Sydney Council</i> (1999) 106 LGERA 289 where His Honour states:</p> <p><i>"[54] The relevant satisfaction required by s96(2)(a) to be found to exist in order that the modification power be available involves an ultimate finding of fact based upon the primary facts found. I must be satisfied that the modified development is substantially the</i></p>

Section 4.55 (2) - Other Modifications	Comments
	<p>same as the originally approved development.</p> <p><i>[55] The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is “essentially or materially” the same as the (currently) approved development.</i></p> <p><i>[56] The comparative task does not merely involve a comparison of the physical features or components of the development as currently approved and modified where that comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted)."</i></p> <p>The applicant has provided the following justification to support their argument that the modifications are substantially the same:</p> <p><i>"In my opinion a quantitative and qualitative assessment of the application is that it remains substantially the same. The approved land use is not altered as a consequence of the changes as proposed. The works relate to refinements of the design to improve functionality, amenity while largely preserving the bulk and scale as approved. The works do not give rise to any additional amenity impacts from the approved scheme and is in general conformity with the planning controls as they reasonably apply.</i></p> <p><i>It is submitted the Council can be satisfied that the proposal to changes remain substantially the same and within the ambit of the consent as issued. The modifications proposed to the dwelling results in a negligible environmental impact."</i></p> <p>Reviewing the above comments and the court judgement by Justice Bignold established in the <i>Moto Projects (No 2) Pty Ltd v North Sydney Council (1999) 106 LGERA 289</i> it is concurred that the proposed modification is substantially the same as the development for which the consent was originally granted and can be considered under Section 4.55 of the Act.</p>
<p>(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval</p>	<p>Development Application DA2018/1412 did not require concurrence from the relevant Minister, public authority or approval body.</p>

Section 4.55 (2) - Other Modifications	Comments
body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	
(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 (2) the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft	There are no current draft environmental planning instruments.

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

Section 4.15 'Matters for Consideration'	Comments
	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 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 application that included a certificate (prepared by Bushcon Australia Pty Ltd, dated 23 May 2023) 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 26/09/2023 to 10/10/2023 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
Landscape Officer	The application is for modification of development consent DA2018/1412 as described in reports and as illustrated in plans. The modification proposal alters the front facade located in proximity to existing natural landscapes features (large rock outcrop and a gum tree). The modification proposal for a double V concrete column to support the dwelling above, as documented, is located upon the rock outcrop however the extent of excavation does not impact upon the visual amenity of the natural landscape feature and is complimentary. No Landscape Referral concerns are raised.

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	<p>The proposal seeks approval for the modification of Development Consent DA2018/1412 granted for Construction of a dwelling house. The comments in this referral relate to the following applicable controls and provisions:</p> <ul style="list-style-type: none"> • Planning for Bushfire Protection 2019 (PBP 2019) • SEPP (Resilience and Hazards) 2021 - Coastal wetlands and proximity area • Pittwater LEP - Clause 7.6 Biodiversity Protection • Pittwater DCP - Clause B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor <p>The proposed modifications would take place in previously disturbed areas of the site and are unlikely to impact on native flora and fauna.</p> <p>An updated Bushfire Report has been submitted with the modification and concluded that no additional vegetation will have to be removed in order to comply with the Asset Protection Zone (APZ) requirements established in PBP 2019 as APZs are already provided on site along with defensible spaces.</p> <p>The site is on land identified as proximity area for coastal wetlands and as such the development must not impact on the ecological integrity of the wetland.</p> <p>No native vegetation or fauna habitat would be impacted, the development is designed, sited and will be managed to avoid any significant adverse environmental impact.</p>
NECC (Coast and Catchments)	<p>The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Resilience & Hazards) 2021, and against the requirements of the Pittwater LEP and DCP.</p> <p>Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore Coastal Management Act 2016 is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the Coastal Management Act 2016.</p> <p>State Environmental Planning Policy (Resilience & Hazards) 2021 The subject land has been included on the 'Proximity to Coastal Wetlands Area' and 'Coastal Environment Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021 (SEPP R & H). Hence, Clauses 2.8, 2.10 and 2.12 of the CM (R & H) apply for this proposal. On internal assessment the proposal satisfies the requirements under clause 2.8, 2.10 and 2.12 of the SEPP R&H.</p>

Internal Referral Body	Comments
	As such, it is considered that the application complies with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021. Pittwater LEP 2014 and Pittwater 21 DCP No issues identified.
NECC (Development Engineering)	The proposed modification increases the proposed excavation to accommodate the utility rooms in garage level. A new Geotechnical report has been submitted for the proposal which addresses the relevant DCP controls. The garage level is unaltered by the proposal and the stormwater management is also unchanged as a result of the proposal. Development Engineering support the proposal subject to conditions 1 and 7 reflecting the revised date of the Geotechnical Report by Martens Consulting Engineers to July 2023.
NECC (Flooding)	The property is not identified as flood prone. There are no flood related objections to the proposed development.

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	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.

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.1392295S dated 08 August 2023). The BASIX Certificate is supported by an ABSA Assessor Certificate (see Certificate No.0008640526-01 dated 12 May 2023).

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 (Transport and Infrastructure) 2021

Ausgrid

Section 2.48 of Chapter 2 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 raised no objections, subject to conditions which have been included in the recommendation of this report.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

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

Division 1 Coastal Wetlands and littoral rainforest area

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

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

Comment:

The subject site is on land identified as "proximity area for coastal wetlands". The proposed development will not significantly impact on the biophysical, hydrological or ecological integrity of the adjacent coastal wetland, or the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland.

Division 3 Coastal environment area

2.10 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 subject site is located within land identified as "coastal environment area". The proposed development is not likely to cause adverse impact to items listed under Clause 2.10(1)(a-g) inclusive.

- 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 subsection (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 proposed development has been designed, sited, and managed to avoid an adverse impact to items listed under Clause 2.10(1)(a-g) inclusive.

Division 4 Coastal use area

2.11 Development on land within the coastal use area

- 1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:

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

Comment:

The proposed development is not likely to cause an adverse impact to items listed under Clause 2.11(1)(a)(i-v) inclusive. The proposal has been designed, sited, and managed to avoid any adverse impacts as detailed under Clause 2.11(1)(a)(i-v) inclusive.

Division 5 General

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

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

Comment:

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

2.13 Development in coastal zone generally—coastal management programs to be considered

Development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land.

Comment:

There is no certified coastal management program applicable to the land.

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

Chapter 4 – Remediation of Land

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

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m (10m variation applicable)	9.6m	unaltered	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	N/A
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 subject site is located in Zone C4 Environmental Living of Pittwater Local Environmental Plan 2014.

The proposal has been assessed against the objectives of zone as detailed below:

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

Comment:

The proposal will provide for low-impact residential development in areas with

special ecological, scientific, or aesthetic values.

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

Comment:

The residential development will not have any adverse effects on the special ecological, scientific or aesthetic values.

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

Comment:

The proposal will provide a low density and scale that will integrate with the landform, and landscape.

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

Comment:

The development will not impact upon any riparian, foreshore vegetation, or wildlife corridors.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
Front building line	6.5m	N/A	N/A	N/A
Rear building line	6.5m	54.0m	unaltered	Yes
Side building line	2.5m (West)	2.0m (Garage and Level 1)	unaltered	N/A
		2.9m (Level 2)	unaltered	Yes
	1m (East)	0.9m (Garage and Level 1)	unaltered	N/A
		1.6m (Level 2)	unaltered	Yes
Building envelope	3.5m (West)	Outside envelope	unaltered	N/A
	3.5m (East)	Outside envelope	unaltered	N/A
Landscaped area	60% (712.56m ²)	81.2%	81%	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.5 Elanora Heights Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B3.1 Landslip Hazard	Yes	Yes
B3.2 Bushfire Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.7 Transport and Traffic Management	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
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	No	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
C1.19 Incline Passenger Lifts and Stairways	No	Yes
C1.23 Eaves	N/A	N/A
D5.1 Character as viewed from a public place (Excluding Elanora Heights Village Centre)	Yes	Yes
D5.3 Building colours and materials (Excluding Elanora Heights Village Centre)	Yes	Yes
D5.5 Front building line (Excluding Elanora Heights Village Centre)	Yes	Yes
D5.6 Side and rear building line (Excluding Elanora Heights Village Centre)	N/A	N/A
D5.7 Building envelope (Excluding Elanora Heights Village Centre)	N/A	N/A
D5.9 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D5.13 Construction, Retaining walls, terracing and undercroft areas (Excluding Elanora Heights Village Centre)	Yes	Yes
D5.14 Scenic Protection Category One Area	Yes	Yes

Detailed Assessment

C1.4 Solar Access

There are no changes to the solar access as approved under DA2018/1412.

Therefore, the assessment under DA2018/1412 remains unchanged, and as such the non-compliance with Clause C1.4 Solar Access is unaltered under this application.

C1.19 Incline Passenger Lifts and Stairways

As detailed in the Assessment Report for DA2018/1412, a condition was recommended to increase the western side setback for the external stairway.

Condition 2 of DA2018/1412 details amendments to the approved plans that includes the following:

(b) The external stairway located along the western boundary is to be amended by maintaining a minimum 1m setback from the western boundary

The amended plans detail the external stairway to be located 1.1m from the western side boundary on all plans, except for the Level 2 Plan. As such, the existing Condition 2 will remain to ensure the external stairway is located a minimum of 1m setback from the western side boundary and detailed correctly on all plans.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

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

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

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

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

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

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2023/0481 for Modification of Development Consent DA2018/1412 granted for Construction of a dwelling house on land at Lot 4 DP 1240491, 104 A Wakehurst Parkway, ELANORA HEIGHTS, 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-367249 Mod2023/0481	The date of this notice of determination	Modification of Development Consent DA2018/1412 granted for Construction of a dwelling house Add Condition 1A - Modification of Consent - Approved Plans and supporting documentation Add Condition 1B - Compliance with Other Department, Authority or Service Requirements Add Condition 1C - No Approval for Secondary Dwelling Add Condition 6A - No Clearing of Vegetation Add Condition 6B - Adherence to Natural Environment Consent Conditions Add Condition 6C - Installation and Maintenance of Sediment and Erosion Control

	Modify Condition 7 - Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans Add Condition 14A - Wildlife Protection Add Condition 18A - No Weeds Imported On To The Site
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Modified conditions

A. Add Condition 1A - Modification of Consent - Approved Plans and supporting documentation, to read as follows:

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

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
-	N	Site Plan / Site Analysis	Thodey Design	11 September 2023
-	N	Garage Level, Level 1 and Level 2	Thodey Design	11 September 2023
-	N	Roof Plan	Thodey Design	11 September 2023
-	N	Elevations & Colours and Finishes	Thodey Design	11 September 2023
-	N	Sections	Thodey Design	11 September 2023

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate	1392295S	Certified Energy 1	08 August 2023
Bushfire Report	104Wak-05	Bushcon Australia Pty Ltd	23 May 2023
Geotechnical Report	P1705950JR02V02	Martens Consulting Engineers	17 July 2023
NatHERS Certificate	0008640526-01	Certified Energy	12 May 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 1B - Compliance with Other Department, Authority or Service Requirements to read as follows:

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response - Electricity Easements Guidelines	4 October 2023
	Ausgrid Referral Response - Overhead Cables	4 October 2023
	Ausgrid Referral Response - Underground Cables	4 October 2023

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

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

C. Add Condition 1C - No Approval for Secondary Dwelling to read as follows:

No approval is granted or implied under this Development Consent for the use of any part of the dwelling house for the purpose of a secondary dwelling or separate occupancy. Built in cooking facilities are not permitted to be installed, other than those shown in the designated kitchen area.

Reason: To ensure compliance with the terms of this consent.

D. Add Condition 6A - No Clearing of Vegetation to read as follows:

Unless otherwise exempt, no vegetation is to be cleared prior to issue of a Construction Certificate.

Details demonstrating compliance are to be submitted to the Certifier prior to issue of Construction Certificate.

Reason: To protect native vegetation.

E. Add Condition 6B - 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 DA2018/1412, unless amended by these biodiversity-related conditions of consent.

Reason: To protect biodiversity values.

F. Add Condition 6C - Installation and Maintenance of Sediment and Erosion Control to read as follows:

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban

Stormwater: Soils and Construction' (2004). Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

Reason: To protect the surrounding environment from the effects of sedimentation and erosion from the site.

G. Modify Condition 7 - Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans to read as follows:

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by Martens Consulting Engineers dated 17 July 2023 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier.

Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

H. Add Condition 14A - Wildlife Protection to read as follows:

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

Reason: To protect native wildlife.

I. Add Condition 18A - No Weeds Imported On To The Site to read as follows:

No Priority or environmental weeds (as specified in the Northern Beaches Local Weed Management Plan) are to be imported on to the site prior to or during construction works.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to issue of any Occupation Certificate.

Reason: To reduce the risk of site works contributing to spread of Priority and environmental weeds.

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

Signed



Stephanie Gelder, Planner

The application is determined on 13/10/2023, under the delegated authority of:



A handwritten signature in black ink, appearing to read "Am".

Adam Richardson, Manager Development Assessments