

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2023/0570
<b>Responsible Officer:</b>	Phil Lane
<b>Land to be developed (Address):</b>	Lot 30 DP 13686, 888 Barrenjoey Road PALM BEACH NSW 2108
<b>Proposed Development:</b>	Modification of Development Consent DA2021/0657 granted for Alterations and additions to a dwelling house including swimming pool and garage
<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>	Lisa Maria Keighery Timothy Donald Goozee
<b>Applicant:</b>	Wyer & Co.

<b>Application Lodged:</b>	27/10/2023
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Refer to Development Application
<b>Notified:</b>	08/11/2023 to 22/11/2023
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

### PROPOSED DEVELOPMENT IN DETAIL

This application seeks to remove the existing street tree within the road reserve on the northern side of the existing driveway. Additionally the existing retaining walls surrounding the street tree are to be removed and replaced with new retaining walls (masonry block walls with stone cladding) in the same location.

The following comments were submitted by the applicant:-

*"This modification application seeks a modification of Condition 21: Protection of Existing Street Tree , including the removal of Tree E01 (Glochidion ferdinandi – Cheese Tree) and the provision of a suitable mature native replacement tree.*

*Upon technical advice provided by Alliance Geotechnical Pty Ltd (Alliance), Northern Beaches Consulting Engineers and Hugh the Arborist, concerning the demolition and reconstruction of existing sandstone retaining wall at the front of the property, it is advised that in order to establish a safe 1:1 (H:V) batter for stability during construction, the batter will extend beyond the base of the existing tree and subsequently undermine the tree. It is therefore not feasible to keep the tree in its current location while maintaining the retaining wall design, layout, and setback from the public pedestrian footway as approved. A suitable mature native replacement tree is proposed within the vicinity of the existing tree to maintain the general configuration of the proposed works as viewed from the street and the neighbouring properties."*

### Application History

12 February 2024 - An additional elevation was submitted by the applicant.

### 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 - C1.24 Public Road Reserve - Landscaping and Infrastructure  
 Pittwater 21 Development Control Plan - D12.5 Front building line  
 Pittwater 21 Development Control Plan - D12.6 Side and rear building line

### SITE DESCRIPTION

<b>Property Description:</b>	Lot 30 DP 13686 , 888 Barrenjoey Road PALM BEACH NSW 2108
<b>Detailed Site Description:</b>	The subject site consists of an allotment located on the eastern side of Barrenjoey Road.  The site is irregular in shape with a frontage of 15.7m along

Barrenjoey Road and a depth of 62.7m-68.9m. The site has a surveyed area of 1003m<sup>2</sup>.

The site is located within the C4 Environmental Living zone and accommodates a dwelling house.

The site is steeply sloped at the rear and contains dense vegetation in this area.

The site is currently under construction via the previous approves granted via DA2021/0657 Alterations and additions to a dwelling house including swimming pool and garage and following modification MOD2022/0188 - Modification of Development Consent DA2021/0657 granted for alterations and additions to a dwelling house including swimming pool and garage.

#### **Detailed Description of Adjoining/Surrounding Development**

Adjoining and surrounding development is characterised by residential development.

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:

- N0297/12 - Alterations and additions to the existing dwelling and a new swimming pool approved 6 February 2013.

- DA2018/0739 - Alterations and additions to a dwelling house including new driveway and landscaping approved on 14 February 2019.
- DA2021/0657 - Alterations and additions to a dwelling house including swimming pool and garage approved 8 June 2022.
- MOD2022/0188 - Modification of Development Consent DA2021/0657 granted for alterations and additions to a dwelling house including swimming pool and garage approved 8 June 2022.

## 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 DA2021/0657, in full, with amendments detailed and assessed as follows:

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

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	<p>The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2021/0657 for the following reasons:</p> <p>The proposal involves the demolition and reconstruction of existing sandstone retaining wall and the removal and replacement planting of the Cheese tree with a suitable mature native replacement tree at the front of the property. The works would result in a similar visual presentation and bulk, and maintains the use as a dwelling house with landscaped features.</p>



Section 4.55 (2) - Other Modifications	Comments
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application DA2021/0657 did not require concurrence from the relevant Minister, public authority or approval body.
(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 2000, 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.	No submissions were received in relation to this application.

## Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 96 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 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 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 61</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. These matters have 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 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 Pittwater 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 'Matters for Consideration'	Comments
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 original development application (prepared by Bush Fire Planning Services, dated 13 May 2021). The report stated that the bushfire attack level of the site is “Flame Zone” and the report recommended an alternative solution to comply with Planning for Bush Fire Protection.

A further Bushfire letter was submitted with the previous modification application, dated 29 March 2022.

This current modification application was referred to the NSW Rural Fire Service for further assessment. The NSW RFS raised no objections to approval, subject to conditions.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 08/11/2023 to 22/11/2023 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	<p>The application is for modification of development consent DA2021/0657 to modify Condition 21: Protection of Existing Street Tree, including the removal of Tree E01 (Glochidion ferdinandi - Cheese Tree) and the provision of a suitable mature native replacement tree.</p> <p>Following engineering technical advice regarding reconstruction of the existing sandstone retaining wall at the front of the property, it is advised that in order to establish a safe 1:1 batter for stability during construction, the batter will extend beyond the base of the existing</p>

Internal Referral Body	Comments
	<p>tree and subsequently impact upon tree stability. Reconstruction of the existing retaining wall is approved under the development consent.</p> <p>The arboricultural advice is that the existing Cheese Tree is unable to be retained due to the impact from batter excavation. The Landscape Plan under the modification proposal includes replacement planting with a semi-advanced Cheese Tree, and Landscape Referral raise no objections based on the engineering and arboricultural report recommendations.</p> <p>Condition 21 shall be deleted, and a condition for replacement street tree planting shall be added.</p>
NECC (Development Engineering)	<p><b>01/02/2024:</b></p> <p>It is noted that Council's Tree team is supportive of removal of existing street tree (internal Ref: TRIM2023/780669) and TfNSW is also supportive of the proposal (internal Ref: TRIM2024/000741). No objections to approval subject to below:</p> <p><b>Condition 13. Submission Roads Act Application for Civil Works in the Public Road</b> to be amended and to be read as:</p> <p>The Applicant is to submit an application for approval for infrastructure works on Council's roadway. Engineering plans for the new development works within the road reserve and this development consent are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993. The application is to include copy of Civil Engineering plans for the design of the driveway crossing and associated retaining walls which are to be generally in accordance with the Council's specification for engineering works - AUS-SPEC #1. The plan shall be prepared by a qualified civil engineer. The design must include the following information:</p> <ol style="list-style-type: none"> <li>1. The driveway crossing is to be 6 metres wide and the profile is to be in accordance with Council drawing A4/3330/2 NH.</li> <li>2. Structural details of the retaining walls are to be provided.</li> <li>3. Form 2 from the Geotechnical Engineer.</li> <li>4. Written approval for the works by Transport for NSW.</li> <li>5. Retaining walls around street tree to be re-constructed at its current location and shall be reconstructed "like for like" to Council's satisfaction</li> <li>6. Pre and post construction structural certification for the retaining walls shall be submitted to Council</li> <li>7. Plans to show details of replaced street tree planting</li> </ol> <p>The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.</p> <p>An approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.</p>



Internal Referral Body	Comments
	<p>Reason: To ensure engineering works are constructed in accordance with relevant standards and Council's specification.</p> <p><b>Rest of the existing Development Engineering conditions for DA2021/0657 are considered to still be relevant and adequate.</b></p> <p><b>24/11/2023:</b> Modification application seeks modification of Condition 21: Protection of Existing Street Tree , of DA2021/0657. As advised by Planning Team, Barrenjoey Road is a State Road and a referral has been sent to Transport for NSW (TfNSW). Development Engineering would like to wait for comments from TfNSW prior to assessing this application.</p>

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.
Rural Fire Service - Local Branch - EP&A Act, s4.14	The New South Wales Rural Fire Service (NSW RFS) has considered the information submitted and supports this application subject to conditions.
Aboriginal Heritage Office	<p>Reference is made to the proposed development at the above area and Aboriginal heritage.</p> <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> <p>Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.</p>
Roads and Maritime Service - Roads Act 1993, s138 (Non-integrated)	<p>TfNSW has reviewed the documentation and provides the following advice for consideration by Council as part of the determination of the application:</p> <p>1. The retaining wall shall be reconstructed "like for like" to Council's satisfaction and post construction structural certification shall be submitted to Council.</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 (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.

#### Transport for NSW (TfNSW)

Section 2.119 - Development with frontage to classified road states:

*The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that—*

*(a) where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and*

*(b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of—*

*(i) the design of the vehicular access to the land, or*

(ii) the emission of smoke or dust from the development, or  
(iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land,  
and

(c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.

Comment:

The application was referred to Transport for NSW who did not raise any objection to the proposal subject to conditions.

## 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	% Variation	Complies
Height of Buildings:	8.5m	3.4m (garage)	2.8m	-	Yes

### Compliance Assessment

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

Clause	Compliance with Requirements
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

#### Detailed Assessment

#### **Zone C4 Environmental Living**

The proposed modifications involves demolition of the existing retaining walls within the road reserve and removal of tree (within this area bounded by the retaining walls - north of the driveway) and associated landscaping works. Dwelling houses are permissible with consent in the C4 Environmental Living zone. The proposal is considered against the objectives of the zone as follows:

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

#### Comment:

The area of the site that is subject to the development has been subject to previous disturbance by previous development. The proposed works include the demolition and replacement of retaining walls within the road reserve and the removal of a street tree (which will conditioned with a replacement native tree), which have been designed to complement and enhance the surrounding natural area and ensure low impact to the ecological, scientific or aesthetic values of the site.

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

#### Comment:

As demonstrated above, the proposed development does not have an adverse effect on the ecological, scientific or aesthetic values listed above.

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

#### Comment:

The proposed development will require removal of some vegetation and this will be replaced with appropriate landscaping at the front of the site. Furthermore, the retaining walls integrates with the slope of land which visually reduces the built form and sensitively responds to the natural topography. The proposal also does not change the existing low density residential land use and the scale of the development is commensurate with nearby residential development within the locality. Overall, the proposal meets this objective.

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

Comment:

The proposed replacement tree will ensure consistency with this clause.

Conclusion

As demonstrated above, the proposed development satisfies the objectives of the C4 Environmental Living zone.

**Pittwater 21 Development Control Plan**

Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
Front building line	6.5m	1.25m	Nil	Existing*
Side building line	2.5m	6.8m (garage)	6.8m / unaltered	Yes
	1m	1m	Nil	Existing**
Building envelope	3.5m	Within	Within envelope	Yes
	3.5m	Within	Within envelope	Yes
Landscaped area	60%	60%	60%	Yes

\* Existing retaining walls within the road reserve

\*\* Existing retaining walls have a nil side setback to the northern side boundary

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
Section A Shaping Development in Pittwater	Yes	Yes
A1 Introduction	Yes	Yes
A1.7 Considerations before consent is granted	Yes	Yes
A4 Localities	Yes	Yes
A4.12 Palm Beach Locality	Yes	Yes
Section B General Controls	Yes	Yes
B1 Heritage Controls	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3 Hazard Controls	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.2 Bushfire Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4 Controls Relating to the Natural Environment	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B5 Water Management	Yes	Yes
B5.15 Stormwater	Yes	Yes



Clause	Compliance with Requirements	Consistency Aims/Objectives
B6 Access and Parking	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.7 Transport and Traffic Management	Yes	Yes
B8 Site Works 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
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
Section C Development Type Controls	Yes	Yes
C1 Design Criteria for Residential Development	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.14 Separately Accessible Structures	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	No	Yes
Section D Locality Specific Development Controls	Yes	Yes
D12 Palm Beach Locality	Yes	Yes
D12.1 Character as viewed from a public place	Yes	Yes
D12.3 Building colours and materials	Yes	Yes
D12.5 Front building line	Yes	Yes
D12.6 Side and rear building line	Yes	Yes
D12.8 Building envelope	Yes	Yes
D12.10 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D12.13 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D12.14 Scenic Protection Category One Areas	Yes	Yes

#### Detailed Assessment

#### **C1.24 Public Road Reserve - Landscaping and Infrastructure**

**Clause C1.24 requires:**

- *"All existing trees over 3m in height and native vegetation within the road reserve areas are to be retained where practical. The existing trees are to be protected during the construction of works through temporary perimeter fencing that is 1.8m high.*
- *All work is subject to a Section 139 approval from Council."*

Comment:

The proposal includes the removal of the existing tree from within the road reserve and this is considered inconsistent with the requirement and outcome of the control which seeks to maintain the desirable character of the Pittwater streetscape and be consistency in the design and construction of landscape works in the road reserve. Please refer to detailed discussion in the Internal Referrals (Landscape Officers comments) of this report.

Additionally, as the works are within the road reserve the applicant is to submit an application for approval for infrastructure works under the provisions of Section 138 and 139 of the Roads Act 1993 and applicable conditions have been incorporated by Council's Development Engineer to ensure that outcome.

In short, conditions has also been included for a replacement planting of native tree and conditions have been included for requirements under the Roads Act ensuring compliance with these objectives and clause is satisfied.

#### **D12.5 Front building line**

*"Built structures other than driveways, fences and retaining walls are not permitted within the front building setback."*

The proposal is to the replace and reconstruction new retaining walls in the same approved location.

#### **D12.6 Side and rear building line**

*"The minimum side and rear building line for built structures including pools and parking structures other than driveways, fences and retaining walls"*

The proposal is to the replace and reconstruction new retaining walls in the same approved location.

### **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. Mod2023/0570 for Modification of Development Consent DA2021/0657 granted for Alterations and additions to a dwelling house including swimming pool and garage on land at Lot 30 DP 13686,888 Barrenjoey Road, PALM BEACH, 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-380515 Mod2023/0570	The date of this notice of	Section 4.55 (2) Environmental Impact - Modification of Development Consent DA2021/0657 granted for Alterations

	determination	and additions to a dwelling house including swimming pool and garage  Add Condition No. 1B - Modification of Consent - Approved Plans and supporting Documentation Amend Condition No.2 - Compliance with Other Department, Authority or Service Requirements Amended Condition No. 13 - Submission Roads Act Application for Civil Works in the Public Road Delete Condition 21 - Protection of Existing Street Trees Add Condition 36A - Street Tree Planting
PAN-212683 Mod2022/0188	8 June 2022	Modification of Development Consent DA2021/0657 granted for alterations and additions to a dwelling house including swimming pool and garage  Add Condition No. 1A - Modification of Consent - Approved Plans and supporting Documentation Amend Condition No.2 - Compliance with Other Department, Authority or Service Requirements

### **Modified conditions**

#### **A. Add Condition No. 1B - 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>
S4.55_1.0	01	Site Plan	Wyer & Co	3 October 2023
S4.55_5.0	01	Proposed Lower/Upper Ground Floor Plan - Front	Wyer & Co	3 October 2023
S4.55_5.2	01	Proposed Ground Floor Plan - Rear	Wyer & Co	3 October 2023
DA_6.1	03	Elevation/Section	Wyer & Co	12 May 2021
LP_1.0	01	Landscape Plan	Wyer & Co	3 October 2023

<b>Approved Reports and Documentation</b>			
<b>Document Title</b>	<b>Version Number</b>	<b>Prepared By</b>	<b>Date of Document</b>
Letter RE Tree Removal (Geotechnical Letter)	1	Alliance Geotechnical Pty Ltd	2 August 2023
Removal of Tree (Engineering Letter)	1	NB Consulting Engineers	17 August 2023

Arborist Letter	1	Hugh The Arborist	23 August 2023
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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. Modify Condition 2 - 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
Ausgrid	Ausgrid Referral Response
TfNSW	TfNSW Referral Response
NSWRFS	NSWRFS Referral Response
AHO	AHO Referral Response

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website [www.northernbeaches.nsw.gov.au](http://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. Modify Condition 13 - Submission Roads Act Application for Civil Works in the Public Road to read as follows:**

The Applicant is to submit an application for approval for infrastructure works on Council's roadway. Engineering plans for the new development works within the road reserve and this development consent are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993.

The application is to include copy of Civil Engineering plans for the design of the driveway crossing and associated retaining walls which are to be generally in accordance with the Council's specification for engineering works - AUS-SPEC #1. The plan shall be prepared by a qualified civil engineer. The design must include the following information:

1. The driveway crossing is to be 6 metres wide and the profile is to be in accordance with Council drawing A4/3330/2 NH.
2. Structural details of the retaining walls are to be provided.
3. Form 2 from the Geotechnical Engineer.
4. Written approval for the works by Transport for NSW.
5. Retaining walls around street tree to be re-constructed at its current location and shall be reconstructed "like for like" to Council's satisfaction



6. Pre and post construction structural certification for the retaining walls shall be submitted to Council
7. Plans to show details of replaced street tree planting

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

An approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure engineering works are constructed in accordance with relevant standards and Council's specification.

**D. Delete Condition 21 - Protection of Existing Street Trees to read as follows:**

DELETED

**E. Add Condition No. 36A - Street Tree Planting, to read as follows:**

Street tree planting shall be installed in accordance with the approved Landscape Plans submitted under the modification application.

Replacement street tree supply shall be a minimum pre-ordered planting size as nominated in the plant schedule, and shall meet the requirements of Natspec - Specifying Trees. All street trees shall be planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, including a four post and top and mid rail timber tree guard, and maintained for a period of 12 months including fertilising and watering until established.

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

Reason: To maintain environmental and streetscape amenity.

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

**Signed**



**Phil Lane, Principal Planner**

The application is determined on 14/02/2024, under the delegated authority of:



**Adam Richardson, Manager Development Assessments**