

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2025/0041
Responsible Officer:	Kye Miles
Land to be developed (Address):	Lot 1 DP 170202, 1126 Pittwater Road COLLAROY NSW 2097
Proposed Development:	Modification of Development Consent DA2023/0173 granted for Alterations and additions to a dwelling house including a swimming pool
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Applicant:	Glenn Robert Wood
Application Lodged:	12/02/2025
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	20/02/2025 to 06/03/2025
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.3 Height of buildings: 9.7%
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

Modification of Development Consent DA2023/0173 granted for Alterations and additions to a dwelling house including a swimming pool. The modifications include:

- Extend the first floor balcony 1.8 metres to the east.
- Roof alterations to match the deck extension.

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

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings

Warringah Development Control Plan - B5 Side Boundary Setbacks

Warringah Development Control Plan - B7 Front Boundary Setbacks

Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting

Warringah Development Control Plan - D7 Views

Warringah Development Control Plan - D8 Privacy

SITE DESCRIPTION

Property Description:	Lot 1 DP 170202 , 1126 Pittwater Road COLLAROY NSW 2097
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the north-eastern corner of Pittwater Road and Ramsay Street.</p> <p>The site is an irregularly shaped corner allotment, with a primary frontage of 10.4m along Pittwater Road and a secondary frontage of 40.8m along Ramsay Street. The site has a surveyed area of 403.0m².</p> <p>The site is located within the R2 Low Density Residential zone within the <i>Warringah Local Environmental Plan 2011</i>, comprising a two (2) storey residential dwelling with vehicular and pedestrian access obtained from Ramsay Street. The rear of the subject site, to the east, is Collaroy Beach which is subject to a current sea wall development application.</p> <p>The site has a westerly orientation toward Pittwater Road, and an easterly orientation toward Collaroy Beach. The site</p>

is generally flat, with no notable slope.

The site is not known to have any threatened species.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by residential development to the north, south and west, with Collaroy Beach sited to the east.

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:

- **EPA2016/0125.** An emergency order from a storm even was logged with Council.
- **DA2017/0591.** This Development Application sought consent for the construction of coastal protection works. This application was approved as a deferred commencement on 5 September 2018. The deferred commencement conditions were satisfied and the Applicant was notified of this on 20 July 2022.
- **Mod2022/0136.** This modification application sought consent to modify DA2017/0591. This application was withdrawn on the NSW Planning Portal on 11 May 2022.
- **CC2022/0574 and NOC2022/0526.** The construction certificate and notice of commencement was submitted to Council, for DA2017/0591, on 8 June 2022.
- **DA2023/0173.** This Development Application sought consent for alterations and additions to a residential dwelling, including a swimming pool. This application was approved as a deferred commencement on 5 July 2023. The deferred commencement conditions were satisfied and the Applicant was notified of this on 12 November 2024.

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 DA2023/0173, 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 consent authority can be satisfied that the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted under DA2021/2326 for the following reasons:</p> <ul style="list-style-type: none"> • The approved use remains unaltered. • The building form remains generally consistent with the approved outcome. • The modifications do give rise to any adverse environmental impacts. • From qualitative and quantitative perspectives, the proposal will not be significantly altered by the proposed modifications.
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition	Development Application DA2023/0173 did not require concurrence from the relevant Minister, public authority or approval body.

Section 4.55 (2) - Other Modifications	Comments
<p>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</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>	<p>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.</p>
<p>(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.</p>	<p>No submissions were received in relation to this application.</p>
<p>Section 4.55 (3) In determining an application for modification of a consent under this section, 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 consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.</p>	<p>The original development was approved with a variation to the Warringah LEP 2011 Height of Buildings (HOB) development standard under Clause 4.6 of WLEP 2011. This variation was deemed acceptable as the built form was considered commensurate with the surrounding and nearby residential developments. Additionally, the existing dwelling created a constraint in maintaining the existing ridgeline for the approved roof over the existing first-floor level deck.</p> <p>The proposed modification introduces an additional height breach associated with the approved roof extension, which seeks to extend 1.4 metres further toward the rear boundary to match the proposed balcony extension.</p> <p>The merits of this additional non-compliance are discussed in</p>

Section 4.55 (2) - Other Modifications	Comments
	detail in the relevant sections of this report. In summary, the modified development remains consistent with the originally approved outcome, maintaining a reasonable scale and density that is compatible with the existing dwelling and surrounding development, and does not result in any unreasonable amenity impacts on neighbouring properties.

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 environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah 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&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>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was not requested in this instance.</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</p>

Section 4.15 'Matters for Consideration'	Comments
	Australia (BCA). This matter has been addressed via a condition of consent.
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 Warringah Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any 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 application has been publicly exhibited from 20/02/2025 to 06/03/2025 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 process council is in receipt of 1 submission/s from:

Name:	Address:
Fergus Patrick Doyle	1128 Pittwater Road COLLAROY NSW 2097

The following issues were raised in the submissions:

- **View loss**

- **Privacy**

The above issues are addressed as follows:

- **View loss**

The submissions raised concerns that the proposal will result in unacceptable view loss.

Comment:

This issue has been addressed in detail under Clause 'D7 Views' in this report. In summary, a view loss assessment, in accordance with the four-part test detailed within *Tenacity Consulting v Warringah Council [2004] NSWLEC 140*, has been undertaken within this assessment report. The views from the affected property have been described and the impacts assessed. The detailed assessment finds that the extent of view loss arising from the proposed development is considered to range from negligible to minor, however, this is considered acceptable within the context of the view sharing principles, given the vulnerability of the impacted views and the proposal's compliance with the relevant controls that have a significant bearing on the maintenance of views.

It is considered that on merit, the issues of view loss or impact does not warrant the refusal of the application.

- **Privacy**

The submissions raised concerns that the proposed addition will result in adverse privacy impacts for the surrounding residents.

Comment:

The above-mentioned privacy impacts have been discussed in further detail in part 'D8 Privacy' of this report. In summary, the proposal will maintain acceptable privacy between buildings.

This matter does not warrant the refusal of the application.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The modification indicate that no additional landscape elements are impacted.</p> <p>No objections are raised to the works regarding landscape issues.</p> <p>Existing conditions are considered still adequate and relevant.</p>
NECC (Bushland and Biodiversity)	The proposed modifications do not increase impacts to biodiversity and as such there are no objections, subject to existing conditions.
NECC (Coast and Catchments)	<p>This modification application was assessed in consideration of:</p> <ul style="list-style-type: none"> • Supplied plans and reports;

Internal Referral Body	Comments
	<ul style="list-style-type: none"> • Coastal Management Act 2016; • State Environmental Planning Policy (Resilience and Hazards) 2021 and • Relevant LEP and DCP clauses <p>Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore the Coastal Management Act 2016 is applicable to this application. The proposed modification is considered to be consistent with the objects, as set out under Part 1 Section 3 of the Coastal Management Act 2016.</p> <p>State Environmental Planning Policy (Resilience & Hazards) 2021 The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Resilience & Hazards) 2021 (SEPP). Hence, Clauses 2.10, 2.11 and 2.12 of the CM (R & H) apply for this DA.</p> <p>On internal assessment the modification satisfies requirements under clauses 2.10, 2.11 and 2.12 of the SEPP. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Resilience & Hazards) 2021.</p> <p>Warringah LEP 2011 and Warringah DCP 2011 The modification is considered to comply with clause 6.5 of Warringah LEP 2011 and E9 of Warringah DCP 2011.</p>
NECC (Development Engineering)	The Statement of Modification and associated documents have been reviewed. Development engineering raises no objections to the proposed modification subject to the removal of condition 8 of consent (Stormwater Disposal), the retention of all other engineering conditions of consent, and the inclusion of the following conditions:
Parks, reserves, beaches, foreshore	<p>No objections are raised by Parks regarding the proposed modification.</p> <p>No additional conditions are considered necessary.</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 (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 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 the Coastal Environment Area. As such, Council's Coast and Catchments Officer has reviewed the modified development against the matters as prescribed within this Clause and are satisfied the proposal complies with these matters, subject to the approved conditions.

- 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:

As above, Council's Coast and Catchments Officer is satisfied that the modification has been appropriately designed to avoid an adverse impact to the above matters.

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 subject site is located within the Coastal use area. As such, Council's Coast and Catchments Officer has reviewed the modified development against the matters as prescribed within this Clause and are satisfied the proposal complies with these matters, subject to the approved conditions.

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:

This Clause applies to the subject site. As such, Council's Coast and Catchments Officer has reviewed the modified development against the matters as prescribed within this Clause and are satisfied the proposal complies with these matters, subject to conditions.

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:

Council's Coast and Catchments Officer has reviewed the modified development and is satisfied that

the proposal complies with the relevant provisions of the Coastal Zone Management Plan for Collaroy-Narrabeen Beach and Fishermans Beach dated (December 2016) that applies 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.

Warringah Local Environmental Plan 2011

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	9.27m	9.32m	9.7%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No (see detail under Clause 4.6 below)
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes
6.5 Coastline hazards	Yes

Detailed Assessment

4.3 Height of buildings

Description of Non-compliance

Development standard:	Height of Buildings
Requirement:	8.5m
Proposed:	9.32m
Percentage variation to requirement:	9.7%

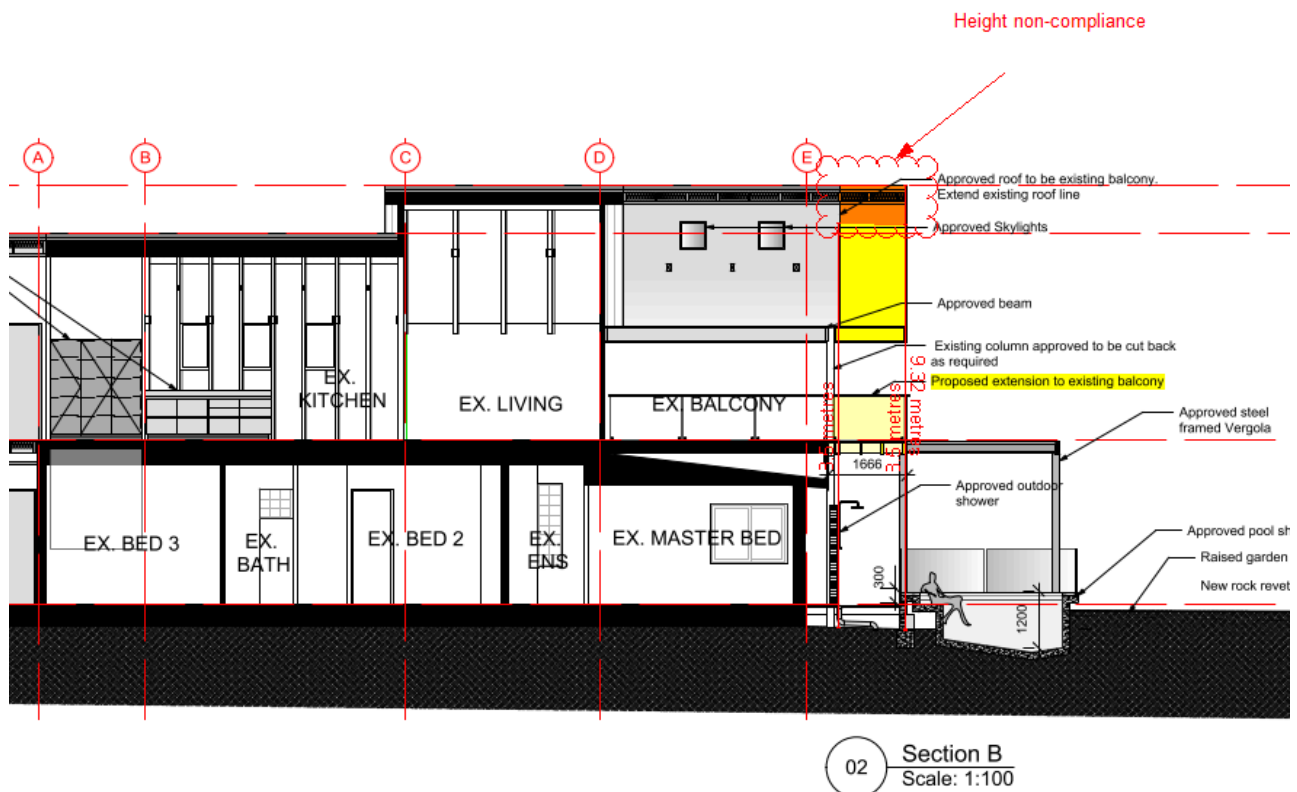


Figure 1. Height non-compliance.

Assessment of Request to Vary a Development Standard

Whilst the modification application will result in a building height that exceeds the maximum permitted by Clause 4.3 of the Warringah LEP 2011, the application does not strictly need to address the requirements of Clause 4.6.

The application has been made under Section 4.55 of the Environmental Planning and Assessment (EPA) Act 1979, which is a free standing provision that in itself authorises the development to be approved notwithstanding any breach of development standards. Section 4.55 is subject to its own stand-alone tests (such as the substantially the same test and consideration of all relevant Section 4.15 matters) and does not rely upon having a Clause 4.6 variation in order to determine the modification application.

Clause 4.6 regulates whether development consent may be granted, not whether an existing consent may be modified, and therefore does not apply to Section 4.55 modification applications. As such, the applicant is not required to submit a written request adequately addressing the matters required to be demonstrated by cl 4.6(3).

Notwithstanding that Clause 4.6 does not apply to Section 4.55 modification applications, the merits of the variation have been assessed with regard to the objectives of the height of buildings development standard and the underlying objectives of the R2 Low Density Residential zone. Notwithstanding that Clause 4.6 does not strictly apply, the assessment has also taken into consideration the relevant tests of the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018]

NSWLEC 118.

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

Comment:

The variation is smaller than what was previously approved in the development application, and the maximum RL of the non-compliant roof form aligns with the existing non-compliance. Additionally, the proposed breach of the western gable does not create any unreasonable amenity impacts and remains largely concealed from the street, as it occurs within the central portion of the site.

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

Comment:

The existing dwelling includes a raised ground floor, along with a substantial subfloor and basement area that are not visible from the street. The proposed design remains under 8.5 metres in height relative to most of the existing ground levels within the adjacent front and side setback areas.

The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

Clause 4.3 Height of Buildings

(1) The objectives of this clause are as follows—

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

Comment:

The height and bulk of the modified dwelling will remain compatible with the approved development and surrounding dwellings on the eastern side of Pittwater Road.

b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,

Comment:

The height breach associated with extending the approved roof by 1.4 metres is minor and centrally located within the site, therefore, will not contribute to any adverse loss of views, privacy or solar access.

c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,

Comment:

The visual appearance of the dwelling is largely unchanged and will remain compatible with the character of the surrounding area. As such, the proposal will not give rise to adverse impacts upon the scenic values of the locality

d) to manage the visual impact of development when viewed from public places such as parks

and reserves, roads and community facilities,

Comment:

The proposed height breach will not cause any adverse visual impacts when viewed from the surrounding public domain.

Zone objectives

- *To provide for the housing needs of the community within a low density residential environment.*

Comment:

The modification provides additional amenity for the site's outdoor entertaining areas to accommodate the housing needs of the occupants, while retaining the low density character of the locality.

It is considered that the development satisfies this objective.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Comment:

Not applicable.

It is considered that the development satisfies this objective.

- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

Comment:

The modification does not involve any additional landscaping works beyond the approved outcome.

It is considered that the development satisfies this objective.

Conclusion

The proposal is found to achieve consistency with the height of buildings objectives and is supported, notwithstanding the minor departure from the development standard.

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

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

Comment:

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

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
B1 Wall height	7.2m	Northern elevation 2.91m	No new walls	Yes
B3 Side Boundary Envelope	Northern elevation 4m	No encroachment	No change	Yes
	Southern elevation 4m	No encroachment	No change	Yes
B5 Side Boundary Setbacks	Northern boundary 0.9m	<i>Ground Floor</i> 0.9m	No change	Yes
		<i>First Floor</i> 1.98m	0.6m	No
		<i>Swimming pool</i> 0.9m	No change	Yes
	Eastern boundary	<i>First Floor</i> 12.68m - 15.61	No change	Yes
		<i>Swimming pool & Deck</i> 7.4m - 9.58m	11.0m	Yes
B7 Front Boundary Setbacks	Primary Frontage Pittwater Road 6.5m	<i>Ground Floor</i> 8.03m	No change	Yes
		<i>First Floor</i> 6.02m - 7.58m	No change	Yes
	Secondary Frontage Ramsay Street 3.5m	<i>First Floor</i> 2.04m	0.8m	No
		<i>Swimming pool</i> 5.24m	No change	Yes
		<i>Deck</i> 1.95m	No change	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40% (161.2m ²)	22.7% (91.6m ²)	No change	No (As approved)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	No	Yes
B7 Front Boundary Setbacks	No	Yes
C4 Stormwater	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
E7 Development on land adjoining public open space	Yes	Yes
E9 Coastline Hazard	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B5 Side Boundary Setbacks

Description of non-compliance

The proposal seeks to extend the existing balcony 1.7 metres toward the eastern boundary, maintaining the current northern side setback of 0.6 metres. The control requires a minimum side setback of 0.9 metres.

Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To provide opportunities for deep soil landscape areas.*

Comment:

The modification does not alter the approved landscaped outcome.

- *To ensure that development does not become visually dominant.*

Comment:

The scale of the modified proposal is acceptable and not expected to result in any undue visual impacts.

- *To ensure that the scale and bulk of buildings is minimised.*

Comment:

The bulk of the modified proposal is found to be consistent with the domestic nature of the property.

- *To provide adequate separation between buildings to ensure a reasonable level of privacy, amenity and solar access is maintained.*

Comment:

The proposal has been designed to maintain a reasonable level of amenity with adjoining buildings. In addition, the expected privacy impacts have been discussed further detail in Part D9 of this report, which are deemed acceptable.

- *To provide reasonable sharing of views to and from public and private properties.*

Comment:

The development has been found to achieve a reasonable sharing of views as discussed in Part D7 of this report.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

B7 Front Boundary Setbacks

Description of non-compliance

This control requires development to be setback 6.5 metres from the front boundary line. In the instance of a corner allotment, or double street frontage, this control permits a reduced front setback to 3.5 metres to the secondary street frontage

The proposal seeks to extend the existing balcony 1.7 metres toward the eastern boundary, maintaining the current secondary front setback of 0.8 metres.

Due to the allotment orientation and positioning, requiring strict compliance with the secondary front setback control would be unreasonable and impracticable, resulting in a undevelopable site.

Merit consideration:

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To create a sense of openness.*

Comment:

Notwithstanding the non-compliance, a reasonable sense of openness is maintained along the front setback area.

- *To maintain the visual continuity and pattern of buildings and landscape elements.*

Comment:

The proposal results in new numerical non-compliances; however, it's important to note that these extensions are consistent with the established front (southern) building line. Despite these non-compliances, the front setback will align with the predominant theme in the streetscape. This landscaping contributes to the overall visual continuity, maintaining the pattern of buildings and landscape elements in a reasonable manner.

- *To protect and enhance the visual quality of streetscapes and public spaces.*

Comment:

As detailed above, the visual continuity and quality of the streetscape will remain visually unchanged as the modified design will retain the existing unique curved roof pitch and design. In this instance, there is no adverse impact upon the visual quality of the Pittwater Road streetscape and nearby public spaces.

- *To achieve reasonable view sharing.*

Comment:

The extent of non-compliance is unlikely to impact upon reasonable view sharing between public and private spaces.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D1 Landscaped Open Space and Bushland Setting

No changes are proposed to the previously approved landscaped open space non-compliance under DA2023/0173. Therefore, a detailed merit assessment is not required in this instance.

D7 Views

Merit consideration

A submission has raised concern that the modified development will result in unreasonable impacts upon views obtained from the property to the north, being No. 1128 Pittwater Road, Collaroy. Accordingly, a view loss assessment has been undertaken below.

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

- *To allow for the reasonable sharing of views.*

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:

No. 1128 Pittwater Road adjoins the subject site's northern side boundary. There is currently a two-storey dwelling house that enjoys views to the north, east and south across an approximate 180-degree arc. The views include landmarks such as Long Reef Headland and North Narrabeen Headland, associated foreshore areas and the ocean. The views to the southeast are partially obscured by existing residential development and landscaping.

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:

No. 1128 Pittwater Road enjoys views across the rear boundary to the east and over both side boundaries to the north and south. The views are largely obtained from both standing and seated positions within internal and external areas of the dwelling on the first floor, including the living room, and external deck, as indicated in the following figures:



Figure 2: Unaffected view - Balcony facing north on the first floor, across the side boundary from a standing position.



Figure 3: Unaffected view - Balcony facing east on the first floor, across the rear boundary from a standing position.



Figure 4: Affected view - Balcony facing south on the first floor, across the side boundary from a standing position

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 indicated in the figures above (Figures 2 - 4), this property has expansive ocean views that are obtained over the northern side boundary, eastern rear boundary, and southern side boundary from the first floor of this dwelling.

The dwelling is two storey and generally orientated to the east. The kitchen, living, dining and outdoor entertaining areas are sited in the eastern portion of the first floor.

As detailed in Step 1, and visually represented in Step 2, the views over the northern side boundary and rear boundary include expansive views of North Narrabeen Headland, associated foreshore areas and the ocean. These views will not be impacted by the proposed

development.

From the first floor balcony (see Figure 4), the view loss from this area includes a reduction of ocean views and the land water interface at Collaroy basin. However, the view loss varies from certain positions, with impacts occurring on the southern side when viewing south and minimal impacts, when viewed from the northern end. In this regard, the view loss upon individual vantage points throughout No. 1128 Pittwater Road ranges from negligible (no impact) to 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:

Clause D7 Views and the intent of Tenacity goes towards the idea of view sharing - rather than view retention. The proposed development is not assessed as having any 'devastating' impacts as it will not block the entirety of anyone's views. However, it is noted that the proposal will result in the loss of views that are clearly important and valuable to the residents surrounding residents.

In answering the question of 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, the proposal has maintained acceptably sized view corridors across the site. The loss of views are primarily a result of the previous approved works. Overall, the proposal itself is acceptable and will result in a reasonable sharing of views.

- *To encourage innovative design solutions to improve the urban environment.*

Comment:

The proposed development will result in a built form that is commensurate with the surrounding single residential dwellings, as well as maintain the design and roof pitch of the existing dwelling. In this instance, the proposed development will use appropriate design solutions that positively contributes to the urban environment.

- *To ensure existing canopy trees have priority over views.*

Comment:

The subject site does not have any canopy trees.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the

Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D8 Privacy

Concerns have been raised regarding the proposal, particularly its potential for unacceptable privacy impacts. Specifically, there is apprehension regarding the first floor balcony extension.

The assessment below outlines the nature and impacts of the proposal.

Merit consideration

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

- *To ensure the siting and design of buildings provides a high level of visual and acoustic privacy for occupants and neighbours.*

Comment:

On the first floor, the proposal includes a 1.8-metre extension to the existing balcony toward the eastern boundary, which is directly accessible from the living areas. The proposed extension maintains the current side setbacks and will remain unscreened, as it is currently. Given the minor nature of the extension and the fact that the extended deck reasonably aligns with established rear building line, the proposal will not result in any unacceptable privacy impacts beyond the existing situation.

All other windows and openings are considered acceptable and will not create unreasonable privacy impacts for adjacent properties. Therefore, additional privacy treatments are not recommended.

- *To encourage innovative design solutions to improve the urban environment.*

Comment:

As above, the proposal will achieve an innovative design solution, which improves the urban environment.

- *To provide personal and property security for occupants and visitors.*

Comment:

The proposal will not impact upon personal and property security.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

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 2024

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;
- Warringah Local Environment Plan;
- Warringah 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. Mod2025/0041 for Modification of Development Consent DA2023/0173 granted for Alterations and additions to a dwelling house including a swimming pool on land at Lot 1 DP 170202, 1126 Pittwater Road, COLLAROY, 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-508375 - Mod2025/0041	The date of this notice of determination	<p>Modification of Development Consent DA2023/0173 granted for Alterations and additions to a dwelling house including a swimming pool</p> <ul style="list-style-type: none"> Add Condition No.2A - Modification of Consent - Approved Plans and supporting documentation Modify Condition No.8 - Stormwater Disposal

Modified conditions

A. Add Condition No.2A - 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
464/001	-	Roof Plan	Stephen Grech and Associates, Architects	4 February 2025
464/002	-	Ground Floor Plan	Stephen Grech and Associates, Architects	4 February 2025
464/003	-	First Floor Plan	Stephen Grech and Associates, Architects	4 February 2025
464/101	-	North & East Elevations	Stephen Grech and Associates, Architects	4 February 2025
464/102	-	South & West Elevations	Stephen Grech and Associates, Architects	4 February 2025
464/103	-	Section B	Stephen Grech and Associates, Architects	4 February 2025

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 No.8 - Stormwater Disposal, to read as follows:

The applicant is to demonstrate how stormwater from the new development within this consent shall be disposed of to an existing approved system or in accordance with Northern Beaches Council's Water Management for Development Policy in particular Section 5.5 Stormwater Drainage from Low Level Properties. Details demonstrating that the existing approved system can accommodate the additional flows or compliance with Northern Beaches Council's policy by an appropriately qualified Civil Engineer are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for disposal and stormwater management arising from the development.

C. Add Condition No.30A - First Floor Balcony, to read as follows:

The northern elevation of the first floor balcony is to remain open and transparent, that is, no privacy screen or other devices. The balustrade remain as clear glass.

Any variation to the above will require the submission to Council of a new modification application.

Reason: To require amendments to the plans endorsed by the consent authority following assessment of the development.

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

Signed



Kye Miles, Planner

The application is determined on 16/04/2025, under the delegated authority of:



Steven Findlay, Manager Development Assessments