

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2024/0223
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Responsible Officer:	Nick England
Land to be developed (Address):	Lot 9 DP 17704, 24 Cabarita Road AVALON BEACH NSW 2107 Lot LIC 631604, 24 Cabarita Road AVALON BEACH NSW 2107
Proposed Development:	Modification of Development Consent DA2023/0083 granted for Demolition works and construction of a dwelling house including swimming pool and boatshed
Zoning:	C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Applicant:	Bruce Ian Macdiarmid

Application Lodged:	03/05/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	13/05/2024 to 27/05/2024
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

EXECUTIVE SUMMARY

This application is made pursuant to Section 4.55 (2) of the Environmental Planning & Assessment Act and seeks to modify Development Consent, DA2023/0083 for demolition works and construction of a dwelling house including swimming pool and boatshed.

DA2023/0083 was determined by the Northern Beaches Local Planning Panel (the Panel), at its meeting of 13 December 2023 due to a breach of development standard pursuant of Clause 7.8 (Foreshore Building Line) of Pittwater Local Environmental Plan 2013.

The subject application has been referred to the Panel due to:

- the modification being made pursuant to Section 4.55 (2) of a consent originally issued by the Panel; and
- the application proposes amendments to a condition of development consent (No.17) recommended in the assessment report but which was subsequently amended by the Panel.

Condition No.17 - Amendments to the approved plans was initially recommended in the assessment report, for the purposes of mitigating impact in regard to view sharing and visual privacy. The Panel resolved to amend this condition, to prioritise the protection of the views from the adjoining property at No.26 Cabarita Road. The proposed modifications to Condition 17 seek to revert to the wording of the assessment report and delete the amendments recommended by the Panel.

An assessment of the application and circumstances has found that the retention of the original wording of Condition No.17 is acceptable as it adequately mitigates impacts on adjoining properties.

The application was notified to adjoining properties in accordance with the Northern Beaches Community Participation Plan. No objections were received during the notification period.

This report concludes with a recommendation that the Panel grant approval to the development application, subject to recommended conditions.

PROPOSED DEVELOPMENT IN DETAIL

The application is made pursuant to Section 4.55 (2) of the Environmental Planning & Assessment Act and seeks to modify the existing consent, DA2023/0083, granted for the "Demolition works and construction of a dwelling house including swimming pool and boatshed".

The original consent was determined by the Northern Beaches Local Planning Panel (the Panel) due to the application requesting a variation to the foreshore building line under Clause 7.8 Limited development on foreshore area of Pittwater Local Environmental Plan 2013.

The application seeks to amend the wording of Condition No.17 - Amendments to the approved plans, from the existing approved wording:

"The following amendments are to be made to the architectural plans and landscape plans:

a) The proposed species of trees and plants are to be amended to ensure there are no species that have a mature height of more than 3 metres. The species are also to be endemic.

b) The proposed privacy screen at the southern elevation Terrace 2 (level 4) is to be deleted.

c) Maintain any planting on Terrace 2 (level 4) to a maximum 1.5 metres in height above the finished floor level.

d) Reduce the depth of the eaves above Terrace 2 (level 4) to 2 metres.

Reason: To improve the views and amenity from the adjoining premises at number 26 Cabarita Road."

to the following wording, as originally recommended in the officer report:

"The following amendments are to be made to the architectural plans and landscape plans:

a) The proposed species are to be amended to ensure there are no species that have a mature height of more than 6m. The species are also to be endemic.

b) The proposed privacy screen at the southern elevation (of terrace 2) is to have fixed panels or louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development.

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

Condition No.17 was originally a special condition of consent recommended to the Panel, at its meeting of 13 December 2023, for the dual purpose of protecting the existing views and privacy of the adjoining dwelling at No.26 Cabarita Road. Relevant extracts from the Principal Planners report is provided below:

- **Impact on Privacy**

The submissions raised concerns with the impact on privacy.

Comment:

The proposal provides a reasonable design in relation to privacy, including windows of an appropriate size, orientation and separation from neighbours. The proposed rear upper level terrace is also provided with privacy screening, and a further condition is imposed to ensure appropriate louvers are installed.

Amended plans have also been provided to reposition the proposed swimming pool towards rear of the site, away from neighbouring living spaces. This is in a location that complies with the controls for physical separation under the privacy clause.

Overall, the design is appropriate for privacy, subject to conditions.

- **View impacts**

The submissions raised concerns with the impact on views.

Concern is also raised with the impact of landscaping/trees on views.

Comment:

A condition is imposed to require amendment of tree species to be no greater than 6.0m (mature height).

An assessment of views is carried out in this report, in accordance with the Land and Environment Court established Planning Principle, which found that the proposed built form provide for reasonable view sharing by maintaining large view corridors from the rear of neighbouring properties toward Pittwater, and a minor extent of impact on the water view on side boundaries.

Figure 1: extract from the assessment report

Upon consideration of the application, the Panel resolved to amended Condition No.17, in the aforementioned wording. The minutes of the meeting provide no specific commentary on why the Panel decided to adopt this alternative wording, however it can be reasonably assumed that the Panel were of the opinion that the reason for the condition should be solely for the purpose of preserving views from the adjoining property, rather than a combination of mitigating view loss and preserving visual privacy from this adjoining property.

As a consequence, the proposed modifications to Condition No.17 can be summarised as follows:

- retain a maximum height of 6m for landscape plantings / trees, rather than 3m;
- not regulate any planting on Terrace 2 (level 4);
- retain the privacy screen on the south elevation of Level 4; and
- retain the eave over Terrace 2 in its originally designed form.

Amended plans have been provided to clarify these modifications, which are attached to this report.

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 - C1.3 View Sharing

SITE DESCRIPTION

Property Description:	<p>Lot 9 DP 17704 , 24 Cabarita Road AVALON BEACH NSW 2107</p> <p>Lot LIC 631604 , 24 Cabarita Road AVALON BEACH NSW 2107</p>
Detailed Site Description:	<p>The subject site consists of an allotment located on the eastern side of Cabarita Road.</p> <p>The site is irregular in shape with a frontage of 12.19 metres along Cabarita Road and a depth of 42 metres - 43.4 metres. The site has a surveyed area of 619.7m².</p> <p>The site is located within the C4 Environmental Living zone and accommodates dwelling house.</p> <p>The site has a crossfall from Cabarita Road down to the foreshore, with a crossfall of approximately 25m. IN sections to the rear of the property, the gradient of this slope is significant.</p> <p>Adjoining and surrounding development is characterised by residential development.</p>

Map:



SITE HISTORY

The land has been used for residential purposes for an extended period of time.

A search of Council's records has revealed the following relevant history:

N0520/07: A swimming pool, deck, boatshed and landscaping works approved on 13/02/2008. This consent included the existing large wall to the rear of the property, adjacent to the boatshed.

DA2023/0083: Consent granted for the "Demolition works and construction of a dwelling house including swimming pool and boatshed" by the Northern Beaches Local Planning Panel at its meeting of 13 December 2023. This consent is the subject of the proposed modification and the relevant history is discussed in greater detail in the Detailed Description of Development section of this report.

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, considering all relevant provisions of the Environmental Planning and Assessment Act 1979 and its 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 DA2023/0083, 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 DA2023/0083 for the following reasons:</p> <ul style="list-style-type: none"> the material change to the approved dwelling will only relate to ancillary aspects of this structure (ie. eaves and a privacy screen); and the variation in maximum heights for landscape plantings is similarly an ancillary and minor aspect of the development subject to the relevant consent.
(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 DA2023/0083 did not require concurrence from the relevant Minister, public authority or approval body.
(c) it has notified the application in accordance with:	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.
(i) the regulations, if the regulations so require, or	

Section 4.55 (2) - Other Modifications	Comments
(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	
(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 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	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of the original consent.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. However, no additional information was required as part of this assessment.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 2001: The Demolition of Structures. This matter has been addressed via a condition of the original consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of the original consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact 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 13/05/2024 to 27/05/2024 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

No referrals were sent in relation to this application

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 (Sustainable Buildings) 2022

A BASIX certificate has been submitted with the application (see Certificate No.1338087S_02 dated 3 February 2023).

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

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
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Principal Development Standards

Development Standard	Requirement	Approved	Proposed	Complies
Height of Buildings:	10m*	9.4m	No change	Yes

* subject to Clause 4.3 (2D) where the slope under the building footprint exceeds 30%

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
7.1 Acid sulfate soils	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.8 Limited development on foreshore area	Yes
7.10 Essential services	Yes

Detailed Assessment

Zone C4 Environmental Living

The original assessment of the application found the development to be consistent with the objectives of the C4 Environmental Living zone. The proposed modification will be likewise consistent with these objectives.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
Front building line	6.5m	6.5m	Unaltered	No change
Rear building line	FBL	within (boatshed)	Unaltered	No change
Side building line	2.5m (north)	2.5m	Unaltered	No change
	1m (south)	1m	Unaltered	No change
Building envelope	3.5m (north)	Outside envelope	Unaltered	No change
	3.5m (south)	Outside envelope	Unaltered	No change
Landscaped area	60%	55%	Unaltered	No change

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
A4.1 Avalon Beach Locality	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.7 Estuarine Hazard - Low density residential	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B4.19 Estuarine Habitat	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
C1.1 Landscaping	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
D1.1 Character as viewed from a public place	Yes	Yes
D1.5 Building colours and materials	Yes	Yes
D1.9 Side and rear building line	Yes	Yes
D1.11 Building envelope	Yes	Yes
D1.14 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D1.20 Scenic Protection Category One Areas	Yes	Yes
D1.21 Masterplan - Careel Bay	Yes	Yes

Detailed Assessment

C1.3 View Sharing

A detailed assessment of the objectives of Part C1.3 and the principles of the NSW Land and Environment Court for Views (*Tenacity Consulting v Warringah Council* [2004] NSWLEC 140) was undertaken in the original assessment of the application. That assessment was:

"C1.3 View Sharing

Merit Consideration

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

A reasonable sharing of views amongst dwellings.

Comment:

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

26 Cabarita Road

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:

The property at 26 Cabarita Road is situated to the immediate south of the subject site and has extensive views of Pittwater over its rear boundary. The view which will be affected is a relatively small corridor in the location of the existing privacy screen, and the tree to the right of the privacy screen in the photo below. The water view to be affected is made somewhat partial by this tree.



Photo 1: View from living area over side boundary

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:

Views in the location of the proposed development are obtained over a side boundary from multiple levels including living areas and bedrooms. The main living area and attached deck has an extensive view toward the rear of the property.

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:

*Along with the extensive view over the rear boundary, a large view corridor is maintained over the side boundary of the subject site, due to the proposed dwelling being well setback from the foreshore. As such, the extent of impact is deemed to be **minor**.*

4. Reasonableness of the proposal that is causing the impact

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

Comment to Principle 4:

The proposal complies with the development standard for building height, and also complies with the rear setback to the dwelling (being the foreshore building line). This provides a significant opportunity for retention of a view corridor over a side boundary. As such, the design is an acceptable view sharing outcome and is reasonable.

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

Comment:

The proposal provides reasonable setbacks, and complies with the development standard for building height. This provides a situation in which reasonable views and vistas are maintained.

- *Canopy trees take priority over views.*

Comment:

The proposal steps with the topography of the land, and provides trees on the landscape plans. This ensures that surrounding trees will take priority over views.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21DCP 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."

This assessment focused on the potential impact to the adjoining property at No.26 Cabarita Road, who had raised objection to the application. This property enjoys significant of Pittwater over its rear and side boundaries.

In summary, it was found that the extent of impact would be "minor" and as such, the proposed the design is an acceptable view sharing outcome and be reasonable to demonstrate consistency with the "Tenacity" principles.

It should be noted that the adjoining property at No.26 Cabarita Road has not raised objection to the proposed modification.

Upon review of the information available in the file, including photographs taken from this property, it is not envisaged that the proposed modification, specifically: the retention of the eave / roof above Terrace No.2 on level 4; the retention of the privacy screen on the south elevation; and permitting mature vegetation up to 6 metres (rather than 3 metres), will result in an adverse loss of the views enjoyed by this property.

Hence, the original assessment is found, for the purposes of the assessment of the proposed modification, to be an accurate evaluation of the context of the development and its impacts upon adjoining properties. The retention of Condition No.17 in its original form is likewise found to be consistent with the relevant policy objectives with regard to view sharing and as such, approval of the application is recommended.

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

PLANNING CONCLUSION

This proposal, for the modification of existing consent DA2023/0083, has been referred to the Northern Beaches Local Planning Panel (the Panel) due to:

- the modification being made pursuant to Section 4.55 (2) of a consent originally issued by the Panel; and
- as specified by the Charter of the Panel, the application proposes amendments to a condition of development consent recommended in the council assessment report but which was subsequently amended by the Panel.

No objections were received during the notification period.

Upon a detailed assessment of the application, the proposed retention of the original requirements of condition No.17 are found to be:

- substantially the same development as that originally approved; and
- not result in any adverse impact to adjoining properties.

As such, it is recommended that the proposed modification be approved.

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

RECOMMENDATION

THAT Northern Beaches Local Planning Panel as the consent authority grant approval to Modification Application No. Mod2024/0223 for Modification of Development Consent DA2023/0083 granted for Demolition works and construction of a dwelling house including swimming pool and boatshed on land at Lot 9 DP 17704,24 Cabarita Road, AVALON BEACH, Lot LIC 631604,24 Cabarita Road, AVALON 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-429657 - MOD2024/0223	The date of this notice of determination	<p>Modification to Condition No.17 - Amendments to approved plans, to retain original wording of the consent originally recommended in report to the Northern Beaches Planning Panel, which was subsequently amended by the Panel and issued in the determination. The modification will require amendment / modification to the following conditions:</p> <ul style="list-style-type: none">No.1 - Approved Plans and Supporting Documentation; andNo.17 - Amendments to approved plans.

Modified conditions

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

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

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
DA00	E	Cover Sheet	Corben Architects	-
DA07	D	Level 4 Plan	Corben Architects	14 March 2024
DA11	D	South Elevation	Corben Architects	14 March 2024

Approved Reports and Documentation	
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Document Title / Number	Version Number	Prepared By	Date of Document
BASIX Certificate No.1338087S_02	-	Efficient Living	3 February 2023

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

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

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

B. Modify Condition No.17 - Amendments to the approved plans, to read as follows:

The following amendments are to be made to the architectural plans and landscape plans:

- a) The proposed species are to be amended to ensure there are no species that have a mature height of more than 6m. The species are also to be endemic.
- b) The proposed privacy screen at the southern elevation (of terrace 2) is to have fixed panels or louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development.

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