

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2024/0458
<b>Responsible Officer:</b>	Olivia Ramage
<b>Land to be developed (Address):</b>	Lot 22 DP 602041, 90 Cabbage Tree Road BAYVIEW NSW 2104
<b>Proposed Development:</b>	Modification of Development Consent DA2021/2442 granted for construction of a swimming pool, spa and pavilion
<b>Zoning:</b>	RU2 Rural Landscape
<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>Applicant:</b>	Casey Brown Architecture Pty Ltd

<b>Application Lodged:</b>	02/09/2024
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Refer to Development Application
<b>Notified:</b>	10/09/2024 to 24/09/2024
<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

The modification proposes the following amendments to the approved development:

- Relocation and alteration to the design and dimensions of the swimming pool,
- Deletion of the spa,
- Reduction to the size of the paved terrace adjacent to the swimming pool,
- Reduction to the size of the pavilion, including the removal of the approved bathroom,
- Retention of 1 tree approved for removal (Tree 8),
- Deletion of the approved fireplace.

### 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 - 5.10 Heritage conservation

### SITE DESCRIPTION

<b>Property Description:</b>	Lot 22 DP 602041 , 90 Cabbage Tree Road BAYVIEW NSW 2104
<b>Detailed Site Description:</b>	<p>The subject site consists of one allotment located on the northern side of Cabbage Tree Road.</p> <p>The site is irregular in shape with a frontage of approximately 58m along Cabbage Tree Road and a depth of 394.5m along the eastern boundary. The site has a surveyed area of 3.17 hectares.</p> <p>The site is located within the RU2 Rural Landscape zone and accommodates one storey stone (with attic) dwelling with a pitched roof with gazebo. Vehicular access is from the front of No. 86 Cabbage Tree Road via a right of carriageway which leads to a large, gravel hardstand close to the house. There is also a drainage easement through the front portion of the site.</p> <p>The site slopes towards the rear of the site.</p> <p>The majority of the site comprises dense bushland. However, in front of the dwelling there is a very extensive garden set both sides of a step valley that falls to the north and is heavily planted with native and exotic trees and</p>

shrubs.

**Detailed Description of Adjoining/Surrounding Development**

Adjoining and surrounding development is characterised by low density residential dwellings located on large allotments and surrounded by dense bushland.

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:

- **DA2021/2442** - Development Application for Construction of a swimming pool, spa and pavilion. Approved 8 April 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 DA2021/2442, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979, are:

<b>Section 4.55(1A) - Other Modifications</b>	<b>Comments</b>
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	<p><b>Yes</b></p> <p>The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons:</p> <ul style="list-style-type: none"> <li>• The modification proposes amendments to the approved swimming pool and pavilion and reduce the scope of the development.</li> <li>• The modification results in a lesser environmental impact.</li> </ul>
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was 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 DA2021/2442 for the following reasons:</p> <ul style="list-style-type: none"> <li>• The proposal remains for ancillary residential development.</li> <li>• The location of the development remains substantially the same with only minor amendments.</li> <li>• The impacts associated with the development remain the same.</li> </ul>
<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</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>

Section 4.55(1A) - Other Modifications	Comments
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 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)(iiiia) – 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>Clauses 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to geotechnical risk.</p> <p><u>Clause 61</u> of the EP&amp;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 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</p>



Section 4.15 'Matters for Consideration'	Comments
	<p>application.</p> <p><u>Clause 69</u> of the EP&amp;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&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>
<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>	<p>(i) <b>Environmental Impact</b> 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) <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>
<p>Section 4.15 (1) (c) – the suitability of the site for the development</p>	<p>The site is considered suitable for the proposed development.</p>
<p>Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs</p>	<p>See discussion on “Notification &amp; Submissions Received” in this report.</p>
<p>Section 4.15 (1) (e) – the public interest</p>	<p>No matters have arisen in this assessment that would justify the refusal of the application in the public interest.</p>

## 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 application that included a certificate (prepared by Bush Fire Planning Services, dated 27 July 2021) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent. An addendum

letter has been provided by Matthew Willis of Bush Fire Planning Services stating that the revised proposal does not adversely affect the results of the original bushfire assessment.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 10/09/2024 to 24/09/2024 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

Internal Referral Body	Comments
Environmental Health (Solid Fuel/Oil Heater)	<p><b>General Comments</b></p> <p>Environmental Health has been requested to comment on this proposal in relation to the inclusion of a solid fuel heater</p> <p>The application seeks to modify the development approved pursuant to DA2021/2442 in the following ways:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Relocation and alteration to the design and dimensions of the swimming pool,</li> <li><input type="checkbox"/> Deletion of the spa,</li> <li><input type="checkbox"/> Reduction to the size of the paved terrace adjacent to the swimming pool,</li> <li><input type="checkbox"/> Reduction to the size of the pavilion, including the removal of the approved bathroom,</li> <li><input type="checkbox"/> Retention of 1 tree approved for removal (Tree 8), and</li> <li><input type="checkbox"/> Deletion of the approved fireplace.</li> </ul> <p>The component of the above development relating to this referral response is the "deletion of the approved fireplace".</p> <p>Environmental Health has no objection to the deleting of the approved fireplace.</p> <p><b>Recommendation</b></p> <p>APPROVAL - no conditions</p>
Environmental Health (Unsewered Lands)	<p><b>General Comments</b></p> <p>Environmental Health has been requested to comment on this proposal in relation to development being undertaken on unsewered lands</p> <p>The application seeks to modify the development approved pursuant to DA2021/2442 in the following ways:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Relocation and alteration to the design and dimensions of the</li> </ul>

Internal Referral Body	Comments
	<p>swimming pool,</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Deletion of the spa,</li> <li><input type="checkbox"/> Reduction to the size of the paved terrace adjacent to the swimming pool,</li> <li><input type="checkbox"/> Reduction to the size of the pavilion, including the removal of the approved bathroom,</li> <li><input type="checkbox"/> Retention of 1 tree approved for removal (Tree 8), and</li> <li><input type="checkbox"/> Deletion of the approved fireplace.</li> </ul> <p>Environmental Health has no objection to the proposal.</p> <p>The proposed development does not require further conditions in addition to those already in place in relation to the management of domestic wastewater at the property.</p> <p><b>Recommendation</b></p> <p>APPROVAL - no conditions</p>
Landscape Officer	<p>The application is for modification to development consent DA2021/2442.</p> <p>The Arboricultural Impact Assessment (AIA) has numbered the trees differently to the AIA approved under DA2021/2442. Trees 6, 7 and 8 identified in the AIA under DA2021/2442 are now numbered trees 3, 4 and 5, and all are able to be retained as outlined in the updated AIA. No concerns are raised with the proposed changes to the pool arrangement and condition 13 Tree Removal Within the Property can be deleted as part of this modification as trees 3, 4 and 5 can now be retained and trees 6 and 7 are dead (and were originally approved for removal albeit numbered trees 9 and 10).</p> <p>No other trees are approved for removal and all other conditions imposed under DA2021/2442 shall remain.</p>
NECC (Bushland and Biodiversity)	<p>The application seeks consent for modifications to Development Consent DA2021/2442.</p> <p>The proposed modifications do not require any additional tree removal nor increased impacts to biodiversity within the site. As such, Council's biodiversity referrals team raise no objections subject to existing conditions.</p>
NECC (Development Engineering)	<p>The proposal is the modification of consent DA 2021/2442. The site is located in H1 geotechnical hazard area. As such geotechnical Forms 1 &amp; 1A are required prior to further assessment.</p> <p><b>Additional Information Provided on 30/9/2024</b></p> <p>Forms 1 &amp; 1A have been provided . No objections to approval subject to the following amendments to Conditions of Consent Da2021/2442.</p> <p>Amend date reference in Condition 8 to reflect new date of 28/6/2024.</p>



Internal Referral Body	Comments
NECC (Flooding)	<p>The two creeks which run through the property can become flood affected, however the proposed modifications are outside the flood planning area.</p> <p>The proposal generally complies with Section B3.11 of the Pittwater DCP and Clause 5.21 of the Pittwater LEP.</p>
NECC (Riparian Lands and Creeks)	<p>Supported</p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> <li>• Supplied plans and reports;</li> <li>• Water Management Act 2000;</li> <li>• Water Management (General) Regulation 2018;</li> <li>• Relevant LEP and DCP clauses; and</li> <li>• Northern Beaches Water Management for Development Policy</li> </ul> <p>This referral body was not provided with an opportunity to assess the original application, DA2021/2442.</p> <p>The site includes a watercourse mapped under the Water Management (General) Regulation 2018 Hydro Line spatial data. The location of the watercourse relative to the proposed development has not been completely surveyed or shown in the plans. It is highly likely that the proposal is within 40 metres of the watercourse and so on waterfront land.</p> <p>The proposed modifications move the development further back from the watercourse and reduce its size compared to the approved DA. In principle, we support such a modification.</p> <p>No construction is permitted on the bed or bank of the watercourse. Appropriate sediment and erosion controls must be installed prior to any disturbance of soil on site and maintained until all work is complete and groundcover re-established.</p>
Strategic and Place Planning (Heritage Officer)	<b>HERITAGE COMMENTS</b>
	Discussion of reason for referral
	<p>This application has been referred as the site is a local heritage item, <b>Item 2270402, Waterfall Cottage and garden</b>, 90 Cabbage Tree Road, Bayview, listed in Schedule 5 of Pittwater Local Environmental Plan 2014. The site is also within the vicinity of <b>Item 2270158, Katandra Bushland Sanctuary</b>, 84 Lane Cove Road, Ingleside, located on the opposite side of Cabbage Tree Road, some 100 metres away.</p>
	Details of heritage items affected
<p>Details of this heritage item, as contained within the heritage inventory, are:</p> <p><b>Item 2270402, Waterfall Cottage and garden</b></p> <p><u>Statement of Significance</u></p> <p>Waterfall Cottage is of local historic, aesthetic and research significance as a fine representative example of a late 20th century large private ornamental garden, with elements of the wild garden, woodland gardens, warm-temperate and rainforest species in a dramatic bush setting. It is representative of the mid-late 20th century permanent suburban settlement of the Bayview area,</p>	

Internal Referral Body	Comments	
	<p>reflecting improved transport links, affluence and subdivision, the building of larger homes with elaborate gardens as secluded retreats from the city, a tranquil style of living, closer to nature. The property's bushland is representative of the Hawkesbury sandstone country of the Pittwater district in terms of rainforest and dry sclerophyll woodland flora and fauna. Waterfall Cottage is at least of local, arguably of regional and possibly state-level social significance, as a renowned private garden opened regularly to the public, popular for repeated visits over some years, through the Australian Open Garden Scheme and through its owner's sustained support for community and charity groups. Waterfall Cottage is rare locally and possibly at a state level, as a large, private informal, woodland and rainforest garden, regularly open to the public, incorporating a large amount of bushland and managed in sympathy with wild animals and birds. Few others exist at this scale, level of diversity and standard of maintenance. Owing to its size and relative intactness, it retains some potential to contain evidence of Aboriginal occupation and use, and historical archaeological relics.</p> <p>Due to increasing subdivision, block clearing and larger houses and areas of paving in the area, Waterfall Cottage's bushland is becoming locally rare in retaining a large bush block that is relatively little-cleared or modified, and thus retaining a degree of intact Hawkesbury sandstone escarpment and foot slope-related rainforest and dry sclerophyll woodland species of flora and fauna. In addition the garden contains many rare species of exotic plants, both in NSW and Australia.</p>	
	<p><b>Other relevant heritage listings</b></p>	
	SEPP (Biodiversity and Conservation) 2021	No
	Australian Heritage Register	No
	NSW State Heritage Register	No
	National Trust of Aust (NSW) Register	No
	RAIA Register of 20th Century Buildings of Significance	No
	Other	No
	<p><b>Consideration of Application</b></p>	
	<p>The proposal seeks consent to modify the consent (DA2021/2442) approved in April 2022, including the relocation and alteration to the design and dimensions of the swimming pool; deletion of the spa; reduction to the size of the paved terrace adjacent to the swimming pool; reduction to the size and design of the approved pool pavilion; retention of 1 tree approved for removal (Tree 8), and deletion of the approved fireplace.</p>	

Internal Referral Body	Comments
	<p>It is considered that the proposed modifications will not have further adverse impact upon the heritage significance of the site subject to the conditions required by Council's Landscape Officer to protect the vegetation on site.</p> <p>Therefore, no objections are raised on heritage grounds and no conditions required.</p> <p><u>Consider against the provisions of CL5.10 of PLEP 2014:</u>            Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? N/A            Is a Heritage Impact Statement required? Yes Has a Heritage Impact Statement been provided? Yes</p>

External Referral Body	Comments
Aboriginal Heritage Office	<p>Reference is made to the proposed development at the above area and Aboriginal heritage.</p> <p>An inspection of the property by the Aboriginal Heritage Office and Council (12 January 2022) did not identify any Aboriginal heritage issues within the proposed development area.</p> <p>One area of potential was identified of the property, a sandstone overhang. Provided that this area is not impacted then the Aboriginal Heritage Office would not foresee any further Aboriginal heritage issues on the proposal. If the area would be impacted, then the Aboriginal Heritage Office would recommend further investigation ('due diligence' under the <i>National Parks and Wildlife Act 1974</i>) by a qualified Aboriginal heritage professional prior to any 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>

### 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. A1759046 dated 7 August 2024).

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

### 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	5.8m	4.2m	N/A	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

Clause	Compliance with Requirements
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes
Schedule 5 Environmental heritage	Yes

### Detailed Assessment

#### 5.10 Heritage conservation

This application has been referred to Council's Heritage Officer as the site is a local heritage item, Item 2270402, Waterfall Cottage and garden, 90 Cabbage Tree Road, Bayview, listed in Schedule 5 of Pittwater Local Environmental Plan 2014. The site is also within the vicinity of Item 2270158, Katandra Bushland Sanctuary, 84 Lane Cove Road, Ingleside, located on the opposite side of Cabbage Tree Road, some 100 metres away.

It is considered that the proposed modifications will not have further adverse impact upon the heritage significance of the site subject to the conditions required by Council's Landscape Officer to protect the vegetation on site. Therefore, the application is supported by Council's Heritage Officer.

#### Pittwater 21 Development Control Plan

##### Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
Front building line	20m	61.9m	>61.9m	Yes
Rear building line	20m	319.2m	>319.2m	Yes
Side building line	East - 6.5m	10.8m	16.7m	Yes
	West - 6.5m	57.3m	56.5m	Yes
Building envelope	East - 3.5m	Within envelope	Within envelope	Yes
	West - 3.5m	Within envelope	Within envelope	Yes
Landscaped area	80%	98%	>98%	Yes

##### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.2 Bayview Heights Locality	Yes	Yes
B1.1 Heritage Conservation - Heritage items, heritage conservation areas and archaeological sites listed in Pittwater Local Environmental Plan 2014	Yes	Yes



Clause	Compliance with Requirements	Consistency Aims/Objectives
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.2 Bushfire Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B4.18 Heathland/Woodland Vegetation	Yes	Yes
B4.22 Preservation of Trees and Bushland Vegetation	Yes	Yes
B5.15 Stormwater	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
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
C1.13 Pollution Control	Yes	Yes
C1.14 Separately Accessible Structures	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
D2.1 Character as viewed from a public place	Yes	Yes
D2.2 Scenic protection - General	Yes	Yes
D2.3 Building colours and materials	Yes	Yes
D2.5 Front building line	Yes	Yes
D2.6 Side and rear building line	Yes	Yes
D2.7 Building envelope	Yes	Yes
D2.9 Landscaped Area - Non Urban	Yes	Yes
D2.11 Fences - Flora and Fauna Conservation Areas	Yes	Yes
D2.12 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes

### **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. Mod2024/0458 for Modification of Development Consent DA2021/2442 granted for construction of a swimming pool, spa and pavilion on land at Lot 22 DP 602041,90 Cabbage Tree Road, BAYVIEW, 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-463590 Mod2024/0458	The date of this notice of determination	<p>Modification of Development Consent DA2021/2442 granted for Construction of a swimming pool, spa and pavilion</p> <p>Add Condition No.1A - Modification of Consent - Approved Plans and supporting documentation Modify Condition No.8 - Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans Add Condition No.12A - Water Quality Management Add Condition No.20A - Installation and Maintenance of Sediment and Erosion Controls Add Condition No.39 - Maintenance of Stormwater Treatment Measures Delete Condition No.13 - Tree Removal Within the Property Delete Condition No.30 - Installation of solid/fuel burning heaters Delete Condition No.31 - Certification of solid fuel burning heaters Delete Condition No.36 - Maintenance of solid fuel heaters Delete Condition No.37 - Operation of solid fuel burning heaters</p>

### 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
01.2	01	Overall Site Plan	Casey Brown Architecture	7 August 2024
01.3	01	Proposed Pool and Cabana Ground Plan	Casey Brown Architecture	7 August 2024
01.4	01	Proposed Pool and Cabana Setout Plan	Casey Brown Architecture	7 August 2024
01.5	01	Proposed Roof Plan	Casey Brown Architecture	7 August 2024
01.6	01	Proposed Pool Elevations	Casey Brown Architecture	7 August 2024
01.7	01	Proposed Pool Section	Casey Brown Architecture	7 August 2024

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate No. A1759046	-	Lin & Associates Pty Ltd	7 August 2024
Arboriculture Impact Assessment with Site-Specific Preliminary Tree Plan of Management	1	Growing My Way Tree Services	August 2024
Bushfire Letter	-	Matthew Willis - Bushfire Planning Services Pty Limited	25 July 2024
Geotechnical Investigation Report	MMGEO2024YEFE_AB REVISION A	MM Geomechanics	28 June 2024

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 - Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans to read as follows:**

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by MM Geomechanics dated 28 June 2024 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

**C. Add Condition No.12A - Water Quality Management to read as follows:**

The applicant must install a filtration device (such as a sediment control pit or absorption trench) that captures organic matter and coarse sediments prior to discharge of stormwater from the land. All stormwater treatment measures must make provision for convenient and safe regular inspection, periodic cleaning, and maintenance.

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

Reason: Protection of the receiving environment.

**D. Add Condition No.20A - Installation and Maintenance of Sediment and Erosion Controls to read as follows:**

Council proactively regulates construction sites for sediment management.

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) and the Erosion and Sediment Control Plan prior to commencement of any other works on site.

Erosion and sediment controls are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and vegetation cover has been re-established .

Reason: To protect the receiving environment.

**E. Add Condition No.39 - Maintenance of Stormwater Treatment Measures to read as follows:**

Stormwater treatment measures must be maintained at all times in accordance with manufacturer's specifications and as necessary to achieve the required stormwater quality targets for the development.

Northern Beaches Council reserves the right to enter the property and carry out appropriate maintenance of the device at the cost of the property owner.

Reason: To protect the receiving environment.

**F. Delete Condition No.13 - Tree Removal Within the Property**

**G. Delete Condition No.30 - Installation of solid/fuel burning heaters**

**H. Delete Condition No.31 - Certification of solid fuel burning heaters**

**I. Delete Condition No.36 - Maintenance of solid fuel heaters**

**J. Delete Condition No.37 - Operation of solid fuel burning heaters**

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

**Signed**



**Olivia Ramage, Planner**

The application is determined on 30/09/2024, under the delegated authority of:





**Adam Richardson, Manager Development Assessments**