

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2023/0573
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<b>Responsible Officer:</b>	Gareth David
<b>Land to be developed (Address):</b>	Lot 170 DP 15376, 255 Whale Beach Road WHALE BEACH NSW 2107
<b>Proposed Development:</b>	Modification of Development Consent DA2021/2239 granted for Alterations and additions to dwelling house including a swimming pool
<b>Zoning:</b>	C4 Environmental Living
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Sally Ann Constable Peter Charles Constable
<b>Applicant:</b>	Nanna Margrethe Lesiuk

<b>Application Lodged:</b>	30/10/2023
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Refer to Development Application
<b>Notified:</b>	07/11/2023 to 21/11/2023
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	1
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

### PROPOSED DEVELOPMENT IN DETAIL

The s4.55(1A) modification application seeks to modify Development Application No DA2021/2239 approved for a alterations and additions to dwelling house including a swimming pool in the following way:

- Addition of new skylights
- New windows
- Alteration and deletion of windows
- New shade structure and associated wall on the living level terrace
- Relocation of BBQ area to living level terrace

- Internal reconfiguration

## 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 - 7.2 Earthworks  
 Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection  
 Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards  
 Pittwater Local Environmental Plan 2014 - 7.8 Limited development on foreshore area  
 Pittwater 21 Development Control Plan - C1.1 Landscaping  
 Pittwater 21 Development Control Plan - C1.3 View Sharing  
 Pittwater 21 Development Control Plan - C1.4 Solar Access  
 Pittwater 21 Development Control Plan - C1.5 Visual Privacy  
 Pittwater 21 Development Control Plan - D12.1 Character as viewed from a public place  
 Pittwater 21 Development Control Plan - D12.5 Front building line  
 Pittwater 21 Development Control Plan - D12.6 Side and rear building line  
 Pittwater 21 Development Control Plan - D12.8 Building envelope

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 170 DP 15376 , 255 Whale Beach Road WHALE BEACH NSW 2107
<b>Detailed Site Description:</b>	<p>The subject site consists of one allotment located on the eastern side of Whale Beach Road, Whale Beach.</p> <p>The site is irregular in shape with a frontage of 15.44m and respective depths of 63.685m and 57.26m along the northern and southern side boundaries. The site has a surveyed area of 918.8sqm.</p>

The site is located within the C4 Environmental Living zone pursuant to Pittwater LEP 2014 and accommodates a part dwelling house including a double garage within the front setback area. The site is currently under construction for works approved within DA2021/2239.

The site backs onto Whale Beach. The rear portion of the site below the footprint of the existing dwelling house is densely vegetated. Pedestrian access stairs are located between the dwelling house and Whale Beach.

The site experiences a slope (fall) of approximately 24.5m that slopes away from the front boundary towards the rear.

The site is environmentally constrained with geotechnical, bushfire and biodiversity constraints.

#### Description of Surrounding Development

The surrounding built environment is characterised by multi storey dwelling houses on sloping sites.

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:

- **DA2021/2239** - Development Application for alterations and additions to dwelling house including a swimming pool (subject of this modification) - Approved 17/06/2022

## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

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

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2021/2239, 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:

Section 4.55(1A) - 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 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 modifications will not change the use of the site,</li> <li>• The modifications will not significantly alter the form of development that was originally approved,</li> <li>• The modifications will not result in increased adverse impacts on the natural environment nor the amenity of surrounding residential properties</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 DA2021/2239 for the following reasons:</p> <ul style="list-style-type: none"> <li>• The modifications will not change the use of the site,</li> <li>• The modifications will not significantly alter the form of development that was originally approved,</li> <li>• From qualitative and quantitative perspectives, the proposal will not be significantly altered by the proposed</li> </ul>

Section 4.55(1A) - Other Modifications	Comments
	modifications.
<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>See discussion on “Notification &amp; Submissions Received” in this report.</p>

### 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
<p>Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument</p>	<p>See discussion on “Environmental Planning Instruments” in this report.</p>
<p>Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument</p>	<p>There are no current draft environmental planning instruments.</p>
<p>Section 4.15 (1) (a)(iii) – Provisions of any development control plan</p>	<p>Pittwater 21 Development Control Plan applies to this proposal.</p>

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&amp;A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 61</u> of the EP&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 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>
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><b>(i) 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><b>(ii) Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p><b>(iii) Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The site is classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

A Bush Fire Report was submitted with the application that included a certificate (prepared by Building Code & Bushfire Hazard Solutions, dated 13/10/2023) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 07/11/2023 to 21/11/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 1 submission/s from:

Name:	Address:
Walter Barda Design Pty Ltd Ms Robyn Mary Assunta Denholm	PO Box 398 DARLINGHURST NSW 1300

The above issues are addressed as follows:

- **Privacy impacts**

Comment:

A submission has been received by the adjoining northern neighbour (No.257 Whale Beach Road) raising concerns with overlooking from the "lower level" Bed 2 northern window (DW/LGF 14). To mitigate potential privacy impacts, it is recommended a condition be imposed for this window to install privacy screens of louvre style construction (with a maximum spacing of 20mm), or be either high sill (i.e. containing a sill height of 1.5m from the FFL) or obscure

glazed. The matter of privacy has been addressed further in the section of this report relating to Section C1.5 *Visual Privacy* of the P21DCP.

## REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The proposed modification is principally design changes within the approved building footprint and the landscape outcome are not altered from the development consent. It is noted that the the Living Terrace at RL23.6 removes the planter and replaces this with a bbq setting however no concerns are raised with this.</p>
NECC (Bushland and Biodiversity)	<p>The proposal seeks approval for Modification of Development Consent DA2021/2239 granted for Alterations and additions to dwelling house including a swimming pool.</p> <p>The comments in this referral relate to the following applicable controls:</p> <ul style="list-style-type: none"> <li>• Planning for Bushfire Protection 2019</li> <li>• Pittwater LEP 2014 - Clause 7.6 Biodiversity Protection</li> <li>• Pittwater DCP 21 - Clause B4.17 Littoral Rainforest Endangered Ecological Community</li> </ul> <p>The proposed modifications relate to hard stand areas and are therefore unlikely to impact upon native flora and fauna.</p> <p>No native vegetation or fauna habitat would be impacted, the development is designed, sited and will be managed to avoid any significant adverse environmental impact.</p>
NECC (Coast and Catchments)	<p>The proposal seeks approval for modification of development consent DA 2021/2239 granted for alterations and additions to a dwelling house including a swimming pool.</p> <p>The proposed modifications predominately relate to minor modifications including skylight addition, windows deletion, addition and modification, shade for outside dining, BBQ relocated, kitchen configured and bathroom layout changes</p> <p>The subject property is located within the 'Coastal Use Area' map of the Coastal Zone. Part of the subject property is within the 'Foreshores Building Line'</p> <p>This application was assessed in consideration of:</p>

Internal Referral Body	Comments
	<ul style="list-style-type: none"> <li>· Supplied plans and reports, including; <ul style="list-style-type: none"> <li>Statement of Modifications prepared by HOUSED by Nanna Lesuik dated October 2023</li> </ul> </li> <li>· Coastal Management Act 2016</li> <li>· State Environmental Planning Policy (Resilience &amp; Hazards) 2021</li> <li>· Relevant LEP and DCP Clauses</li> </ul> <p>The objectives and requirement of the CMA 2016, SEPP -R &amp; H 2021 and relevant LEP and DCP Clauses have been met.</p> <p>The proposed modifications appear consistent with the design intent of the original proposal and fulfills the objectives and requirements of the relevant clauses of the Act, SEPP, LEP and DCP.</p> <p>No conditions in additions to those for the original development application are considered necessary</p>
NECC (Development Engineering)	The proposal is the modification of Consent DA2021/2239.No objections to approval and no changes to conditions.
Parks, reserves, beaches, foreshore	The proposed modifications are not detrimental to the landscape character of the adjoining Reserve, and as such Parks, Reserves and Foreshores raise no concerns with the modification proposal.
Road Reserve	<p>It is noted that some form of landscaping is now shown on the hardstand area on the public road reserve. No other details are shown. Any works in this area shall require Council approval prior to commencing any work. The removal of any retaining walls or concrete paving is not supported unless full engineering details are provided indicating the extent of work. If any structural work is proposed a Road Act Application for civil works shall be lodged to obtain approval. An Application for Minor Encroachment/Constructions on the Road Reserve shall be lodged and approval obtained prior to commencing any minor works.</p> <p>The comments and conditions on DA2021/2239 still apply, namely: Private Structures on Public Road Reserve</p> <p>The retaining walls and concrete paved area on the public road reserve adjacent to the garage shall not be used for private parking of vehicles or storage unless expressly authorised by Council and</p>

Internal Referral Body	Comments
	subject to an appropriate agreement. The property owner shall maintain these structures in accordance with provisions of s142 of the Roads Act 1993. Reason: To ensure public infrastructure is not used inappropriately for a private benefit and the structures are maintained by the property owner.

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

### ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)\*

All, Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

### State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

#### SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No.A434715\_02 dated 17 October 2023).

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

#### SEPP (Transport and Infrastructure) 2021

##### Ausgrid

Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.

- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The proposal was referred to Ausgrid who raised no objections, subject to conditions which have been included in the recommendation of this report.

## **SEPP (Resilience and Hazards) 2021**

### **Chapter 2 – Coastal Management**

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

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

Comment:

The proposed modification will not impact the matters identified in this clause. The proposed modification application does not seek any additional works within the foreshore area. The works within the foreshore area will remain consistent with that approved within the original consent (DA2021/2239).

The proposal has been reviewed by Council's Coastal Officer, Landscape and Reserves and Bushland & Biodiversity Officer who have raised no objection to the works and associated impacts to the surrounding natural environment.

The bulk, scale and size of the proposed development will be commensurate with approved development and surrounding development and that the proposal will be suitable for this coastal setting.

## Division 5 General

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

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

#### Comment:

The application has been reviewed by Council's Coastal Engineer who is satisfied that the development is not likely to cause increased risk of coastal hazards on other land subject to conditions.

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

## Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been 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 Building:- Clause 4.3 (2D)	10m	9.16m	9m (shade structure) Other elements unaltered	N/A	Yes

### Compliance Assessment

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

### Detailed Assessment

#### **7.2 Earthworks**

The objective of Clause 7.2 - 'Earthworks' requires development to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

In this regard, before granting development consent for earthworks, Council must consider the following matters:

*(a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality of the development*

Comment: The proposal is unlikely to unreasonably disrupt existing drainage patterns and soil stability in the locality.

*(b) the effect of the proposed development on the likely future use or redevelopment of the land*

Comment: The proposal will not unreasonably limit the likely future use or redevelopment of the land.

*(c) the quality of the fill or the soil to be excavated, or both*

Comment: The excavated material will be processed according to the Waste Management Plan for the development. A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

*(d) the effect of the proposed development on the existing and likely amenity of adjoining properties*

Comment: The proposed earthworks will not result in unreasonable amenity impacts on adjoining properties. Conditions have been included in the recommendation of this report to limit impacts during excavation/construction.

*(e) the source of any fill material and the destination of any excavated material*

Comment: The excavated material will be processed according to the Waste Management Plan for the development.

*(f) the likelihood of disturbing relics*

Comment: The excavation works are generally limited to previously disturbed areas of the site and thus, the earthworks are not likely to disturb relics.

*(g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area*

Comment: Council's Biodiversity, Landscape and Coast Officers have reviewed the application and are satisfied that the proposal is not likely to have an adverse impact upon the foreshore vegetation, subject to adherence to the conditions of consent.

*(h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Comment: Conditions are included in the recommendation of this report that will minimise the impacts of the development.

*(i) the proximity to and potential for adverse impacts on any heritage item, archaeological site or heritage conservation area.*

Comment: The site is not a heritage item, in the vicinity of a heritage item or in a conservation area or archaeological site.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of PLEP 2014, Pittwater 21 DCP and the objectives specified in s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

## **7.6 Biodiversity protection**

Before determining a development application for development on land to which this clause applies, this clause requires the consent authority to consider:

*(a) whether the development is likely to have:*

- (i) any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and*
- (ii) any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and*
- (iii) any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and*
- (iv) any adverse impact on the habitat elements providing connectivity on the land, and*

Comment:

The development has been assessed by Council's Biodiversity Team, who raised no objections to approval. Therefore, Council can be satisfied that the development will not have any adverse impact on the condition, ecological value and significance of the fauna and flora on the land; the importance of the vegetation on the land to the habitat and survival of native fauna; or the habitat elements providing connectivity on the land. Council is also satisfied that the development will not unreasonably fragment, disturb, or diminish the biodiversity structure, function, or composition of the land.

*(b) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Comment:

The development has been assessed by Council's Biodiversity Team, who raised no objections to approval. Therefore, Council can be satisfied that the proposal includes appropriate measures to avoid, minimise, or mitigate the impacts of the development.

Before granting development consent, this clause also requires the consent authority to be satisfied that:

- (a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or*
- (b) if that impact cannot be reasonably avoided by adopting feasible alternatives—the development is designed, sited and will be managed to minimise that impact, or*
- (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.*

Comment:

The development has been assessed by Council's Biodiversity Team, who raised no objections to approval. Therefore, Council can be satisfied that the development is designed, sited and will be managed to any significant adverse environmental impact.

## **7.7 Geotechnical hazards**

Under Clause 7.7 Geotechnical Hazards, before determining a development application for development on land to which this clause applies, the consent authority must consider the following matters to decide whether or not the development takes into account all geotechnical risks:

- (a) site layout, including access,*
- (b) the development's design and construction methods,*
- (c) the amount of cut and fill that will be required for the development,*
- (d) waste water management, stormwater and drainage across the land,*
- (e) the geotechnical constraints of the site,*
- (f) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Comment:

The proposed development is supported by a geotechnical risk assessment, that demonstrate all geotechnical risks have been taken into account. The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent.

Development consent must not be granted to development on land to which this clause applies unless:

- (a) the consent authority is satisfied that the development will appropriately manage waste water, stormwater and drainage across the land so as not to affect the rate, volume and quality of water leaving the land, and*

Comment:

The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent.

*(b) the consent authority is satisfied that:*

- (i) the development is designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development, or*
- (ii) if that risk or impact cannot be reasonably avoided - the development is designed, sited and will be managed to minimise that risk or impact, or*

(iii) if that risk or impact cannot be minimised - the development will be managed to mitigate that risk or impact.

Comment:

The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent. As such, Council can be satisfied that the proposed development has been designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development.

### 7.8 Limited development on foreshore area

The proposed modification application does not seek any additional works within the foreshore area. The works within the foreshore area will remain consistent with that approved within the original consent (DA2021/2239). As such, the assessment within the original Development Application (DA2021/2239) is still applicable in this instance.

### Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
Front building line	6.5m	Garage - No change to existing (nil) Dwelling - 7.9m to 11.4m	unaltered	<b>No</b> (unaltered)
Rear building line	Foreshore Building Line (FBL)	Dwelling - no encroachment Pool - encroaches by up to 6.4m	unaltered	<b>No</b> (unaltered)
Side building line	2.5m (N)	Garage - 0.65m (existing) Additions - 1.4m Terraces - 0.9m	Garage - Unaltered Additions - unaltered with exception of added and deleted windows Terraces - unaltered with exception of new shade structure and associated wall which will have a setback of 1.5m	<b>No</b>
	1m (S)	Building - 1.1m	1.1m	Yes
Building envelope	3.5m (N)	Outside envelope	Outside envelope	<b>No</b>
	3.5m (S)	Outside envelope	unaltered	<b>No</b> (unaltered)
Landscaped area	60% (551.28sqm)	62.92% (578.13sqm)	unaltered	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach Locality	Yes	Yes
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
B4.17 Littoral Rainforest - Endangered Ecological Community	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	No	Yes
C1.5 Visual Privacy	No	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.14 Separately Accessible Structures	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D12.1 Character as viewed from a public place	No	Yes
D12.3 Building colours and materials	Yes	Yes
D12.5 Front building line	No	Yes
D12.6 Side and rear building line	No	Yes
D12.8 Building envelope	No	Yes
D12.10 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D12.13 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D12.14 Scenic Protection Category One Areas	Yes	Yes

## Detailed Assessment

### **C1.1 Landscaping**

The proposed modification would not result in a change to the landscaping outcome as approved under Development Consent DA2021/2239 . The proposal is therefore consistent with the assessment of the original application.

### **C1.3 View Sharing**

The proposed modifications are not considered to result in additional unreasonable view impacts to adjoining neighbours. The overall built form and height of the proposal will remain generally consistent with the original approval. The adjoining neighbours to the north and the south will retain unobstructed ocean and beach views over their eastern (rear) boundary from eastern facing windows and private open space. Overall, the assessment of views within the original Development Application (DA2021/0708) is still applicable and the proposal is considered to retain reasonable view sharing. Furthermore, no submissions with regards to view loss has been received by adjoining neighbours to the subject modification application. In consideration of the lack of submission received, the anticipated proportion of view lost in comparison to views retained, and in consideration that any view loss would be over a side boundary, the view sharing outcome is assessed as reasonable in this instance and is supported on merit.

### **C1.4 Solar Access**

The assessment of the approved development (DA2021/2239) found that although the adjoining neighbour at No. 253 Whale Beach Road did not receive a compliant level of solar access throughout the day, the proposal was sited and designed to allow reasonable solar access to the adjoining property and achieve the outcomes of the control. The non-compliance with this control was primarily attributed to the east-west orientation of the allotments, the steep topography that falls towards the east and existing development on the subject site.

The proposed modification represents a minor change in the built form. On balance, the proposed modifications are not considered to result in unreasonable additional overshadowing, and the assessment of this control within the original Development Application remains applicable.

The proposed development is acceptable in relation to the relevant built form controls within the P21 DCP, for the reasons detailed throughout this report. In this way, the proposed development is reasonable in its context.

Overall, the proposal represents a modest increase to the existing built form which is sited and designed to provide reasonable solar access in consideration of the topography of the site and surrounding areas.

### **C1.5 Visual Privacy**

#### Description of Non-compliance

Clause C1.5 of the P21DCP stipulates that private open space areas and windows of adjoining properties are to be protected from direct overlooking within 9.0m by building layout, landscaping, screening devices or greater spatial separation.

#### Merit Assessment

- **Southern elevation:**

The proposed window arrangement will remain generally consistent with the original approval. The modification plans include privacy screens, frosted glazing and raised sills as required by conditions imposed within the original consent (DA2021/2239).

- **Northern elevation:**

The proposed modification seeks to amend the "lower level" Bed 2 northern window (DW/LGF 14). A submission has been received by the adjoining northern neighbour (No.257 Whale Beach Road) raising concerns with overlooking into their southern facing rumpus room window. These windows will align and may result in downward overlooking. In order to minimise privacy impacts and mitigating direct overlooking, it is recommended a condition be imposed for this window to install privacy screens of louvre style construction (with a maximum spacing of 20mm), or be either high sill (i.e. containing a sill height of 1.5m from the FFL) or obscure glazed.

The remaining windows on the northern elevation are not anticipated to give rise to unreasonable privacy impacts given their offset positioning.

Having regard to the above assessment, it is concluded that the applicable outcomes of the control have been achieved.

Therefore, the application is supported on merit, subject to conditions.

### **D12.1 Character as viewed from a public place**

The proposed modification retains the approved garage location, resulting in a technical non-compliance with this control, which requires that parking structures be located behind the front building line.

#### Merit consideration:

The proposed modification retains the approved garage location. It is considered that the overall height, setbacks and design would remain generally consistent with the original approval. Overall, it is considered that the modification is consistent with the original assessment and is supported on merit.

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

The proposed modification works will not alter the non-compliant front setback previously approved under the original development application. Therefore, the outcomes of the original consent are maintained and a detailed merit assessment is not required in this instance.

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

The control requires development to be setback 2.5m from one side boundary and 1m from the opposing side boundary. The proposed modification generally retains the approved setback of the built form. However, the new shade structure and associated wall encroach into the 2.5m northern side setback, with a setback of 1.5 m from the northern boundary. The modification also includes alteration

to windows within the northern side setback.

A merit assessment of the application against the outcomes of the control is provided below:

### Merit consideration

With regards to the consideration for a variation, the development is considered against the underlying objectives of the control as follows:

- *To achieve the desired future character of the Locality.*

#### Comment:

The proposal will maintain the desired future character of the Palm Beach Locality.

- *To bulk and scale of the built form is minimised.*

#### Comment:

The proposed elements within the side setback are of minimal bulk and scale. The height, bulk and scale of the proposed development is commensurate with established low density residential development within the Whale Beach foreshore area. Additionally, the building is well articulated and employs a 'terraced style' built form that steps down with the slope of the land to integrate with the landform and landscape. The existing foreshore dense vegetation and proposed landscape treatment will further alleviate the perceived bulk and scale of the built form

- *Equitable preservation of views and vistas to and/or from public/private places.*

#### Comment:

As discussed in detail within the section of this report relating to Clause C1.3 of the Pittwater 21 DCP, the proposal allows for the equitable preservation of views and vistas from nearby private and public property.

- *To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.*

#### Comment:

As noted above, no views are to be unreasonably compromise by the proposed works.

- *To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties.*

#### Comment:

As the proposed modifications are not expected to cause any unreasonable impact upon the privacy, amenity or solar access of adjacent properties. The matter of privacy has been addressed elsewhere within this report in detail (refer Clause C1.5) and it is considered that no unreasonable privacy impacts occur as a result of the development, subject to conditions.

- *Substantial landscaping, a mature tree canopy and an attractive streetscape.*

Comment:

The proposed development will allow for substantive landscaping across the site.

- *Flexibility in the siting of buildings and access.*

Comment:

It is considered that the proposed development is adequately sited to ensure a reasonable level of amenity and a reasonable visual presentation for the subject site and adjacent sites.

- *Vegetation is retained and enhanced to visually reduce the built form.*

Comment:

The proposed development includes adequate vegetation and landscaping to soften and visually reduce the built form.

- *To ensure a landscape buffer between commercial and residential zones is established.*

Comment:

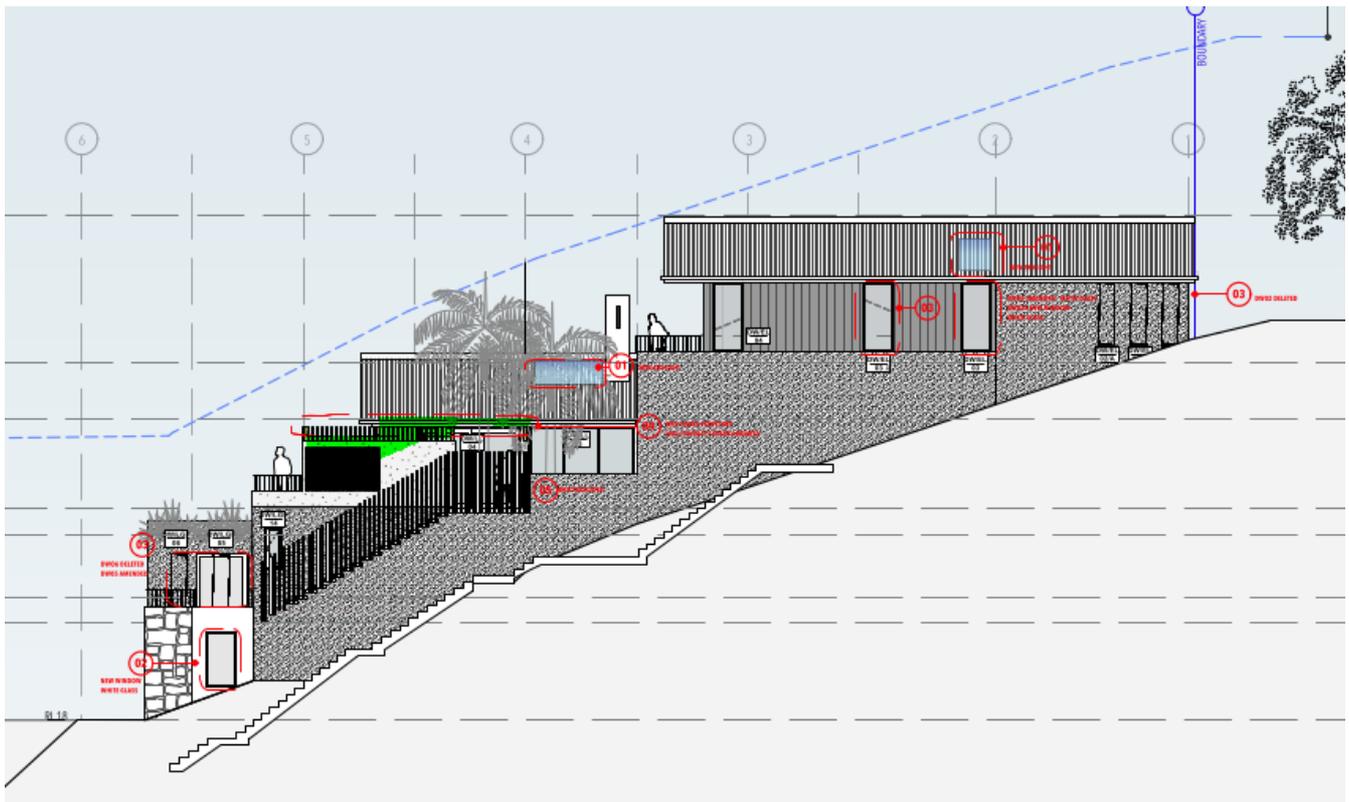
The proposed development does not adjoin a commercial zone.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of 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.

## **D12.8 Building envelope**

The proposed modification would result in a minor additional breach to the building envelope on the northern elevation. This breach would result from the roof of the new shade structure and associated wall which would replace an existing approved privacy screen of the same height.

The approved envelope breach on the southern elevation would remain unaltered from the proposed modifications. The additional envelope non-compliance (subject of this modification) is represented in green on the figure below:



Overall, it is considered that the minor additional breach in building envelope is not considered to result in unreasonable impacts to the character of the development as viewed from the street and would not result in unreasonable amenity impacts to the adjoining neighbour. The envelope breach would be a direct result of existing built form and the significant slope of the site. Therefore, a variation to the control can be considered in this circumstance given the minimal impacts the variation presents in terms of amenity and visual impact from the streetscape.

### **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 EPs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

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

## RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2023/0573 for Modification of Development Consent DA2021/2239 granted for Alterations and additions to dwelling house including a swimming pool on land at Lot 170 DP 15376,255 Whale Beach Road, WHALE 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-381335 MOD2023/0573	The date of this notice of determination	Modification of Development Consent DA2021/2239 granted for Alterations and additions to dwelling house including a swimming pool

		<ul style="list-style-type: none"> <li>• Add Condition No.1A (Modification of Consent - Approved Plans and supporting Documentation)</li> <li>• Add Condition No.10A (Privacy Treatment to Window)</li> <li>• Add Condition No.15A (Road Act Approvals)</li> </ul>
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### **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.

<b>Approved Plans</b>				
<b>Plan Number</b>	<b>Revision Number</b>	<b>Plan Title</b>	<b>Drawn By</b>	<b>Date of Plan</b>
DA/MOD 06		Proposed Site Plan	Housed Architects	12/12/2023
DA/MOD 07		Proposed Roof Plan	Housed Architects	12/12/2023
DA/MOD 08		Proposed Entry Level	Housed Architects	12/12/2023
DA/MOD 09		Proposed Living Level	Housed Architects	12/12/2023
DA/MOD 10		Proposed Lower Level	Housed Architects	12/12/2023
DA/MOD 11		Proposed Pool Level	Housed Architects	12/12/2023
DA/MOD 12		Proposed Elevations - South	Housed Architects	12/12/2023
DA/MOD 13		Proposed Elevations - North	Housed Architects	12/12/2023
DA/MOD 14		Proposed Elevations - East	Housed Architects	12/12/2023
DA/MOD 15		Proposed Elevations - West	Housed Architects	12/12/2023
DA/MOD 16		Proposed Section 01	Housed Architects	12/12/2023
DA/MOD 17		Proposed Section 02	Housed Architects	12/12/2023

<b>Approved Reports and Documentation</b>			
<b>Document Title</b>	<b>Version Number</b>	<b>Prepared By</b>	<b>Date of Document</b>
BASIX Certificate (A434715_02)		GRS Building Report	17/10/2023
Flora and Fauna Assessment Letter		GIS Environmental Consultants	16/10/2023
Bushfire Assessment Report Letter		Building Code & Bushfire Hazard Solutions Pty Limited	13/10/2023

Geotechnical Investigation Letter		White Geotechnical Group	05/10/2023
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In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

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

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

**B. Add Condition 10A (Privacy Treatment to Window) to read as follows:**

A privacy screen is to be installed on the "lower level" northern window adjoining the "Bed 2" (DW/LGF 14). The privacy screen shall be of horizontal louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development. Alternatively, this windows shall be fitted with obscured glazing or have a minimum sill height of 1.5m above the Finished Floor Level.

**C. Add Condition 15A (Road Act Approvals) to read as follows:**

Any work on Council's public road reserve shall be obtained prior to commencing work depending on the scale of work proposed either a Minor Encroachment Application or Infrastructure Works on Council Roadway

Reason: To ensure works on the public road reserve comply with Council's requirements.

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

**Signed**



**Gareth David, Principal Planner**

The application is determined on 24/01/2024, under the delegated authority of:



**Steven Findlay, Manager Development Assessments**