

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2021/0446
Responsible Officer:	Kent Bull
Land to be developed (Address):	Lot 70 DP 11067, 32 The Strand WHALE BEACH NSW 2107
Proposed Development:	Modification of Development Consent DA2019/0913 granted for demolition works and construction of a dwelling house including a swimming pool
Zoning:	E4 Environmental Living RE1 Public Recreation
Development Permissible:	Yes - Zone RE1 Public Recreation Yes - Zone E4 Environmental Living
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Robert Alfred Kenneth Nugan
Applicant:	Robert Alfred Kenneth Nugan

Application Lodged:	01/07/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	09/07/2021 to 23/07/2021
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

The application seeks to modify Development Consent No. DA2019/0913 granted for demolition works and construction of a dwelling house including a swimming pool.

The modification application seeks approval for the following changes:

1. Installation of a passenger lift connecting the second floor level (garage and master bedroom) and the first floor (living) level;
2. The modification of the external south side stairs to delete the top flight (between first floor and garage level);
3. Replacing the stair with a planter on the western side of the lift and the lift shaft;

4. The deletion of the window into the first floor which the lift core now occupies (L1/W05); and
5. The widening of the window/door in the laundry (L1D05).

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 RE1 Public Recreation
 Pittwater Local Environmental Plan 2014 - 5.1 Relevant acquisition authority
 Pittwater Local Environmental Plan 2014 - 5.1A Development on land intended to be acquired for public purpose
 Pittwater Local Environmental Plan 2014 - 7.2 Earthworks
 Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards
 Pittwater 21 Development Control Plan - A4.12 Palm Beach Locality
 Pittwater 21 Development Control Plan - C1.3 View Sharing
 Pittwater 21 Development Control Plan - C1.5 Visual Privacy
 Pittwater 21 Development Control Plan - C1.23 Eaves
 Pittwater 21 Development Control Plan - C1.25 Plant, Equipment Boxes and Lift Over-Run
 Pittwater 21 Development Control Plan - D12.3 Building colours and materials
 Pittwater 21 Development Control Plan - D12.6 Side and rear building line
 Pittwater 21 Development Control Plan - D12.8 Building envelope
 Pittwater 21 Development Control Plan - D12.10 Landscaped Area - Environmentally Sensitive Land

SITE DESCRIPTION

Property Description:	Lot 70 DP 11067 , 32 The Strand WHALE BEACH NSW 2107
Detailed Site Description:	The site is irregular in shape, with a primary frontage of 19.13m to Whale Beach Road, a secondary frontage of 18.29m to The Strand and a depth of 63.385m. The site has a surveyed area of 1105m ² . The site is subject to split

zoning; with the western portion of the site zoned E4 Environmental Living and the eastern portion of the site zoned RE1 Public Recreation under the provisions of the PLEP 2014. A single storey dwelling house that once occupied the western portion of the site zoned E4 has since been demolished, with excavation and construction works having commenced in relation to the original application. Vehicular and pedestrian access for the yet to be constructed dwelling is proposed via the Whale Beach Road frontage. The site falls approximately 11.54m from the Whale Beach Road frontage to the The Strand frontage, with the majority of the fall occurring in the western portion of the site. The site is identified on the Geotechnical Hazard Map, Coastline Hazard Map, Flood Hazard Map, Foreshore Building Line Map and Biodiversity Map of the PLEP 2014. Adjoining and surrounding development is characterised by low-density residential dwellings of varied architectural styles.

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:

11 December 2019

Development Application No. DA2019/0913 was approved by Council.

8 September 2020

Modification Application No. Mod2020/0334 was approved by Council.

APPLICATION HISTORY

1 July 2021

The subject modification was lodged with Council.

10 August 2021

A public domain site inspection was undertaken by the assessing officer due to COVID-19 pandemic restrictions that were in place.

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 DA2019/0913, in full, with amendments detailed and assessed as follows:

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

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	<p>The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2019/0913 for the following reasons:</p> <p>Whilst the proposed changes do not see an increase of the overall building height, it is acknowledged that the lift addition contributes additional bulk and scale to the development. The lift core is to be located in an area that had previously been approved as open pedestrian stairs and results in a breach to both the southern prescribed building envelope and side setback controls. Consideration has been given in this report to the respective clauses that despite these breaches, the resultant development would be acceptable on merit grounds subject to conditions. It is also noted that the subject site falls approximately 11.54m from the Whale Beach Road frontage to</p>

Section 4.55 (2) - Other Modifications	Comments
	<p>The Strand frontage, with the majority of the fall occurring in the western portion of the site. Evidentially, with such a steeply sloping site it would not be unreasonable to propose a lift as an alternative means of access for the occupants. The Applicant has indicated that the lift is to allow the owners/residents of the home to be able to age-in-place. The installation of this lift is to connect the lower floors to the second floor (garage level) and is to incorporate external finishes that are consistent with the dwelling house. The approved landscape plan (Dwg No. LP01-D4418, Issue 01, Rev. B) dated 17.08.2020 by Dangar Barin Smith also indicates that the lift will be largely screened with vegetation when viewed from adjoining properties. The remaining modifications including the window changes are not considered to result in an unreasonable amenity or privacy impacts. In this regard, the modifications are considered to be of minor environmental impact. The consent authority can therefore be satisfied that the development as modified will be "essentially or materially" substantially the same as the approved development.</p>
<p>(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</p>	<p>Development Application DA2019/0913 did not require concurrence from the relevant Minister, public authority or approval body.</p>
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require,</p> <p>or</p> <p>(ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the</p>	<p>The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Pittwater Local Environmental Plan 2014 and Pittwater 21 Development Control Plan.</p>

Section 4.55 (2) - Other Modifications	Comments
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 96 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah/Manly/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 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p>

Section 4.15 'Matters for Consideration'	Comments
	<p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original 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) 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>
<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 & 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 not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 09/07/2021 to 23/07/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The proposed modifications are described as:</p> <ol style="list-style-type: none"> 1. installation of a passenger lift connecting the second floor level (garage and master bedroom) and the first floor (living) level. 2. the modification of the external south side stairs to delete the top flight (between first floor and garage level) 3. replacing the stair with a planter on the western side of the lift and the lift shaft 4. the deletion of the window into the first floor which the lift core now occupies (L1/W05) 5. the widening of the window/door in the laundry (L1D05) <p>The plans indicate that no additional impacts on significant landscape features are proposed.</p> <p>No objections are therefore raised to the Modification. Existing conditions are considered still relevant and adequate.</p>
NECC (Bushland and Biodiversity)	<p>The mod seeks approval for:</p> <ul style="list-style-type: none"> • Installation of a passenger lift connecting the second floor level (garage and master bedroom) and the first floor (living) level. • The modification of the external south side stairs to delete the top flight (between first floor and garage level) • Replacing the stair with a planter on the western side of the lift and the lift shaft • The deletion of the window into the first floor which the lift core now occupies (L1/W05) • The widening of the window/door in the laundry (L1D05) <p>The application does not require the removal of prescribed trees or vegetation, nor is it likely to impact on nearby biodiversity values. Council's Natural Environment Unit - Biodiversity referral team has no objections to the proposed modification subject to the conditions provided for the previous DA consent (DA2019/0913).</p>
NECC (Coast and Catchments)	<p>This modification application seeks approval for:</p> <ul style="list-style-type: none"> • Installation of a passenger lift connecting the second floor level (garage and master bedroom) and the first floor (living) level. • The modification of the external south side stairs to delete the top flight (between first floor and garage level) • Replacing the stair with a planter on the western side of the lift and the lift shaft • The deletion of the window into the first floor which the lift core now occupies (L1/W05) • The widening of the window/door in the laundry (L1D05)

Internal Referral Body	Comments
	<p>The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Coastal Management) 2018 and has also been assessed against the requirements of Pittwater LEP 2014 and Pittwater 21 DCP.</p> <p>Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore the Coastal Management Act 2016 is applicable to this application. The proposed development is consistent with the objects, as set out under Clause 3 of the Coastal Management Act 2016.</p> <p>State Environmental Planning Policy (Coastal Management) 2018 The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses 13, 14 and 15 of the CM SEPP apply for this application. On internal assessment, the application satisfies requirements under clauses 13, 14 and 15 of the CM SEPP. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.</p> <p>Pittwater LEP 2014 and Pittwater 21 DCP The property is shown as affected by wave inundation on the Coastal Risk Planning Map (Sheet CHZ_015) in Pittwater Local Environmental Plan 2014. The property is also mapped as being subject to coastal erosion and coastal inundation hazards in the Pittwater 21 Development Control Plan (DCP)1 Map MDCP016. Therefore, the property is subject to the B3.3 Coastline (Beach) Hazard controls of Pittwater 21 DCP, and the Coastline Risk Management Policy for Development in Pittwater (Coastline Policy).</p> <p>The proposed modifications are within the footprint of the original proposal and do not alter the original Natural Environment coastal assessment of the above listed matters for DA2019/0913.</p> <p>As such no additional or modified conditions of consent are recommended.</p> <p><u>Planner Comments:</u> Clause 13 (Coastal Environment Area) of the CM SEPP does not apply to the subject site. Refer to the assessment against Clauses 14 and 15 of the CM SEPP later in this report.</p>
NECC (Development Engineering)	<p>The proposed modifications do not alter the original assessment of the application by Development Engineering.</p> <p>No objection to approval with no additional or modified conditions of consent recommended.</p>
NECC (Riparian Lands and Creeks)	assessed under coast
NECC (Stormwater and	All proposed modifications are located above the Flood Planning

Internal Referral Body	Comments	
Floodplain Engineering – Flood risk)	Level for the site. No flood related development controls applied.	
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS	
	Discussion of reason for referral	
	The proposal has been referred to Heritage as the subject property is within proximity to a heritage item Norfolk Island Pines (<i>Araucaria heterophylla</i>) - eastern side of The Strand	
	Details of heritage items affected	
	Details of the item as contained within the Pittwater heritage inventory is as follows: <u>Statement of significance:</u> The Norfolk Island Pines are a defining landscape element for Whale Beach, but also for many ocean beaches in Pittwater and along the coast of NSW and southern QLD. These pines are significant for their historic association with early settlement and as local cultural plantings, in some instances dating from the 1930s. The Norfolk Island Pine plantings also have a high level of visual, environmental and aesthetic value. <u>Physical description:</u> There are approximately 33 Norfolk Island Pines located along the eastern and to a lesser extent the western edges of the beach car park. The trees have a mix of sizes and age and many trees have achieved dramatic proportions and scale. The Pines are a visible feature of the Beach when approaching from the north via Whale Beach Road.	
	Other relevant heritage listings	
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	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	N/A	

Internal Referral Body	Comments
	<p data-bbox="533 318 903 349">Consideration of Application</p> <p data-bbox="533 356 1410 562">The proposal seeks modifications to an approved dwelling. The changes include a new lift, removal of stairs and changes to windows. The heritage item is located to the east of the subject site, across The Strand. There is adequate separation between the heritage item and the dwelling by way of the road reserve and the yard of the subject property.</p> <p data-bbox="533 600 1410 631">Therefore Heritage raises no objections and requires no conditions.</p> <p data-bbox="533 669 1206 701">Consider against the provisions of CL5.10 of PLEP.</p> <p data-bbox="533 739 1294 770">Is a Conservation Management Plan (CMP) Required? No</p> <p data-bbox="533 777 943 808">Has a CMP been provided? No</p> <p data-bbox="533 815 1118 846">Is a Heritage Impact Statement required? No</p> <p data-bbox="533 853 1227 884">Has a Heritage Impact Statement been provided? No</p> <p data-bbox="533 891 783 922">Further Comments</p> <p data-bbox="533 929 1227 960">COMPLETED BY: Brendan Gavin, Principal Planner</p> <p data-bbox="533 999 708 1030">DATE: 7 July</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs, REPs 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, REPs 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 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 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 Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1020266S_02, dated 4

June 2021). The BASIX Certificate is supported by an ABSA Assessor Certificate (see Certificate No. 0006081954, dated 4 June 2021).

The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	50	54

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

SEPP (Infrastructure) 2007

Ausgrid

Clause 45 of the SEPP 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:

A referral to Ausgrid was not sent in relation to the modified proposal. The development is to comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice that has been subject to a condition of the original application.

SEPP (Coastal Management) 2018

The site is subject to SEPP Coastal Management (2018). Accordingly, an assessment under the SEPP has been carried out as follows:

14 Development on land within the coastal use area

(1)

- (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,

- (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,
 - (iv) Aboriginal cultural heritage, practices and places,
 - (v) cultural and built environment heritage, and
- (b) is satisfied that:
- (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or
 - (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - (iii) 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 development is not likely to cause an impact on the existing access along the foreshore for members of the public, including persons with a disability and will not cause any overshadowing, wind tunneling or unreasonable impact on the loss of views from public places to foreshores. The visual amenity and scenic qualities of the coast, including the coastal headlands will be preserved. The proposed development will also not have an adverse impact on the cultural and built environment heritage. It is considered that the proposed development has satisfied the requirement to be designed, sited and managed to avoid an adverse impact on the above mentioned cultural and environmental aspects. Furthermore, the proposed development is considered to be of an acceptable bulk, scale and size that is generally compatible with the surrounding coastal and built environment, which consist of low-density residential dwellings.

15 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:

It is considered that the proposed development is not likely to cause increased risk of coastal hazards on the subject site or other land.

As such, it is considered that the application does/does not comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

Pittwater Local Environmental Plan 2014

Is the development permissible?	Zone RE1: Yes Zone E4 : Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Zone RE1: Yes Zone E4 : Yes

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.85m (RL 19.415)	Unchanged - 9.85m (RL 19.415)	-	Yes (as approved)

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
5.1 Relevant acquisition authority	Yes
5.1A Development on land intended to be acquired for public purpose	Yes
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.3 Flood planning	Yes
7.5 Coastal risk planning	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 RE1 Public Recreation

No works are proposed within the area of the site zoned "RE1 Public Recreation".

5.1 Relevant acquisition authority

In accordance with Clause 5.1, the consent authority has identified that the relevant authority of the State to acquire land identified as Zone RE1 Public Recreation and marked "Regional open space" on the Land Reservation Acquisition Map as 'The corporation constituted under section 8 of the Act', being the *Land Acquisition (Just Terms Compensation) Act 1991*.

5.1A Development on land intended to be acquired for public purpose

In accordance with Clause 5.1A, the land identified as Zone RE1 Public Recreation and marked "Regional open space" is to be maintained as a recreation area.

As discussed previously within this report, no building works are proposed within the RE1 Public Recreation zone, and as such, the consent authority can be satisfied in this regard.

7.2 Earthworks

The proposed lift shaft requires additional excavation to southern side of the dwelling house. To ensure that the earthworks proposed will not have a detrimental impact on environmental functions and

processes, neighbouring uses, cultural or heritage items or features of the surrounding land, conditions have been placed on the original consent for Dilapidation Reports, inclusive of a photographic surveys, to be undertaken prior to the issue of a Construction Certificate (Condition 20) and prior to the issue of an Occupation Certificate (Condition 43). The placement of these condition are considered an appropriate measure to address any detrimental effects arising from excavation works, on existing adjoining properties. Council's Development Engineer has also reviewed modified proposal inclusive of the Geotechnical documentation, raising no objections and recommending no additional or modified conditions to be placed. Conditions have been placed on the original consent to ensure appropriate management and protection measures in relation to demolition, water and sediment control are incorporated during construction. As such, the proposal is considered to satisfactorily address the matters identified in this clause.

7.7 Geotechnical hazards

The proposed lift shaft appears to require further excavation to the southern side of the dwelling house. The submitted Geotechnical Addendum Letter Ref. J2226H, dated 21 June 2021 by White Geotechnical Group Pty Ltd concludes the following:

“The changes are considered minor from a geotechnical perspective and do not alter the recommendations or the risk assessment in the original report carried out by this firm numbered J2226 and dated the 17 June 2019.”

As previously highlighted, Council's Development Engineer has also reviewed modified proposal inclusive of the Geotechnical documentation, raising no objections and recommending no additional or modified conditions to be placed.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
Front building line	6.5m (west - Whale Beach Road)	0m (gate house) 1.5m (outdoor courtyard - excavated) 5.1m (garage)	Unaltered (Lift core measured 7.8m from the Front boundary)	No, but as approved
Rear building line	N/A - FBL applies	Works outside FBL	Unaltered	Yes
Side building line	2.5m (south)	0m-6m	Unaltered (Lift core measured 2.2m from the southern boundary)	No, see discussion under Clause D12.6 of this report.
	1m (north)	0m-2.7m	Unaltered	No, but as approved.
Building envelope	3.5m @ 45 degrees (south)	Within envelope	Outside envelope (Lift core is outside the envelope by 1.03m)	No, see discussion under Clause D12.8 of this report.
	3.5m @ 45 degrees (north)	Outside envelope by 1.1m	Unaltered	No, but as approved.

Landscaped area	Based on 60% of 881.6m ² (528.96m ²)	50.8% (447.8m ²)	Unaltered (Lift core located on existing impervious area)	No, but as approved.
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Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach Locality	No	Yes
B1.2 Heritage Conservation - Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.3 Coastline (Beach) 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
B8.6 Construction and Demolition - Traffic Management Plan	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
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.14 Separately Accessible Structures	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C1.23 Eaves	No	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	Yes	Yes
D12.3 Building colours and materials	Yes	Yes
D12.5 Front building line	Yes	Yes
D12.6 Side and rear building line	No	Yes
D12.8 Building envelope	No	Yes
D12.10 Landscaped Area - Environmentally Sensitive Land	No	Yes
D12.13 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D12.14 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

A4.12 Palm Beach Locality

The proposed lift shaft is to extend down the southern side of the approved three storey dwelling house. Despite breaching the desired character for a maximum of two storeys in any one place, the assessment report for development consent no. DA2019/0913 recognised the dwelling house development as acceptable on the following grounds:

- The development is generally constrained to the portion of the site that is steeply sloping;
- While the development presents as three storeys when viewed from The Strand, a high degree of facade modulation, including setbacks, assist with integrating the dwelling with the sloping topography;
- The incorporation of an extensive landscaped area for plantings including locally native canopy trees between the development and The Strand;
- The use of materials and finishes including timber batten screens to the ground floor, stone cladding and black roofing help to blend the development into the surrounding natural environment;
- The development would appear as one storey from the Whale Beach Road frontage and generally two storeys from adjoining dwellings; and
- Consideration was given to the number of neighbouring dwellings including No(s). 213, 223, 237 and 237A that are located along the eastern side of Whale Beach Road are greater than two storeys.

The assessment largely sees the above grounds as continuing to be applicable for the modified proposal and is therefore considered consistent with the desired future character of the Palm Beach Locality*.

***Note:** The suburb of Whale Beach forms part of the Palm Beach Locality.

C1.3 View Sharing

During the assessment of the development application (for which this modification application relates), Council requested for height poles to be erected and undertook a reverse view loss assessment. Whilst no submissions were received, consideration has been given to the level of view impacts arising from the proposed lift addition. The top of the lift shaft is to have a level of RL 20.850, which is lower than the western-most main roof ridge that was approved at RL 22.750 and consistent with the top of the garage

roof.

The lift addition is to be located south of the garage and has been qualitatively considered to result in a negligible-minor impact upon views for properties to the west. Properties No. 208 and 210 Whale Beach Road are to receive a minor impact on views, with a portion of the beach views anticipated to be affected. It is expected that these particular views for No. 208 Whale Beach Road are likely partially filtered through vegetation including the Norfolk Island Pines along The Strand. For No. 210 Whale Beach Road, the lift addition is expected to have a very minor impact towards southern views of Whale Beach; however, again, these views are currently filtered with the established Coastal Banksia Trees along the northern side boundary of No. 30 The Strand. For properties along Morella Road, the proposed lift addition is expected to have negligible impact upon views of Whale Beach.

As previously highlighted, the resultant development will continue to present as one storey to the Whale Beach Road frontage, and is of a scale that is consistent with neighbouring dwellings along Whale Beach Road. Furthermore, as all proposed built form non-compliances have been considered and supported on merit, the proposal is not considered to be unreasonable in the circumstances of the site. Overall, the development is considered acceptable and with view sharing achieved between properties.

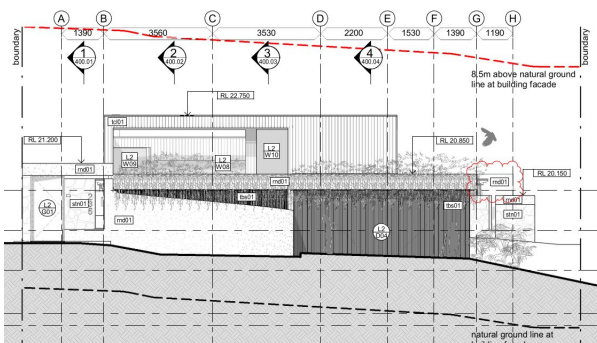


Figure 1: Extract of the proposed western elevation. Lift addition clouded in red.



Figure 2: Image taken by the assessing officer on 22 November 2019 from the road reserve in front of No. 208 Whale Beach Road.

Note: The height profiles/poles reflected in this image were at RL 23.05, whereas the approved height for this ridge was reduced to RL 22.750.

C1.5 Visual Privacy

The eastern side of the proposed lift addition is to be entirely glazed by a window (W11). Whilst this proposed window is expected to be for the purposes of capturing views of Whale Beach, consideration should be given to the extent of privacy impacts on neighbouring properties that may arise as a result of its installation. As previously highlighted, the approved Landscape Plan (Dwg No. LP01-D4418, Issue 01, Rev. B) dated 17.08.2020 by Dangar Barin Smith demonstrates that established Giant Bird of

Paradises (maturity height 5-7m), Banksia Trees (maturity height 5-10m) and Tuckeroos (maturity height 5-10m) will be planted with the southern setback area, which is considered to assist with restricting any overlooking towards No. 30 The Strand (directly south). It has also been noted that the lift window is not orientated to the southern adjoining property and therefore will not result in direct views of habitable windows or principal private open space areas.

C1.23 Eaves

The proposed modifications do not provide for eaves for the lift shaft. In this regard, the arrangement is considered remains unchanged to that approved under the original application. As discussed within the Assessment Report for DA2019/0913, Council was satisfied that the development was of contemporary character, consistent with other developments in the locality. The submitted BASIX information submitted indicates that appropriate levels of solar access and shading would be achieved. The modification is therefore considered to continue satisfying the outcomes of this clause and the non-compliance is supported on merit.

C1.25 Plant, Equipment Boxes and Lift Over-Run

With the proposed lift addition being attached externally to the southern side of the dwelling house, it is technically not 'integrated internally into the design fabric of the built form of the building'. Despite this, it should be acknowledged that the external finishes are consistent with that of the dwelling house to ensure that the lift addition blends into the design fabric. The top of the lift is also matches the height of the garage parapet and is therefore not considered to protrude beyond the approved built form. Conditions are to be recommended ensuring that the lift structure inclusive of any overrun does not exceed the height of RL 20.850. The proposed modifications have therefore been considered to meet the outcomes of this clause and the application is supported on merit.

D12.3 Building colours and materials

The external render 'rnd01' to the lift addition is to comply with Condition 22 of the development consent DA2019/0913 that requires the finish/tone be equivalent to or darker than Colorbond 'Windspray'.

D12.6 Side and rear building line

Requirement:

2.5m (South) side building line
1m (North) side building line

Approved:

0m-6m (South)
0m-2.7m (North)

Proposal:

2.2m to the lift (South)
Unchanged (North)

The proposed lift addition being 2.2m from the southern side boundary is non-compliant with the prescribed 2.5m setback that has been applied the site. It should be noted that the extent of breach is limited to the lift dimensions (east to west) of 2m and protrudes 1.2m from southern face of the dwelling

house. As discussed previously in this report, the lift is to occupy an area that had previously been indicated as being a stairwell and thereby does not see a further reduction in landscaped area and only minimal level of additional excavation necessary. Despite the non-compliance, the proposal is considered to maintain sufficient privacy and amenity between the occupants of the subject site and those of the adjoining southern property. Furthermore, the modification is considered to continue providing acceptable level of solar access while also achieving view sharing for neighbouring properties. The resultant landscaping arrangement and external colours and finishes to the dwelling will also assist to visually reduce the bulk and scale of the development.

Based on the above, the proposed modification are considered to satisfy the outcomes of this clause and the non-compliance is supported on merit.

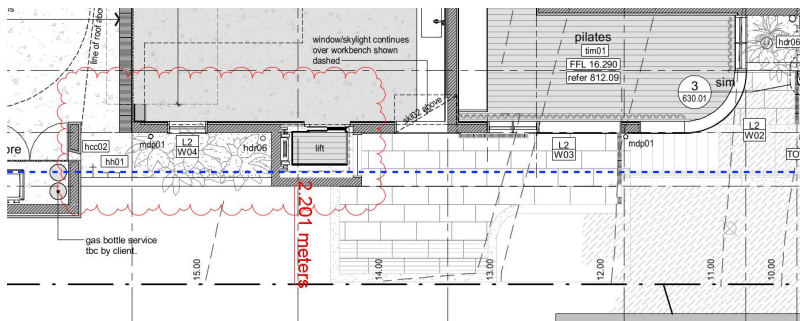


Figure 3: Extract of the Second Floor Plan with annotations overlaid to reflect the proposed setback (red) and the prescribed 2.5m setback (blue).

D12.8 Building envelope

The proposed lift addition will breach the prescribed building envelope by a maximum of 1.03m along the southern elevation. Despite the breach, it should be acknowledged that the remainder of the development remains compliant with the prescribed building envelope along the southern elevation through the provision of increased side setbacks. Given the inherent design limitations of a lift, it also noted that compliance would be difficult to achieve without considerable reconfigurations to the internal floor plans to fully integrate the lift core within the approved built form. The variation sought for the proposed modifications are not considered to result in unreasonable impacts to neighbouring properties with regard to views, privacy and solar access. Furthermore, the proposal is consistent with the desired future character of the locality, and the visual impacts on the streetscape, through limiting the built form of the proposed development and incorporating vegetation within setback areas.

Based on the above, the proposed modification are considered to satisfy the outcomes of this clause and the non-compliance is supported on merit.

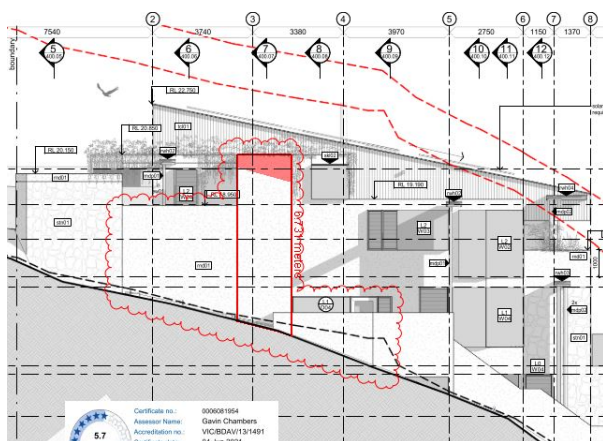


Figure 4: Extract of the proposed southern elevation. The extent of the building envelope non-compliance is highlighted in red.

compliance has been shaded in red.

D12.10 Landscaped Area - Environmentally Sensitive Land

The proposed modifications do not result in any further decrease to the landscaped area on site 50.8% (447.8m²) as approved under modification application no. Mod2020/0334. While it is noted that the modification proposed a planter to the west of the proposed lift, this area cannot be included as part of the overall landscaped area due to it being located above the building footprint. Acknowledgement is given that the planter will provide opportunities to improve the landscape amenity of the site and soften the proposed addition when viewed from Whale Beach Road.

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 2021

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 2000;
- 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. Mod2021/0446 for Modification of Development Consent DA2019/0913 granted for demolition works and construction of a dwelling house including a swimming pool on land at Lot 70 DP 11067,32 The Strand, WHALE BEACH, subject to the conditions printed below:

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

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
200.01, Rev. K (Second Floor)	19.05.21	Shaun Lockyer Architects Pty Ltd
200.02, Rev. J (First Floor)	19.05.21	Shaun Lockyer Architects Pty Ltd
200.03, Rev. K (Ground Floor)	19.05.21	Shaun Lockyer Architects Pty Ltd
300.02, Rev. L (East Elevation)	19.05.21	Shaun Lockyer Architects Pty Ltd
300.03, Rev. L (South Elevation)	19.05.21	Shaun Lockyer Architects Pty Ltd
300.04, Rev. L (West Elevation)	19.05.21	Shaun Lockyer Architects Pty Ltd
400.07, Rev. K (Section 7)	19.05.21	Shaun Lockyer Architects Pty Ltd

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate, Ref. 1020266S_02	4 June 2021	Building Sustainability Assessments
ABSA Assessor Certificate, Ref. 0006081954	4 June 2021	Building Sustainability Assessments
Geotechnical Addendum Letter, Ref. J2226H	21 June 2021	White Geotechnical Group Pty Ltd

b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

B. Modify Condition 33 Survey Certificate under heading **CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK** to read as follows:

Survey Certificate

A Survey Certificate prepared by a Registered Surveyor at the following stages of construction:

(a) Commencement of perimeter walls, columns and/or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.

(b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.

(c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

(d) At the completion of the lift shaft confirming the finished height does not exceed RL 20.850.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To determine the height of buildings under construction comply with levels shown on approved plans.

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

Signed



Kent Bull, Planner

The application is determined on 17/08/2021, under the delegated authority of:



Rodney Piggott, Manager Development Assessments