

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2022/0601
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Responsible Officer:	Thomas Prosser
Land to be developed (Address):	Lot 5 DP 25653, 41 Coasters Retreat COASTERS RETREAT NSW 2108
Proposed Development:	Construction of a dwelling house including an inclinator.
Zoning:	C3 Environmental Management
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Nichola Danielle Midgley Graham John Midgley
Applicant:	Graham John Midgley

Application Lodged:	08/11/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	15/11/2022 to 29/11/2022
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks to modify the consent approved for a new dwelling under in DA2021/0968.

In detail, the modification seeks to :

Ground Floor

- Changes to windows
- Removal of battens at front elevation
- Change to location of door at rear

First Floor

- Changes to windows
- Changes to kitchen wall layout

External

- Change to water tank location
- Adjustment to roof style

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

There are no assessment issues.

SITE DESCRIPTION

Property Description:	Lot 5 DP 25653 , 41 Coasters Retreat COASTERS RETREAT NSW 2108
Detailed Site Description:	<p>The subject site is legally described as Lot 5 DP 25653 and is known as 41 Coasters Retreat, Coasters Retreat.</p> <p>The site falls within the E3 Environmental Management zone pursuant to the Pittwater Local Environmental Plan 2014, and in the Upper Western Foreshores Locality pursuant to the Pittwater 21 Development Control Plan 2014.</p> <p>The site is the 'axe' of a battleaxe arrangement and achieves a maximum depth of 85m by a width of 74m, equating to an overall surveyed area of 2,230 square</p>

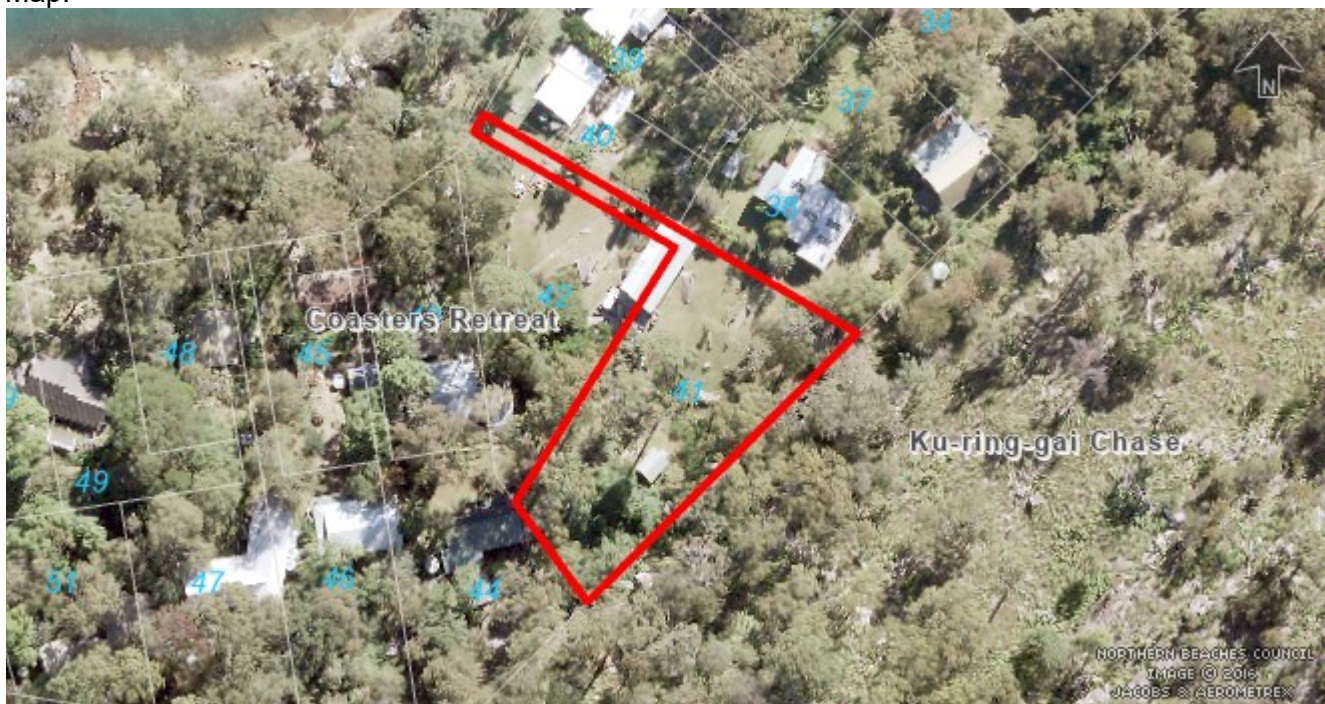
metres. The frontage of the site (at the 'handle') fronts onto a portion of Ku-ring-gai Chase and the Pittwater waterway.

The site is presently vacant of structures with the exception of a 21 square metre shed.

The site has significant rocks throughout, mainly floaters, and approximately 21 trees. Topographically the site inclines from front to rear (north to south) by approximately 35 metres. The access handle into the site inclines approximate 15m via a gradual slope.

Surrounding developments consist of detached dwelling houses of varying age, size and construction.

Map:



SITE HISTORY

A search of Council's records has revealed that there are no recent or relevant applications for this site (with the exception of the development application subject to this modification).

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

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 DA2021/0968, 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>Yes</p> <p>The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons:</p> <p>The proposal involves minor changes to the built form and the relocation of an approved water tank.</p>
(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 DA2021/0968 for the following reasons:</p> <p>The proposal retains the approved use of a dwelling and does not involve any new floor space or any substantial bulk.</p>
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (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	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.
(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.	See discussion on "Notification & Submissions Received" in this report.

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made	See discussion on “Notification & Submissions

Section 4.15 'Matters for Consideration'	Comments
in accordance with the EPA Act or EPA Regs	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 original application (prepared by Building Code & Bushfire Hazard Solutions Pty Limited, dated 07 May 2021). The report recommended an alternative solution to comply with Planning for Bush Fire Protection.

The application was referred to the NSW Rural Fire Service for further assessment. The NSW RFS raised no objections to approval, subject to conditions. The recommendations of the Bush Fire Report , along with the conditions from the NSW RFS remain in the conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 15/11/2022 to 29/11/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p><u>Additional Information Comment 06/02/23:</u> Owners consent for the removal of neighbouring tree 18 has been submitted and no further concerns are raised. All conditions imposed in DA2021/0968 shall remain.</p> <p><u>Original Comment Summary:</u></p> <ul style="list-style-type: none"> Concern was raised with the proposed rainwater tank locations and the potential impact they would have on surrounding trees.
NECC (Bushland and Biodiversity)	The comments on this assessment relate to the following provisions:

Internal Referral Body	Comments
	<ul style="list-style-type: none"> State Environmental Planning Policy (Resilience and Hazards) 2021 - 2.10 Development on land within the coastal environment area <p>The original development application sought approval to build a new two story dwelling with an inclinor. The proposed modifications seek to change the location of the rainwater tanks on the site. However, no updated arboricultural impact assessment (AIA) has been supplied with these modifications to determine whether irreversible impacts will take place on trees present within the site.</p> <p>Additionally, no indication has been given as to whether the rainwater tanks being installed will require cutting and filling to build retaining walls which would contravene the conditions set out in the Natural Environment Referral Response - Biodiversity (09/07/2021).</p> <p>The removal of additional native trees should be avoided unless no feasible alternative exists. If the removal of additional trees cannot be avoided, then to comply with the DCP control additional tree planting is required to avoid a net loss in native canopy trees.</p> <p>The completion of the assessment is dependent on an updated AIA which has not been attached to the modification application.</p> <p>AMENDED COMMENTS 06/02/2023</p> <p>Evidence has been provided in the form of an updated AIA and neighbour's consent for the removal of tree 18. No objections are raised in regards to the removal following the evidence provided and no other trees will be impacted by the works undertaken. Previous Natural Environment conditions still apply as per Natural Environment Referral Response - Biodiversity (09/07/2021)</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 (Stormwater and Floodplain Engineering – Flood risk)	The proposed residential development is outside of the medium flood risk precinct. Therefore there are no applicable flood related development controls.

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.1229951S).

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

Commitment	Required Target	Proposed
Water	40	76
Thermal Comfort	Pass	Pass
Energy	50	97

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

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	10m (under clause 2D)	8.6m	8.6m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
Front building line	6.5m	Front boundary - approx. 55m To rear of 42 Coasters Retreat - 10m Inclinor - 6.5m	Unaltered	Yes
Rear building line	6.5m	House - 12m Deck - 8.5m	Unaltered	Yes
Side building line	2.5m	36.5m	Unaltered	Yes
	1m	House - 5.2 - 8.7m Inclinor - 1m	Unaltered	Yes
	3.5m	Within	Unaltered	Yes
Landscaped area	Maximum area not provided as landscaped area - 230m ²	New dwelling - 216sqm Existing shed - 21sqm Total - 237sqm	Unaltered	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.13 Upper Western Foreshores Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B4.15 Saltmarsh Endangered Ecological Community	Yes	Yes
B4.16 Seagrass Conservation	Yes	Yes
B4.19 Estuarine Habitat	Yes	Yes
B5.13 Development on Waterfront Land	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
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
C1.12 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
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure		Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D13.1 Character as viewed from a public place	Yes	Yes
D13.2 Scenic protection - General	Yes	Yes
D13.3 Building colours and materials	Yes	Yes
D13.5 Front building line	Yes	Yes
D13.6 Side and rear building line	Yes	Yes
D13.11 Fences - Flora and Fauna Conservation Areas	Yes	Yes
D13.13 Companion animals	Yes	Yes
D13.16 Stormwater overflow	Yes	Yes
D13.17 Parking management	Yes	Yes
D13.18 Site disturbance	Yes	Yes
D15.11 Waterfront lighting	Yes	Yes
D15.12 Development seaward of mean high water mark	Yes	Yes
D15.13 Lateral limits to development seaward of mean high water mark	Yes	Yes
D15.14 Minimum frontage for waterfront development	Yes	Yes
D15.15 Waterfront development	Yes	Yes

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

Refer to Assessment by Council's Natural Environment Unit elsewhere within this report.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- Pittwater Local Environment Plan;
- Pittwater Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

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

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2022/0601 for Construction of a dwelling house including an inclinator. on land at Lot 5 DP 25653,41 Coasters Retreat, COASTERS RETREAT, 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
A102 A- Site Plan	18/05/2022	Cornerstone Structures
A103 A- Site Sections 1	18/05/2022	Cornerstone Structures
A104 A- Site Sections 2	18/05/2022	Cornerstone Structures
A105 A- Site Sections 3	18/05/2022	Cornerstone Structures
A106 A- Ground Floor Plan	18/05/2022	Cornerstone Structures
A107 A- First Floor Plan	18/05/2022	Cornerstone Structures
A108 A- Roof Plan	18/05/2022	Cornerstone Structures
A109 A- Elevations 1	18/05/2022	Cornerstone Structures
A110 A- Elevations 2	18/05/2022	Cornerstone Structures
A111 A- Elevations 3	18/05/2022	Cornerstone Structures
A112 A- Sections 1	18/05/2022	Cornerstone Structures
A113 A- Sections 2	18/05/2022	Cornerstone Structures

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

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

Signed



Thomas Prosser, Principal Planner

The application is determined on 27/02/2023, under the delegated authority of:



Steven Findlay, Manager Development Assessments