

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2025/0226
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Responsible Officer:	Maxwell Duncan
Land to be developed (Address):	Lot 22 DP 602041, 90 Cabbage Tree Road BAYVIEW NSW 2104
Proposed Development:	Modification of Development Consent DA2021/2442 granted for construction of a swimming pool, spa and pavilion
Zoning:	RU2 Rural Landscape
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Applicant:	Robert Brown

Application Lodged:	14/05/2025
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	21/05/2025 to 04/06/2025
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

This application seeks consent for modification of an approved development (DA2021/2442) for 'construction of a swimming pool, spa and pavilion', at the site known as 90 Cabbage Tree Road, Bayview

The development proposed under MOD2025/0226 is lodged pursuant to Section 4.55(2) of the Environmental Planning and Assessment Act 1979. The proposed modification seeks to amend the built form of the approved development, specifically:

- Construction of an art studio to the east of the swimming pool, including a fireplace,
- Relocation of the pool equipment store from below the terrace to below the proposed art studio,

- Continuation of the hardwood battens over the approved pergola above the daybed, and
- Minor enlargement of terrace towards the west (square with the approved

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 22 DP 602041 , 90 Cabbage Tree Road BAYVIEW NSW 2104
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Detailed Site Description:

The subject site consists of one allotment located on the northern side of Cabbage Tree Road.

The site is irregular in shape with a frontage of approximately 58m along Cabbage Tree Road and a depth of 394.5m along the eastern boundary. The site has a surveyed area of 3.17 hectares.

The site is located within the RU2 Rural Landscape zone and accommodates one storey stone (with attic) dwelling with a pitched roof with gazebo. Vehicular access is from the front of No. 86 Cabbage Tree Road via a right of carriageway which leads to a large, gravel hardstand close to the house. There is also a drainage easement through the front portion of the site.

The site slopes towards the rear of the site.

The majority of the site comprises dense bushland. However, in front of the dwelling there is a very extensive garden set both sides of a step valley that falls to the north and is heavily planted with native and exotic trees and shrubs.

Detailed Description of Adjoining/Surrounding Development

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

Map:



SITE HISTORY

The land has been used for residential purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

MOD2024/0458 - Modification of Development Consent DA2021/2442 granted for construction of a swimming pool, spa and pavilion. Approved 30 September 2024

DA2021/2442 - Construction of a Swimming Pool, Spa and Pavilion. Approved 8 April 2024.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:
The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

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

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2021/2442, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55 (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	The consent authority can be satisfied that the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted under DA2021/2442 for the following reasons: • The proposal retains characterisation as an ancillary structure to the dwelling house. • The proposed development does not increase density on the site.

Section 4.55 (2) - Other Modifications	Comments
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application DA2021/2442 did not require concurrence from the relevant Minister, public authority or approval body.
(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.	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 a modification application made under Section 4.55 (2) the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent

authority for the grant of the consent that is sought to be modified.

Section 4.15(1) is addressed in the table below.

The reasons given by the consent authority for the grant of the consent that is sought to be modified is discussed as follows:

Comment on reasons for determination of DA2021/2442.

- 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

The reasons for the granting of the original consent have been considered in the assessment of this modification application. The proposed changes will result in a modified development that will not conflict with the original reasons for the granting of consent.

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<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. <u>Clause 29</u> of the EP&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. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to geotechnical assessment and category of application. . <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 2001: The Demolition of Structures. This clause is not relevant to this modification application <u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application. <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.
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	(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. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (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.
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

A Bush Fire Report was submitted with the application (prepared by Matthew Willis) stating that the National Construction Code (NCC) class for the proposed work does not include any class 1, 2, 3 or 4 structures. As the proposal does not include any Class 1, 2, 3 or a class 10 that is associated with a class 1 building, AS 3959 2018 does not apply to this development.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 21/05/2025 to 04/06/2025 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
Environmental Health (Solid Fuel/Oil Heater)	General Comments In relation to this proposal modification, the statement of environmental effects describes the following: "When compared to the previous modification application, the subject modification seeks consent for the following amendments: ☐ Construction of an art studio to the east of the swimming pool, including a fireplace, ☐ Relocation of the pool equipment store from below the terrace to below the proposed art studio, ☐ Continuation of the hardwood battens over the approved pergola above the daybed, and ☐ Minor enlargement of terrace towards the west (square with the approved pool). When compared to the original development application, the subject modification seeks consent for the following amendments: ☐ Relocation and alteration to the design and dimensions of the swimming pool, ☐ Deletion of the spa, ☐ Reduction to the size of the paved terrace adjacent to the swimming pool, ☐ Reduction to the size of the pavilion and bathroom and conversion to an art studio, ☐ Relocation of the approved fireplace, ☐ Retention of 1 tree approved for removal (Tree 8), and ☐ Relocation of the pool equipment store from below the terrace to below the proposed art studio. A comparison between the approved development and the modified proposal now sought is highlighted in the Architectural Plans by Casey Brown Architecture The modifications proposed also necessitate the following amendments to conditions in the Notice of Determination: ☐ Modify Condition 1, to refer to the modified plans and documents, ☐ Re-introduction of Conditions 30, 31, 36 and 37, which relate to the installation and operation of the approved fireplace, as the fireplace was removed in the previous modification and is re-introduced in the subject modification application.." This referral response specifically relates to the inclusion of a fireplace within the proposed art studio and the reintroduction of a previously approved fireplace. In regard to the above, both fireplaces appear to be appropriately sited and are supported by Environmental Health.

Internal Referral Body	Comments
	Recommendation APPROVAL - subject to conditions

Internal Referral Body	Comments
Environmental Health (Unsewered Lands)	General Comments In relation to this proposal modification, the statement of environmental effects describes the following: "When compared to the previous modification application, the subject modification seeks consent for the following amendments: ☐ Construction of an art studio to the east of the swimming pool, including a fireplace, ☐ Relocation of the pool equipment store from below the terrace to below the proposed art studio, ☐ Continuation of the hardwood battens over the approved pergola above the daybed, and ☐ Minor enlargement of terrace towards the west (square with the approved pool). When compared to the original development application, the subject modification seeks consent for the following amendments: ☐ Relocation and alteration to the design and dimensions of the swimming pool, ☐ Deletion of the spa, ☐ Reduction to the size of the paved terrace adjacent to the swimming pool, ☐ Reduction to the size of the pavilion and bathroom and conversion to an art studio, ☐ Relocation of the approved fireplace, ☐ Retention of 1 tree approved for removal (Tree 8), and ☐ Relocation of the pool equipment store from below the terrace to below the proposed art studio. A comparison between the approved development and the modified proposal now sought is highlighted in the Architectural Plans by Casey Brown Architecture The modifications proposed also necessitate the following amendments to conditions in the Notice of Determination: ☐ Modify Condition 1, to refer to the modified plans and documents, ☐ Re-introduction of Conditions 30, 31, 36 and 37, which relate to the installation and operation of the approved fireplace, as the fireplace was removed in the previous modification and is re-introduced in the subject modification application.." As the proposal will not result in an increase in bedrooms, occupant numbers, or additional sanitary facilities that would alter previous determinations regarding domestic wastewater matters, the proposal is supported. Recommendation APPROVAL - no conditions

Internal Referral Body	Comments
Landscape Officer	The application is for modification to development consent DA2021/2442. The Arboricultural Impact Assessment (AIA) included as part of this application outlines that existing trees 4, 5 and 8 will suffer minor encroachment; however, their retention is supported by the Arborist. The tree protection recommendations outlined in the AIA shall be adopted and implemented prior to and during the construction of the art studio / plant room. For planner if approved: Condition 1 - add the Arboricultural Impact Assessment included in this application.
NECC (Bushland and Biodiversity)	The proposed modification has been assessed against the following biodiversity legislation and controls: - NSW Biodiversity Conservation Act 2016 - Pittwater LEP Clause 7.6 (Biodiversity Protection) - Pittwater DCP Clause B4.18 (Heathland/Woodland Vegetation) The submitted arborist report summarises potential impacts to an additional three trees, as required and supported by the consulting arborist. No biodiversity objections subject to retention of existing biodiversity conditions.
NECC (Development Engineering)	The proposal is for the modification of Consent DA2021/2442 to include an art studio to the east of the approved pool and terrace. The applicant has provided an updated Geotechnical report but Forms 1 & 1A are not provided. Updated Geotechnical Forms 1 & 1A are requested prior to Development Engineering finalising comments. Review 15/7/2025: Forms 1 & 1A have been provided . No objections to approval subject to the following amendments to Conditions of Consent DA2021/2442. Amend date reference in Condition 8 to reflect new date of 18/3/2025.
NECC (Flooding)	This proposal is for modifications to DA2021/2442 and the subsequent modification application MOD2024/0458. The proposal includes the construction of an art studio, the relocation of the swimming pool and its equipment storeroom, as well as other modifications. The proposal is assessed against Section B3.11 of the Pittwater DCP and Clause 5.21 of the Pittwater LEP. The proposed works are outside the Flood Planning Area and as such are not subject to flood-related development controls. The proposal generally complies with Section B3.11 of the Pittwater DCP and Clause 5.21 of the Pittwater LEP.

Internal Referral Body	Comments
NECC (Riparian Lands and Creeks)	This application was assessed in consideration of: • Supplied plans and reports; • Relevant LEP and DCP clauses; • Water Management Act 2000; • Water Management (General) Regulation 2018; • Northern Beaches Water Management for Development Policy (WMD Policy); and • Water Sensitive Urban Design (WSUD). The site includes a watercourse mapped under the Water Management (General) Regulation 2018 Hydro Line spatial data. The location of the watercourse relative to the proposed development has not been completely surveyed or shown in the plans. It is highly likely that the proposal is within 40 metres of the watercourse and so on waterfront land. No construction is permitted on the bed or bank of the watercourse. Appropriate sediment and erosion controls must be installed prior to any disturbance of soil on site and maintained until all work is complete and groundcover re-established. The conditions applied for the MOD2024/0458 continues to apply.

Internal Referral Body	Comments
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS
	Discussion of reason for referral
	This application has been referred as the site is a local heritage item, Item 2270402, Waterfall Cottage and garden, 90 Cabbage Tree Road, Bayview, listed in Schedule 5 of Pittwater Local Environmental Plan 2014. The site is also within the vicinity of Item 2270158, Katandra Bushland Sanctuary, 84 Lane Cove Road, Ingleside, located on the opposite side of Cabbage Tree Road, some 100 metres away.
	Details of heritage items affected

Internal Referral Body	Comments		
	Details of this heritage item, as contained within the heritage inventory, are: <i>Item 2270402, Waterfall Cottage and garden, 90 Cabbage Tree Road, Bayview</i> <u>Statement of Significance</u> Waterfall Cottage is of local historic, aesthetic and research significance as a fine representative example of a late 20th century large private ornamental garden, with elements of the wild garden, woodland gardens, warm-temperate and rainforest species in a dramatic bush setting. It is representative of the mid-late 20th century permanent suburban settlement of the Bayview area, reflecting improved transport links, affluence and subdivision, the building of larger homes with elaborate gardens as secluded retreats from the city, a tranquil style of living, closer to nature. The property's bushland is representative of the Hawkesbury sandstone country of the Pittwater district in terms of rainforest and dry sclerophyll woodland flora and fauna. Waterfall Cottage is at least of local, arguably of regional and possibly state-level social significance, as a renowned private garden opened regularly to the public, popular for repeated visits over some years, through the Australian Open Garden Scheme and through its owner's sustained support for community and charity groups. Waterfall Cottage is rare locally and possibly at a state level, as a large, private informal, woodland and rainforest garden, regularly open to the public, incorporating a large amount of bushland and managed in sympathy with wild animals and birds. Few others exist at this scale, level of diversity and standard of maintenance. Owing to its size and relative intactness, it retains some potential to contain evidence of Aboriginal occupation and use, and historical archaeological relics. Due to increasing subdivision, block clearing and larger houses and areas of paving in the area, Waterfall Cottage's bushland is becoming locally rare in retaining a large bush block that is relatively little-cleared or modified, and thus retaining a degree of intact Hawkesbury sandstone escarpment and foot slope-related rainforest and dry sclerophyll woodland species of flora and fauna. In addition the garden contains many rare species of exotic plants, both in NSW and Australia.		
	Other relevant heritage listings		
	SEPP (Biodiversity and Conservation) 2021	No	Comment if applicable
	Australian Heritage Register	No	
	NSW State Heritage Register	No	

Internal Referral Body	Comments		
	National Trust of Aust (NSW) Register	No	
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	No	
	Consideration of Application		

Internal Referral Body	Comments
	This application proposes modification of Consent DA2021/2442 which approved construction of a swimming pool and pool pavilion, located to the east of the existing house, adjoining the driveway. Mod2024/0458 approved changes to the pool and pool terrace dimensions and deleted the spa. This new modification now proposes the construction of a small art studio to the east of the approved pool, connected by a timber walkway, and with pool equipment located underneath it. The art studio has been designed in the same style as the house and to be built of similar materials. It also includes a solid fuel burning fire appliance. The heritage significance of this item is embodied in the gardens and landscape. The site is very large at 3.17ha and the approved pool area is located in one of the few areas accessible from Cabbage Tree Road. It is also located in a previously filled area, with vegetation which is not of the same quality as plantings further into the site. The proposed art studio adjoins the approved pool area to the east and while visible from the driveway, it is designed to be complementary to the existing house and to blend in with the landscape, using natural stone and timber materials, with a metal corrugated roof. No trees need to be removed for this proposal and the Arborist Report contains measures to ensure no trees will be compromised. It is noted that Council's Landscape team have no objections, subject to the Arborist Report being referenced in any consent. Therefore, it is considered that this proposal will have a limited impact upon the heritage significance of the site, which is embodied in its gardens and landscape. The proposed art studio is located adjacent to the approved pool area, which is located in an area on-site which does not contain significant garden areas. No trees will be removed. It is also considered reasonable for the owners to be able to develop an ancillary art studio within such a large site. Also, the proposed development will not be visible from the heritage item in the vicinity, Katandra Bushland Sanctuary, and therefore it will have no impact on the significance of this item. Therefore, no objections are raised on heritage grounds and no conditions required. <u>Consider against the provisions of CL5.10 of PLEP 2014:</u> Is a Conservation Management Plan (CMP) required? No Has a CMP been provided? N/A Is a Heritage Impact Statement required? Yes Has a Heritage Impact Statement been provided? Yes

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.
Aboriginal Heritage Office	Existing conditions remain relevant.

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)

Housing and Productivity Contribution

SEPP (Sustainable Buildings) 2022

A BASIX certificate has been submitted with the application (see Certificate No. A1804567 dated 17 July 2025).

The embodied emissions have been quantified in the above BASIX Certificate.

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.

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	5.8m	6.7m (excluding flu)	-	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
7.6 Biodiversity protection	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	20m	61.9m	No change.	N/A
Rear building line	20m	319.2m	322m	Yes
Side building line	E - 2.5m	10.8m	10.73m	Yes
	W - 1m	57.3m	57.3m	Yes
Building envelope	E - 3.5m	Within envelope	Within envelope	Yes
	W - 3.5m	Within envelope	Within envelope	Yes
Landscaped area	80%	98%	97%	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.2 Bayview Heights Locality	Yes	Yes
B1.1 Heritage Conservation - Heritage items, heritage conservation areas and archaeological sites listed in Pittwater Local Environmental Plan 2014	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.2 Bushfire Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B4.18 Heathland/Woodland Vegetation	Yes	Yes
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
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

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D2.1 Character as viewed from a public place	Yes	Yes
D2.2 Scenic protection - General	Yes	Yes
D2.3 Building colours and materials	Yes	Yes
D2.5 Front building line	Yes	Yes
D2.6 Side and rear building line	Yes	Yes
D2.7 Building envelope	Yes	Yes
D2.9 Landscaped Area - Non Urban	Yes	Yes
D2.11 Fences - Flora and Fauna Conservation Areas	Yes	Yes
D2.12 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2024

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. Mod2025/0226 for Modification of Development Consent DA2021/2442 granted for construction of a swimming pool, spa and pavilion on land at Lot 22 DP 602041,90 Cabbage Tree Road, BAYVIEW, subject to the conditions printed below:

Modification Summary

The development consent is modified as follows:

MODIFICATION SUMMARY TABLE

Application Number	Determination Date	Modification description
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PAN-529440 MOD2025/0226	The date of this notice of determination	Modification of Development Consent DA2021/2442 granted for construction of a swimming pool, spa and pavilion Add Condition No.1B - Modification of Consent - Approved Plans and supporting documentation Modify Condition 8 - Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans Add Condition 33A - Installation of solid/fuel burning heaters Add Condition 33B - Certification of solid fuel burning heaters Add Condition 38A - Operation of solid fuel burning heaters Add Condition 38B - Maintenance of solid fuel heaters
PAN-463590 Mod2024/0458	30/09/2024	Modification of Development Consent DA2021/2442 granted for Construction of a swimming pool, spa and pavilion Add Condition No.1A - Modification of Consent 2 - Approved Plans and supporting documentation Modify Condition No.8 - Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans Add Condition No.12A - Water Quality Management Add Condition No.20A - Installation and Maintenance of Sediment and Erosion Controls Add Condition No.39 - Maintenance of Stormwater Treatment Measures Delete Condition No.13 - Tree Removal Within the Property Delete Condition No.30 - Installation of solid/fuel burning heaters Delete Condition No.31 - Certification of solid fuel burning heaters Delete Condition No.36 - Maintenance of solid fuel heaters Delete Condition No.37 - Operation of solid fuel burning heaters

Modified conditions

A. Add Condition No.1B - Modification of Consent 2 - Approved Plans and supporting documentation, to read as follows:

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

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
01.2	05	Overall site plan	Casey Brown Architecture	22 April 2025
01.3	05	Proposed pool and cabana ground plan	Casey Brown Architecture	22 April 2025

01.4	05	Proposed pool and cabana setout plan	Casey Brown Architecture	22 April 2025
01.5	05	Proposed roof plan	Casey Brown Architecture	22 April 2025
01.6	05	Proposed pool elevations	Casey Brown Architecture	22 April 2025
01.7	05	Proposed pool section	Casey Brown Architecture	22 April 2025
01.8	05	Plant room plan	Casey Brown Architecture	22 April 2025

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate No. A1804567	0	-	17 July 2025
Arboricultural Impact Assessment	-	Growing my way	March 2025

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

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

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

B. Modify Condition 8 - Geotechnical Report Recommendations to read as follows:

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by MM Geomechanics dated 18 May 2025 are to be incorporated into the construction plans.

Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

C. Add Condition 33A - Installation of solid/fuel burning heaters to read as follows:

Installation work must be carried out by an appropriately experienced and qualified person and in accordance with the relevant provisions of AS2918 – Domestic Solid Fuel Burning Appliances – Installation

Reason: To ensure the installation is completed in a legislatively compliant manner.

D. Add Condition 33B - Certification of solid fuel burning heaters to read as follows:

A certificate from an appropriately qualified person indicating the system is compliant with all relevant legislation, Building Code of Australia, Australian Standards, Specifications and manufacturer requirements is to be submitted to Council prior to the operation of the solid fuel heater.

Reason: To ensure the system operates in a legislatively compliant manner.

C. Add Condition 38A - Operation of solid fuel burning heaters to read as follows:

The owner/operator must take all practicable measures to prevent the likelihood of causing smoke and/or odour nuisances. Such measures must include:

- Using dry seasoned hardwood
- Storing wood in a dry well-ventilated place
- Having a hot and well oxygenated fire
- Ensuring that the chimney flue is clean
- Checking the chimney at different stages of the fire to see if there is any smoke
- Maintenance according to the manufacturer's specifications

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community.

D. Add Condition 38B - Maintenance of solid fuel heaters to read as follows:

The owner/occupier shall ensure servicing of the heater is maintained according to the manufacturer's specifications.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community.

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

Signed



Maxwell Duncan, Principal Planner

The application is determined on 23/07/2025, under the delegated authority of:



Adam Richardson, Manager Development Assessments