

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2018/0098
----------------------------	--------------

Responsible Officer:	Hugh Halliwell
Land to be developed (Address):	Lot 139 DP 11933, 131 Whale Beach Road AVALON BEACH NSW 2107
Proposed Development:	Modification of consent N0258/17 for the construction of a new dwelling house
Zoning:	E4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Fionna Kathryn Stewart
Applicant:	Jessica Stewart

Application lodged:	28/02/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	23/03/2018 to 06/04/2018
Advertised:	Not Advertised
Submissions Received:	3
Recommendation:	Approval

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 - 4.3 Height of buildings

Pittwater 21 Development Control Plan - A1.7 Considerations before consent is granted

Pittwater 21 Development Control Plan - B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor

Pittwater 21 Development Control Plan - C1.4 Solar Access

Pittwater 21 Development Control Plan - C1.5 Visual Privacy

Pittwater 21 Development Control Plan - D1.8 Front building line

Pittwater 21 Development Control Plan - D1.11 Building envelope

Pittwater 21 Development Control Plan - D1.14 Landscaped Area - Environmentally Sensitive Land

Pittwater 21 Development Control Plan - D1.17 Construction, Retaining walls, terracing and undercroft areas

SITE DESCRIPTION

Property Description:	Lot 139 DP 11933 , 131 Whale Beach Road AVALON BEACH NSW 2107
Detailed Site Description:	The site is known as 131 Whale Beach Road, Avalon Beach and legally referred to as Lot 139 in Deposited Plan 11933. The site is irregular in shape with a splayed rear boundary and has a total site area of 728m ² . Vehicular and pedestrian access is gained via the 15.24m wide, south-west facing frontage. The site is located on the north-eastern side of Whale Beach Road and adjoins residential properties to the rear along Rayner Road. The site experiences a steep rise from the south-west frontage of the site towards the north-east rear boundary, with a slope of 30.8%. The site is currently occupied by a one (1) and two (2) storey dwelling with a driveway and retaining wall to the front of the site. Located to the rear is a detached secondary dwelling. It is noted that recent clearing of numerous canopy trees has been undertaken in order to accommodate the approved dwelling. The site is surrounded by residential properties on all sides.

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:

- N0258/17 - Development application for the construction of a new dwelling house was lodged with Council on 26 June 2017 and subsequently approved by delegated authority on 22 August 2017;
- Notice of Commencement of building work issued on 22 August 2017;
- Construction certificate (CC0350/17) issued on 28 September 2017;
- N0258/17/S96/1 - Modification application was lodged with Council on 11 September 2017 and subsequently approved on 15 November 2017; and
- Modified construction certificate (CC2017/0782) issued on 19 December 2017.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent to modify the approved development (DA N0258/17) in the following manner:

- Deletion of pedestrian stairs from the rear of the hard stand parking area
- Deletion of tiered retaining walls to rear of the hard stand parking area;
- Addition of sandstone retaining wall within the road reserve;
- Amend approved retaining walls to the north-west of the driveway to two sandstone retaining walls that run parallel and perpendicular to Whale Beach Road;
- Amendment of timber framing of dwelling to steel frame construction with internal walls being maintained as timber;
- Deletion of Level 2 external stair along the south eastern side boundary;
- Addition of window W24 associated with staircase, amendment to window W13 along the south-eastern elevation;
- Deletion of W08 within south-eastern;

- Extension of Level 3 decking to have a depth of 3.325m, which necessitates an amendment to condition C8;
- Addition of a 1.7m high privacy screen to the south-eastern level of Level 3;
- Amendment to the rear retaining wall material to timber;
- Deletion of the two western retaining walls at the north-western corner of the dwelling.

In consideration of the application a review of (but not limited) documents as provided by the applicant in support of the application was taken into account detail provided within Attachment C.

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 N0258/17 and N0258/17/S96/1 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 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 N0258/17 and subsequent modification applications for the construction of a new dwelling.
(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	Development Application N0258/17 and subsequent modification applications did not require concurrence from the relevant Minister, public authority or approval body.

Section 4.55 (2) - Other Modifications	Comments
approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	
(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 2000, Pittwater Local Environmental Plan 2011 and Pittwater Development Control 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 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	None applicable.
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 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<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. <u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development

Section 4.15 'Matters for Consideration'	Comments
	application. This clause is not relevant to this application. <u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No Additional information was requested. <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. <u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 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 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. <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. <u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.
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 Warringah 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 “Public Exhibition” 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.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of 3 submission/s from:

Name:	Address:
Mrs Linda Clair Moss	133 Whale Beach Road AVALON BEACH NSW 2107
Paul Alexander Roget	129 Whale Beach Road WHALE BEACH NSW 2107
Cook Productions Pty Ltd	36 Rickard Avenue MOSMAN NSW 2088

Council's system has three (3) registered submissions against the subject application. Although only one (1) submission from No. 129 Whale Beach Road raises objections to the proposal. There has been a double up of the submission from No. 129, therefore, technically there has only been one (1) submission from this property. The second submission from No. 133 Whale Beach Road raised concerns with respect to not all information being provided online for them to view. This was made available to the neighbour who now appears satisfied with the modifications and has not raised any concerns.

The following issues were raised in the submission from No. 129 and each have been addressed further in this report:

- Solar access;
- Visual privacy;
- Natural environment;
- Bulk and scale;
- Retaining walls; and
- Windows.

See relevant clauses below for response to each of the neighbour's concerns.

MEDIATION

No requests for mediation have been made in relation to this application.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	No objection to the modification subject to increasing the setback of the proposed sandstone retaining wall within the road reserve to 1.2m from the existing footpath to allow for passing pedestrian movements.
NECC (Bushland and Biodiversity)	Updated Biodiversity Referral Response (4 June 2018): This updated assessment is based on the following submitted additional information: - Arboricultural statement confirming capacity of the site to accommodate seven canopy trees in accordance with Condition 8 of the original consent (N0258/17) (Naturally Trees, 18 May 2018); - Revised landscape plan identifying locations and details of compensatory canopy tree plantings to fulfill Condition 8 of the original consent (N0258/17) (ATC Landscape Architects and Swimming Pool Designers, 17 May 2018); - Arboricultural statement regarding level of encroachment to a neighbouring tree (Landscape Matrix, 31 May 2018). The arboricultural statement by Naturally Trees (18 May 2018) states the following: "Based on the current landscape plan, I believe that seven additional canopy trees can be supported as required under Condition 8". Given this statement and requested amendments to the landscape plan, the landscape plan is considered acceptable and consistent with DCP Clause B4.4. The arboricultural statement by Naturally Trees (Landscape Matrix, 31 May 2018) states that the development has required additional excavation works which have resulted in a 10.62% Tree Protection Zone (TPZ) encroachment of a Scribbly Gum (<i>Eucalyptus haemastoma</i>) on the neighbouring property to the south-east of the subject site. The author states that this is "a low to moderate level of impact and within an acceptable threshold". It is noted that owner's consent has not been submitted for impact to this tree, which is assessed by Naturally Trees as being in good health and of high landscape significance. Based on the submitted plans and documentation, it is considered that the proposed modification is not inconsistent with DCP Clause B4.4 (Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor). Biodiversity Referral Response (19 April 2018): The site is subject to the following controls of Clause B4.4 (Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor): - <i>Development shall provide flora and fauna habitat and wildlife corridors by active restoration, regeneration, and/or creation.</i> - <i>Development shall result in no significant onsite loss of canopy cover or net loss in native canopy trees.</i> - <i>Planting is to maximise linkage to the wildlife corridor</i>

Internal Referral Body	Comments
	The original DA N0258/17 proposed removal of 21 trees and retention of 7 neighbouring and site trees (with specific and general tree protection measures). The approved landscape plan for N0258/17 included a number of compensatory plantings, with additional canopy trees required under Condition 8 - <i>At least 7 locally native canopy trees which will mature at a height no less than 5 metres are to be planted...</i> An additional DA (N0530/17, under assessment) and subsequent modifications to N0258/17 (approved N0258/17/S96/1 and the current proposal) will all serve to reduce the landscaped area available for compensatory plantings required by Condition 8. The landscape plan submitted with the current proposal does not detail how the requirements of Condition 8 will be achieved, however it is likely that there would be insufficient area to achieve the condition should DA N0530/17 and MOD2018/0098 be approved as submitted. These proposals are also likely to impact further on existing trees. A detailed landscape plan which complies with all landscaping requirements of the original consent, and an arborist statement confirming that the modification can be undertaken without additional impact to neighbouring trees, are required in order to adequately assess the impacts of the modification and compliance with the DCP control.
NECC (Development Engineering)	The proposed modifications do not alter the original assessment of the application by Development Engineers. The revised driveway profile is acceptable using Council's Maximum High profile. The letter by the Geotechnical Engineer addresses the relevant DCP controls. No objection to approval with no additional or modified conditions of consent recommended.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

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. 826394S_03 dated 28 February 2018).

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

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

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:

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

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	8.2m	8.68m	2.11%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
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

Detailed Assessment

4.3 Height of buildings

The proposed modification, in particular the privacy screen erected along the south-eastern elevation protrude through the prescribed 8.5m building height plane resulting in a technical height breach. It is noted that a submission has been received from the neighbour to the south-east at 129 Whale Beach Road with concerns relating to the overall bulk and scale of the south-east elevation attributed to by the privacy screens in question. The level 3 deck services a master bedroom, which is not considered a high-use or principal living area; and therefore, not requiring such an extensive privacy screen. It is therefore recommended that the privacy screen be reduced in length, subsequently reducing the bulk and scale created by the privacy screen. Should the application be approved, the following condition of consent is recommended:

The privacy screens on level 3 along the south-east elevation and north-west elevation are to be reduced in length, so not to extend 3.7m beyond the south-west external facing wall on level 3.

The above condition will result in a reduced impact to the neighbour at No. 129 and allow the dwelling to fully comply with the maximum 8.5m height limit.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
Front building line	6.5m	>6.5m	2.5m	No
Rear building line	6.5m	>6.5m	Unaltered	Yes
Side building line	2.5m	7.2m	Unaltered	Yes
	1m	2.2m	1.2m	Yes
Building envelope	3.5m	Outside envelope	Unaltered	No

	3.5m	Outside envelope	Unaltered	No
Landscaped area	60%	58.2%	55.6% (w/o variation) 57% (w/ variation)	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.1 Avalon Beach Locality	Yes	Yes
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
D1.1 Character as viewed from a public place	Yes	Yes
D1.8 Front building line	No	Yes
D1.9 Side and rear building line	Yes	Yes
D1.11 Building envelope	No	Yes
D1.14 Landscaped Area - Environmentally Sensitive Land	No	Yes
D1.17 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D1.20 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

A1.7 Considerations before consent is granted

Upon visiting the subject site, it is understood that a number of aspects of the subject application have been constructed prior to consent being granted. The applicant has also confirmed this in writing with respect to the level 3 deck and privacy screens.

Although works have been done without formal consent, modification applications can be granted retrospective approval under NSW case law as established in the case of Windy Dropdown Pty Ltd v Warringah Council [2000] NSWLEC 240. Commissioner J. Talbot considered the following:

the broad construction of s 96 leads to a practical result that enables a consent authority to deal with unexpected contingencies as they arise during the course of construction of development or even subsequently, provided of course that the development to which the consent as modified relates is substantially the same development.

Therefore, although the works which form the basis of this section 4.55 application have already been

undertaken, modification approval can still be granted, subject to an assessment under the relevant controls.

B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor

The neighbour at No. 129 has noted that the pedestrian stairs to the south-east which have been relocated are closer to a mature native tree on their property. Due to concerns regarding this, an arborist letter was received supporting the proposal and additional works close to the neighbour's tree (*Eucalyptus haemastome* - Scribbly Gum). Council's Natural Environment Officer - Biodiversity has supported the modifications based on the advice provided by the consulting arborist.

C1.4 Solar Access

A submission from No. 129 has raised concern that the privacy screens and general bulk and scale will lead to further overshadowing. It is not anticipated that the reduced privacy screen (see C1.5) will result in further overshadowing of the neighbour's property beyond what is already approved under N0258/17 and will therefore remain consistent with the original consent. The proposal is supported.

C1.5 Visual Privacy

A submission from No. 129 Whale Beach Road to the south-east has raised concern with regards to potential overlooking from various areas of the south-east elevation, including windows and decks. Two windows of concern (W13 and W24) have been directly mentioned by the neighbour. Although appreciating the concerns raised by the neighbour, window 24, which has an appropriate sill height and services a non-principal/primary living area, is not considered to result in any unreasonable level of overlooking of the neighbouring property. As for window 13, whilst the window services a staircase leading to the master bedroom, the floor to ceiling height of the window is considered unwarranted, particularly along a south-east elevation that will receive little to no direct solar access. Should the application be approved, the following condition is recommended:

W13 on the south-east elevation is to be amended to have obscured glazing.

The same neighbour has raised concern regarding overlooking from approved decks. Having visited the subject site and stood on the deck at level 3, there is not considered to be an unacceptable level of overlooking with installed privacy screens preventing any overlooking of the neighbouring property. The level 3 deck services a master bedroom (non-primary living area) and will unlikely receive a high-volume of foot traffic as opposed to the level 2 deck, which services the kitchen/living/dining areas of the house where typically the occupants of the dwelling will spend more time. Overall, the modifications are not considered to result in an unacceptable impact upon the visual privacy of the neighbour at No. 129.

The neighbour has noted that existing and approved windows along the south-east internal stairway create overlooking of their property. It is noted that these windows do not service a primary living area (i.e. dining/living area) and that proposed landscaping will provide sufficient screening to reduce any potential for overlooking.

D1.8 Front building line

The modification application largely complies with the approved development (N0258/17 and N0258/17/S96/1) with the exception of pedestrian access stairs, which have been relocated from the rear of the hard stand parking area to the south-eastern side of the parking slab. The relocation and subsequent technical non-compliance is not considered to be unreasonable. The stairs will not result in

any impact to the existing streetscape, existing vegetation or to the neighbouring property at No. 129. For this reason, the variation is supported on merit.

D1.11 Building envelope

It is noted that due to the slope of the subject, the upper level and portions of the mid level will remain outside the prescribed building envelope plane (addressed under the original assessment N0258/17). It is acknowledged that concerns have been raised by the neighbour at No. 129 with respect to the overall bulk and scale of the development along the south-east elevation. It is understood that the level 3 tiled deck (as constructed) contravenes the previous development consent by extending beyond what had previously been approved, thereby requiring retrospective approval. Although concerns have been raised by the neighbour, there is not considered to be unreasonable impact associated with the extended deck. Being setback 2.5m from the south-east boundary, there remains sufficient separation from the No. 129 to limit any adverse impact to the neighbour. Subject to the removal of a portion of the privacy screen, the modification is recommended for approval.

D1.14 Landscaped Area - Environmentally Sensitive Land

The proposed modifications result in a reduced landscaped area compared to that approved under N0258/17 and N0258/17/S96/1. This is largely due to the approval of a secondary dwelling at the rear of the property. It has been noted already that the proposal, in particular the additional footprint will not adversely impact the amenity or solar access current provided to the adjoining properties. Extensive planting is proposed, as indicated on the provided landscape plan allowing the bulk and scale of the built form to be softened as viewed from both Whale Beach Road and adjoining private properties. The additional footprint is not considered to result in negative runoff impacts, in relation to stormwater. Overall, the desired future character of the Avalon Beach locality will not be affected by the proposal or reduced landscaped area. Whilst technically non-compliant with the minimum 60% landscaped area requirement, the resulting modifications will not significantly alter the approved landscaped area. Including allowable variations, such as areas of outdoor recreational space, in this case, pathways, the landscaped area increases to 57% from 55.6%. Although remaining non-compliant, the landscaped area is supported on merit for the reasons noted above.

D1.17 Construction, Retaining walls, terracing and undercroft areas

Assessment of the architectural plans and a site inspection confirmed that the besser block retaining wall around the hard stand parking area has been constructed prior to development consent being granted, thereby relying on retrospective approval. The previous development consent (N0258/17/S96/1) provided consent for tiered retaining walls at the rear of the hard stand parking area, which were to be planted out. The subject application seeks consent to remove these tiered retaining walls and retrospectively approve a 2.9m high besser block retaining wall at the rear of the parking area. Whilst it is preferred that sandstone material be used for retaining walls, particularly when visible from a public place, a site inspection confirmed that this wall is notably high, but is only visible when viewed directly front on. Viewed from other angles, the retaining wall will be screened by proposed landscaping within the front setback.

The same neighbour at No. 129 has raised concern regarding this retaining wall adding to the bulk of the building and 'taking away even more of the bush aspect'. Whilst the size of the wall is notable, as touched on above, it is not unreasonable, in so far as the extensive planting proposed within the front setback (see landscape plan) will provide adequate screening. Also, given the distance of this wall from the neighbour's property, it is unlikely it will cause any impact to their property. In the same submission, the neighbour has made reference to the addition of a new 1.2m high retaining wall to be constructed from timber. The submission raises concern relating to the raising of the ground level created by the addition of this retaining wall. It is considered that this retaining wall will adversely impact the neighbour,

in terms of visual privacy or unreasonable bulk and scale. Proposed landscaping along the south-east boundary include NSW Christmas Bush which are proposed to grow to a mature height of 3m, thereby providing adequate screening between both properties.

Although constructed prior to consent being granted, this assessment finds the proposal acceptable on merit.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly effect 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

Pittwater Section 94 Development Contributions Plan

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. Mod2018/0098 for Modification of consent N0258/17 for the construction of a new dwelling house on land at Lot 139 DP 11933, 131 Whale Beach Road, AVALON BEACH, subject to the conditions printed below:

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
S96-02	2/03/2018	Action Plans
S96-03	2/03/2018	Action Plans
S96-04	2/03/2018	Action Plans
S96-05	2/03/2018	Action Plans
S96-06	2/03/2018	Action Plans
S96-07	2/03/2018	Action Plans
S96-08	2/03/2018	Action Plans
S96-09	2/03/2018	Action Plans
S96-10	2/03/2018	Action Plans
S96-11	2/03/2018	Action Plans
S96-12	2/03/2018	Action Plans
S96-13	2/03/2018	Action Plans
Landscape Plan, L/01'C', Issue C	17/05/2018	A Total Concept

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate, No. 826394S_03	28/02/2018	Actions Plans
Geotechnical Letter, AG 17008B	12/03/2018	Ascent Geotechnical Consulting
Arborist Letter, 131 Whale Beach Road, Avalon Beach	31/05/2018	Landscape Matrix

c) Any plans and / or documentation submitted to satisfy the Deferred Commencement Conditions of this consent as approved in writing by Council.

d) 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. (DACPLB01)

C. Delete Condition C8:

The approved plans, and approved modified plans are to be amended. The areas of decking on level 2 and 3 are to be reduced as follows:

- The level 2 deck is to be reduced in width by 1.8m so not to extend 3.325m from the external wall on the south-west elevation; and
- The level 3 deck is to be reduced in width by 1.6m so not to extend 2m from the external wall on the south-west elevation.

D. Add Condition C17 to read as follows:

W13 on the south-east elevation is to be amended to have obscured glazing.

Reason: To ensure privacy is maintained to adjoining properties.

D. Add Condition C18 to read as follows:

The privacy screens on level 3 along the south-east elevation and north-west elevation are to be reduced in length, so not to extend 3.7m beyond the south-west external facing wall on level 3.

Reason: To reduced the bulk and scale of the development.

D. Add Condition D24 to read as follows:

As excavation is required within five metres of an existing significant tree or trees and vegetation on an adjoining site, the excavation is to be supervised by a qualified consulting arborist. In the event that major structural roots or feeder roots are encountered, the arborist is to require the builder to carry out appropriate action to ensure the retention of the tree or other vegetation, and is to advise the Principal Certifying Authority accordingly. Works are not to progress past this point until the Principal Certifying Authority has confirmed that this condition has been satisfied.

Where the subject trees are on neighbouring property and are on Council's list of exempt species, tree removal remains subject to the owner's consent. Council will not be involved in approving or refusing removal/damage to these trees, and any future decisions made in relation to them is a civil matter between the neighbouring parties.

Reason: To ensure the protection and retention of neighbouring property trees.

D. Add Condition E15 to read as follows:

The proposed setback of the sandstone retaining wall within the road reserve shall be setback a minimum of 1.2m from the existing footpath.

Reason: To allow for the continuation of safe pedestrian access along the street frontage, not impeded by restrictions. (C1.2 part 2)

D. Add Condition E16 to read as follows:

A certificate is to be submitted to the Principal Certifying Authority with the Occupation Certificate application by a qualified practicing landscape architect, landscape/environmental designer or horticulturalist, certifying that the proposed automatic watering system and/or subsoil drainage and any associated waterproofing membrane have been installed in accordance with details shown on the

approved landscape working drawing and/or the manufacturers specification.

Reason: To ensure landscaping is viable, consistent with approved plans and will thrive.

D. Add Condition E17 to read as follows:

Documented evidence of a qualified arborist supervising the works in proximity to trees being retained, particularly Tree 7 (*Eucalyptus haemastoma*) and ensuring that all tree protection measures as specified in the supplied arborist report is required. This documentation is to be provided prior to the issue of the Occupation Certificate.

Reason: To ensure the retention of the Urban Forest/Natural Environment.

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

Signed



Hugh Halliwell, Planner

The application is determined under the delegated authority of:



Anna Williams, Manager Development Assessments

ATTACHMENT A

No notification plan recorded.

ATTACHMENT B

No notification map.

ATTACHMENT C

Reference Number	Document	Date
 2018/155055	Report - BASIX	28/02/2018
 MOD2018/0098	131 Whale Beach Road AVALON BEACH NSW 2107 - Section 96 Modifications - Section 96 (2) Environmental Impact	28/02/2018
 2018/141663	DA Acknowledgement Letter - Jessica Stewart	28/02/2018
 2018/152876	Lothringer - Condition of Footpath - 131 Whale Beach Road Whale Beach	02/03/2018
 2018/155059	Plans - Master Set - 131 Whale Beach Rd, Avalon Beach NSW 2107	02/03/2018
 2018/155054	Plans - NOTIFICATION PLAN - 131 Whale Beach Rd, Avalon Beach NSW 2107	02/03/2018
 2018/155057	Plans - External	05/03/2018
 2018/155058	Plans - Internal	05/03/2018
 2018/155056	Report - Statement of Environmental Effects s96v2- 131 Whale Beach Road Avalon Beach	05/03/2018
 2018/155430	Request for Further Information - Mod2018/0098	05/03/2018
 2018/186236	DA Acknowledgement Letter (not integrated) - Jessica Stewart	20/03/2018
 2018/187404	Notification Letter - Mod	21/03/2018
 2018/207782	Online Submission - Moss	28/03/2018
 2018/207859	Notification Sign	29/03/2018
 2018/247659	Natural Environment Referral Response - Biodiversity	19/04/2018
 2018/250240	Landscape Referral Response	20/04/2018
 2018/263784	Development Engineering Referral Response	30/04/2018
 2018/273551	Request for Withdrawal of Development Application - Jessica Stewart	03/05/2018
 2018/307381	Landscape Plan.pdf	21/05/2018
 2018/307382	Response to Issues Letter May 2018.pdf	21/05/2018
 2018/307999	Response to Issues - Updated Landscape Plan - Mod2018/0098 - 131 Whale Beach Road Avalon Beach	22/05/2018
 2018/312040	Site Photos	23/05/2018
 2018/315252	Arborist statement re landscaping.pdf	24/05/2018
 2018/332664	Submission - Cook/Kittson	30/05/2018
 2018/332678	Submission - Cook/Kittson	30/05/2018
 2018/334779	Arborist Letter regarding neighbouring trees.pdf	01/06/2018
 2018/340000	Updated Natural Environment Referral Response - Biodiversity	04/06/2018
2018/342132	Submission Acknowledgement Letter - Paul	05/06/2018



Alexander Roget - SA2018/332664



2018/342149

Submission Acknowledgement Letter - Cook
Productions Pty Ltd - SA2018/332678

05/06/2018



2018/408054

FW: Post Construction Dilapidation Report - 131
Whale Beach Rd

02/07/2018