

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2024/0694
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Responsible Officer:	Phil Lane
Land to be developed (Address):	Lot 16 DP 236420, 32 Loblay Crescent BILGOLA PLATEAU NSW 2107
Proposed Development:	Modification of Development Consent DA2023/1023 granted for Alterations and additions to a dwelling house including retaining walls
Zoning:	C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Applicant:	Jo Willmore Designs

Application Lodged:	02/01/2025
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	15/01/2025 to 29/01/2025
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

The proposed modification seeks the following changes to the approved development: -

- Rear approved retaining wall to be changed from sandstone block to concrete to engineers details;
- Rear approved retaining wall height modified to achieve consistent single height (part reduced by 300mm, part increased by 200mm);
- Screen above retaining wall to be reduced from 1.5m to 1.2m high; and
- Request that a condition be included to the Notice of Determination stating that the existing shared Viburnum Hedge to the rear of the north west boundary be maintained at a height of no more than RL132.45 (200mm above the top of the proposed screen).

ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - Zone C4 Environmental Living
Pittwater Local Environmental Plan 2014 - 7.2 Earthworks
Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection
Pittwater 21 Development Control Plan - B8.3 Construction and Demolition - Waste Minimisation
Pittwater 21 Development Control Plan - B8.6 Construction and Demolition - Traffic Management Plan
Pittwater 21 Development Control Plan - C1.1 Landscaping
Pittwater 21 Development Control Plan - C1.5 Visual Privacy
Pittwater 21 Development Control Plan - D3.7 Side and rear building line
Pittwater 21 Development Control Plan - D3.11 Landscaped Area - Environmentally Sensitive Land
Pittwater 21 Development Control Plan - D3.14 Construction, Retaining walls, terracing and undercroft areas

SITE DESCRIPTION

Property Description:	Lot 16 DP 236420 , 32 Loblay Crescent BILGOLA PLATEAU NSW 2107
Detailed Site Description:	The subject site consists of one (1) allotment located on the south-western side of Loblay Crescent. The site is generally rectangular in shape with a frontage of 12.19m along Loblay Crescent and a depth of 39.20m. The site has a surveyed area of 716.5m². The site is located within the C4 Environmental Living zone and accommodates a detached dwelling house.

The site is constrained by steep topography and the locating of the existing dwelling. The site rises by approximately 10.11m diagonally upward from the street towards the south-eastern rear boundary corner. Notably, the following site levels are evident:

- Front setback: Rises 1.6m from the front boundary to the front façade of the dwelling).
- Northern side setback: Rises 2.66m from the north-western edge of the existing terrace deck to the north-eastern edge of the swimming pool.
- Rear setback: Rises 4.17m from the northern side boundary to the southern side boundary.
- Southern side setback: Rises 5.82m from the front façade of the dwelling to the south-eastern rear boundary corner.

As a result of the above topography, the site contains levelling via numerous retaining walls.

The site is largely underlaid with rock outcrop and is devoid of vegetation with exception to surface grass and a stand of trees along the rear boundary.

The north-western side boundary is currently physically truncated from its surveyed location.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by detached dwellings of varying age and architectural design with associated outbuildings/structures and landscaped gardens.

Map:



SITE HISTORY

DA2023/1023 - Alterations and additions to a dwelling house including retaining walls approved 9 February 2024

DA2022/1768 - Construction of a swimming pool including the use of an existing deck approved 4 January 2023

BC2023/0008 - Building Information Certificate - Small deck off living room approved 24 August 2023

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 DA2023/1023, 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 DA2023/1023 for the following reasons: • The proposed position and height of the retaining walls remain consistent with those originally approved development. • The change in materials from sandstone to concrete blocks is considered to be substantially the same development as originally approved development. • The proposed reduction in the height of the privacy screen is also considered to be substantially the same as the approved development.
(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 DA2023/1023 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	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.

Section 4.55 (2) - Other Modifications	Comments
under section 72 that requires the notification or advertising of applications for modification of a development consent, and	
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	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 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 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)(iiia) – Provisions of any planning agreement	Non applicable.
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 via DA2023/1023. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. No additional information was formally requested, however the applicant submitted additional information to address comments raised by Council's Landscape Officer within the initial referral response. A review of this information was completed by Council's Landscape Officer and

Section 4.15 'Matters for Consideration'	Comments
	supported (subject to condition). <u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 2001: The Demolition of Structures. This matter has been addressed via a condition of consent via DA2023/1023. <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 matter has been addressed via a condition of consent via DA2023/1023. <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 via DA2023/1023.
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 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 15/01/2025 to 29/01/2025 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 process council is in receipt of 1 submission/s from:

Name:	Address:
Mr John Bruce Lawson	34 Loblay Crescent BILGOLA PLATEAU NSW 2107

- ***Change of Materials from Sandstone to Concrete – Impact on Viburnum Trees***

The Owners of 34 Loblay Crescent object to the proposed change of retaining wall materials from sandstone to concrete due to the increased excavation likely required for concrete footings, and the potential impact on the root system of viburnum trees along the shared boundary.

Comment: Council's Landscape Officer initially noted that retention of Tree 1 and Tree Group 2 under DA2023/1023 relied on minimal excavation associated with sandstone construction. Concrete walls typically require deeper footings, which could affect these trees. In response, the applicant submitted updated engineering documentation from NITMA Consulting and an addendum to the Arboricultural Impact Assessment (Treeism, dated 24 January 2025), which demonstrated that the excavation necessary won't have a significant impact on those trees. Council's Landscape Officer reviewed the additional information and advised that the concrete wall may have less impact if designed in consultation with the arborist, with appropriate tree-sensitive construction techniques. A new condition titled **"Concrete Wall Design Near Trees to be Retained"** is recommended as part of the modification approval which introduces these sensitive construction techniques. All other conditions under DA2023/1023 remain unchanged.

- ***Increase in Retaining Wall Height and Privacy Concerns***

Objections were raised to the increase in retaining wall height by 0.2m (northeastern portion), citing concerns about privacy, particularly potential views into skylights of upper-level rooms at No. 34.

Comment: While a 0.2m increase is proposed in one section, a 0.3m decrease occurs elsewhere (northwestern portion). The applicant's proposal to reduce the privacy screen from 1.5m to 1.2m and remove landscaping is not supported.

Existing consent conditions requiring a 1.5m privacy screen and landscaping are to be maintained to preserve residential amenity and privacy between 32 and 34 Loblay Crescent. These measures are considered necessary and proportionate.

- ***Reduction of the proposed privacy screen from 1.5m to 1.2m (privacy impacts)***

Comment: The 1.5m privacy screen and accompanying landscape screening were imposed

under DA2023/1023 to prevent overlooking and maintain amenity for No. 34. These measures remain appropriate and will not be reduced, nor are is their deletion supported. They provide a substantial privacy buffer to adjacent open space and dwelling areas, including skylights.

- ***Poisoning of viburnum trees***

Comment: Allegations of tree poisoning have been received. A tree investigation (TR2025/02632) has been lodged and is currently under review by Council's Tree Services Team. This matter will be addressed separately from the assessment of this modification application.

- ***Drainage Design and Surface Water Management***

Comment: Drainage concerns relating to dish drains and ag-drains are acknowledged. Engineering and drainage details will be required at Construction Certificate stage as per existing Condition 10 – Retaining Walls, which includes certification of drainage compliance with relevant Australian Standards.

- ***Location of Footings Relative to Property Boundary***

Comment: **Condition 12 - Construction of footings** will be amended to reflect the change in material from sandstone to concrete and explicitly state that all footings are to be located a minimum of 0.05m from the northern side boundary, ensuring no encroachment into No. 34 Loblay Crescent.

- ***Construction Monitoring and Inspections***

Comment: Conditions will continue to require critical stage inspections by the project arborist, certifier, and structural engineer to ensure compliance with drainage, structural stability, and tree protection standards during excavation and wall construction.

- ***Request to Relocate Retaining Wall Further from Tree 1 (Blackwood Gum Tree)***

Comment: The requested 500mm setback is noted. However, the proposed and previously approved wall alignments provide a 0.45m setback from the northern side boundary. Council's Landscape Officer has confirmed support for the concrete block wall, subject to tree protection conditions, and no further realignment is considered necessary.

- ***Arborist Supervision During Excavation***

Comment: Council's Landscape Officer requires, via condition, that a Level 5 Project Arborist be engaged to supervise all relevant works. This is considered adequate to ensure appropriate management of tree root zones and aligns with best-practice standards for developments near retained vegetation.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	The application is for modification to development consent DA2023/1023. <u>Additional Information Comment 29/01/25:</u> The arboricultural letter and engineering information is noted. The Arborist states that the concrete wall will reduce impact to the adjacent trees due to a reduction in bearing capacity and the ability to adopt tree sensitive construction techniques. The concrete wall shall be designed in collaboration with the Arborist to ensure the viable retention of the surrounding trees, and as such the condition 'Concrete Wall Design Near Trees to be Retained' will be added as part of this modification application. All other conditions imposed under DA2023/1023 remain. <u>Original Comment:</u> <i>The application proposes to change the retaining wall in the rear building setback from sandstone blocks to concrete. It is noted the sandstone block wall was assessed by the Arborist under DA2023/1023 and the retention of tree 1 and tree group 2 were reliant on the minimal impact and minimal excavation required for this construction methodology. While in theory no objection is made to a concrete wall, this construction methodology would usually required considerable footings. Please provide further information from the engineer regarding the requirements of any footings and updated comments from the Arborist supporting the concrete wall construction in regards to the retention of tree 1 and tree group 2.</i>
NECC (Bushland and Biodiversity)	The proposed modifications of Development Consent DA2023/1023 do not result in any additional biodiversity impacts and as such there are no objections with the proposal in relation to biodiversity. It is noted that a new screen hedge of Lilly Pilly are proposed to be planted. Species are to be selected from Council's Native Planting Guide - Pittwater Ward which is available on Council's Website. https://www.northernbeaches.nsw.gov.au/environment/native-plants/native-planting-guide/pittwater-ward Existing conditions to remain.

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	Reference is made to the proposed development at the above area and Aboriginal heritage. No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of

External Referral Body	Comments
	surviving unrecorded Aboriginal sites. Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development. Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

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 (Transport and Infrastructure) 2021

Ausgrid

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

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 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	3m - 3.3m* (rear wall with privacy screen) 0.5m - 2.5m** (front wall with metal safety fence)	2.5m - 2.9m***	-	Yes

* Wall at the rear section has height ranging from 1.5m - 1.8m with a 1.5m high privacy screen

** Wall at the front section has height ranging from 0.5m - 1.5m with a 1m high metal safety fence at the rear portion of the front retaining wall

*** Proposed Concrete Retaining Wall with 1.2m privacy screen

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
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.10 Essential services	Yes

Detailed Assessment

Zone C4 Environmental Living

The subject site is located in Zone C4 Environmental Living of Pittwater Local Environmental Plan 2014.

The proposal has been assessed against the objectives of zone as detailed below:

- ***To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.***

Comment:

The proposal will continue to provide for a low-impact residential development in areas with special ecological, scientific, or aesthetic values.

- ***To ensure that residential development does not have an adverse effect on those values.***

Comment:

The residential development will not have any adverse effects on the special ecological, scientific or aesthetic values.

- ***To provide for residential development of a low density and scale integrated with the landform and landscape.***

Comment:

The proposal will provide a low density and scale that will integrate with the landform, and landscape.

- ***To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.***

Comment:

The development will not impact upon any riparian, foreshore vegetation, or wildlife corridors.

7.2 Earthworks

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

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

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

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

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

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

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

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

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

Comment: The proposed earthworks will not result in unreasonable amenity impacts on adjoining properties.

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

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

(f) the likelihood of disturbing relics

Comment: The site is not mapped as being a potential location of Aboriginal or other relics.

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

Comment: The site is not located in the vicinity of any watercourse, drinking water catchment or environmentally sensitive areas. Retention of mature trees has been considered in the design of the building.

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

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

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

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

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of PLEP 2014, Pittwater 21 DCP and the objectives specified in s.1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

7.6 Biodiversity protection

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

(a) whether the development is likely to have:

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

Comment:

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

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

Comment:

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

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

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

Comment:

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

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
Front building line	6.5m	Nil*	28.7m	Yes
Rear building line	6.5m	Nil*	Unaltered	Yes

Side building line	2.5m (south)	14.3m	14m	Yes
	1m (north)	Nil (front retaining wall) 0.05m - 0.45m (rear retaining wall)*	0.05m - 0.45m (rear retaining wall)*	Yes
Building envelope	3.5m (south)	Within envelope	Unaltered	Yes
	3.5m (north)	Within envelope	Unaltered	Yes
Landscaped area	60% (429.9m ²)	43.75% (313.4m ² deep soil landscape) 49.75% (356.4m ² with permitted variations)	43.2% (309m ² deep soil landscape) 49.2% (352m ² with permitted variations)	No

* Allowable structures under the applicable controls

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.3 Bilgola Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.6 Wildlife Corridors	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.13 Pollution Control	Yes	Yes
D3.1 Character as viewed from a public place	Yes	Yes
D3.3 Building colours and materials	Yes	Yes
D3.6 Front building line	Yes	Yes
D3.7 Side and rear building line	Yes	Yes
D3.11 Landscaped Area - Environmentally Sensitive Land	No	Yes
D3.12 Fences - General	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D3.14 Construction, Retaining walls, terracing and undercroft areas	No	Yes
D3.15 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

B8.3 Construction and Demolition - Waste Minimisation

Previous conditions applied via original consent (DA2023/1023).

B8.6 Construction and Demolition - Traffic Management Plan

Previous condition(s) applied via original consent (DA2023/1023).

C1.1 Landscaping

The applicant has requested that a condition be included in the Notice of Determination requiring the existing shared Viburnum hedge along the rear north-west boundary to be maintained at a height no greater than RL132.45 (i.e., 200mm above the top of the proposed screen).

However, the majority of this hedge is located on the adjoining property at No. 34 Loblay Crescent. Without the consent of the owners of No. 34 Loblay Crescent, Council does not have the authority to impose such a condition, as it would not be enforceable or legally valid.

C1.5 Visual Privacy

The previous condition requiring a 1.5m high privacy screen is to remain as part of the conditions of consent, as the proposed reduction to 1.2m does not adequately address the concerns raised by the adjoining property owners at No. 34 Loblay Crescent, nor does it appropriately satisfy the relevant clause.

D3.7 Side and rear building line

"The minimum side and rear building line for built structures including pools and parking structures other than driveways, fences and retaining walls"

The proposal is for the construction of new sandstone retaining wall, fence and sandstone stairs.

D3.11 Landscaped Area - Environmentally Sensitive Land

Clause D3.11 Landscaped Area requires land zoned C4 Environmental Living a minimum of 60% landscaped area, which equates to 429.9m².

The proposal provides a landscaped area of 352m² (49.2%) this includes 6% variation for impervious areas less than 1m in width and areas used for outdoor recreational purposes of the subject site. This presents a variation of 18.1% or 77.9m² to the requirements of the clause. It is important to recognise that the works do not readily impinge on the existing area of landscaping on site and in effect replicate the existing site situation in terms of useable and functional landscape area, as well as the ability to

support canopy trees and areas of significant vegetation.

The proposal has been assessed against the outcomes of the control. In this instance, the proposal meets the outcomes of the control, and therefore the variation is supportable.

- ***Achieve the desired future character of the Locality.***

Comment:

The proposed development is consistent with the desired future character of the Bilgola Locality.

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

Comment:

The proposed retaining walls, railing and fence has effectively mitigated any unreasonable bulk and scale given they open nature and generally consistency with similar structures within the vicinity.

- ***A reasonable level of amenity and solar access is provided and maintained.***

Comment:

A reasonable and compliant level of amenity and solar access is provided and maintained for the subject site, and adjoining site.

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

Comment:

The proposal includes retained vegetation that will assist to visually reduce the built form.

- ***Conservation of natural vegetation and biodiversity.***

Comment:

Council's Bushland and Biodiversity Officer has reviewed the proposal in relation to biodiversity and conservation, finding the development to be acceptable, subject to recommended conditions.

- ***Stormwater runoff is reduced, preventing soil erosion and siltation of natural drainage channels.***

Comment:

Stormwater runoff is not expected result in any unreasonable impacts to soil erosion and siltation of natural drainage channels. Additionally, suitable conditions have been included.

- ***To preserve and enhance the rural and bushland character of the area.***

Comment:

The subject site is located within, and is surrounded by, environmental living and residential zones, the proposal will preserve the bushland character present in the Bilgola Locality and therefore will not detract from the rural and bushland character of the area.

- ***Soft surface is maximised to provide for infiltration of water to the water table, minimise run-off and assist with stormwater management.***

Comment:

Adequate soft landscaping is present on the site, which will provide appropriate infiltration of water that will minimise run-off and assist with stormwater management.

Having regard to the above assessment, it is concluded that the outcomes of the clause have been achieved. Therefore, the application is supported on merit in this particular circumstance.

D3.14 Construction, Retaining walls, terracing and undercroft areas

Excavation and retaining walls are proposed in order to provide terracing within the rear northwestern garden. The subject site has already been heavily modified, with significant retaining walls and pre-existing excavation currently existing on site. It is therefore considered that the resultant development does not unreasonably impact on natural landforms (subject to conditions). Landscaping has been proposed in order to minimise the visual impact of the development.

The proposed development, while including earthworks, steps down with the topography of the land, thereby minimising the impacts the proposal has in relation to bulk and scale. The level of excavation included in this proposal is consistent with developments in the Bilgola area, due to the land's steep topography and valuable views.

As discussed previously in this report, the level of excavation is considered acceptable subject to recommended conditions. The proposal has also been assessed by Council's Bushland and Biodiversity and Landscape Officer who have raised no objection to the proposal in relation to the natural environment subject to recommended conditions.

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. Mod2024/0694 for Modification of Development Consent DA2023/1023 granted for Alterations and additions to a dwelling house including retaining walls on land at Lot 16 DP 236420,32 Loblay Crescent, BILGOLA PLATEAU, 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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PAN494951 - MOD2024/0694	The date of this notice of determination	Section 4.55 (2) Environmental Impact - Modification of Development Consent DA2023/1023 granted for Alterations and additions to a dwelling house including retaining walls Add Condition No. 1A - Modification of Consent - Approved Plans and supporting documentation Modify Condition No. 2 - Compliance with Other Department, Authority or Service Requirements Modify Condition No. 12 - Construction of footings Add Condition No. 14A - Concrete Wall Design Near Trees to be Retained Modify Condition No. 16 - Survey of concrete wall location Modify Condition No. 27 - Native Landscaping Modify Condition No. 32 - Certification of retaining walls
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Modified conditions

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

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

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
RW DA-01D	D	Site Plan	Jo Willmore Designs	November 2024
RW DA-02D	D	Floor Plan	Jo Willmore Designs	November 2024
RW DA-03D	D	Elevation & Section	Jo Willmore Designs	November 2024

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Addendum to Arboricultural Impact Assessment (AIA)	-	TREEISM	24/1/25

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 No. 2 - Compliance with Other Department, Authority or Service

Requirements to read as follows:

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	13 January 2025
Aboriginal Heritage Office	Aboriginal Heritage Office Response	13 January 2025

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website www.northernbeaches.nsw.gov.au)

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

C. Modify Condition No. 12 - Construction of footings to read as follows:

Prior to the issue of any Construction Certificate, detailed engineering drawings / cross sections at 1 metre intervals or chainages is to be provided to the Certifier which details how the sandstone and concrete blocks to be used for the construction of the wall are to be integrated into existing ground conditions of the site. These plans shall detail necessary excavation and fill that is required, as well as significant features such as rock and existing improvements. These plans are to clearly detail how the wall will tie in ground levels and conditions on the opposite side of the boundary, clearly demonstrating how existing conditions on the other side of the respective boundary will be maintained and unaffected.

No Construction Certificate shall be issued until the Certifier is satisfied that the installation of the sandstone and concrete blocks will not have an effect on the adjoining properties.

Reason: To ensure that the development does not impact any adjoining property.

D. Add Condition No. 14A - Concrete Wall Design Near Trees to be Retained

a) the concrete wall design including any lining or footing requirements near existing tree 1 and tree group 2 shall be developed in co-ordination with an Arborist with AQF minimum Level 5 qualifications in arboriculture, and a qualified Structural Engineer.

b) the Arborist shall review, comment, recommend design revision as required and approve the design, to ensure the concrete wall will be manageable in terms of tree protection measures.

c) the Arborist shall submit certification to the Certifier that the design is accepted.

d) the agreed design plans and footing layout shall be submitted to the Certifier for approval prior to commencement of works.

Reason: Tree protection.

E. Modify Condition No. 16 - Survey of concrete wall location to read as follows:

Prior to the recommencement of works, a registered surveyor is to accurately peg out the location of the wall relative to the approved plans and the boundary with No. 34 Loblay Crescent. The Surveyor shall then provide certification to the Principal Certifier and Council that the peg out location of the sandstone and concrete walls is to be wholly within the boundaries of No. 32 Loblay Crescent and is consistent with the detail shown on the approved plans. No works are to commence until the Principal Certifier is satisfied that the works will be undertaken wholly within No. 32 Loblay Crescent and will not encroach over the boundary.

All vegetation and existing structures to be demolished and or removed are to be tagged and certified by the Surveyor to be within No. 32 Loblay Crescent. This certification is to be given to the Certifier. No vegetation from No. 34 Loblay Crescent is to be removed or impacted by the proposed works.

Reason: To ensure the proposed works are within the subject site.

F. Modify Condition No. 27. Native Landscaping

Any new landscaping is to incorporate a minimum 60% locally native vegetation species as a proportion of the total number of plants. Locally native species are to be consistent with the relevant section of the Native Planting Guide available on Council's website.

Details demonstrating compliance are to be provided to the Principal Certifier prior to issue of any Occupation Certificate.

Reason: To ensure compliance with the requirement to retain and protect native planting on the site.

G. Modify Condition No. 32 - Certification of retaining walls

Prior to the issue of an Occupation Certificate or within 3 months of practical completion of the sandstone and concrete wall(s) (whichever comes first), the registered surveyor who marked out the location of the walls is to certify that the walls, footings and all associated parts of the walls and landscape plantings is wholly within the boundaries of No. 32 Loblay Crescent. Any structure, part of the wall or landscaping encroachment over the boundary is to be immediately removed. Council and the Principal Certifier are to be notified of such an encroachment and its rectification.

Reason: To ensure that the approval is in accordance with the approved plans.

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

Signed



Phil Lane, Principal Planner

The application is determined on 01/05/2025, under the delegated authority of:



Adam Richardson, Manager Development Assessments