

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2024/0697
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Responsible Officer:	Olivia Ramage
Land to be developed (Address):	Lot 27 DP 28669, 950 Barrenjoey Road PALM BEACH NSW 2108
Proposed Development:	Modification of Development Consent DA2018/0563 granted for Construction of a new dwelling house with internal lift and garage
Zoning:	C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Applicant:	Kim Marie Williams

Application Lodged:	09/01/2025
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	19/02/2025 to 05/03/2025
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

The proposed modification works to DA2018/0563 comprise of the following:

- New Lower Ground Floor level created in the void between the approved Ground Floor level and Basement level (garage);
- Minor reconfiguration to internal stair; and
- New windows W18 and W19.

A site visit was conducted on Wednesday, 22 January 2025. It was noted that a portion of the proposed modification works comprising of the slab, internal walls, side and rear walls and planter had already been conducted. Case law indicates that Council can no longer approve retrospective modifications to a consent when the works have already been constructed (please refer to *Ku-ring-gai*

Council v Buyozo Pty Ltd [2021] NSWCA 177). As such, the works undertaken are not able to be included in this Modification Application. During the assessment the Applicant submitted amended plans to highlight in green the works already undertaken, and annotations that these works are subject to a Building Information Certificate. A suitable condition is recommended to ensure the proposal is for prospective works only.

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

SITE DESCRIPTION

Property Description:	Lot 27 DP 28669 , 950 Barrenjoey Road PALM BEACH NSW 2108
Detailed Site Description:	The subject site consists of one (1) allotment located on the north-eastern side of Barrenjoey Road. The site is irregular in shape with a frontage of 22.86m along Barrenjoey Road and a depth of 65.690m. The site has a surveyed area of 1322m². The site is located within the C4 Environmental Living zone from PLEP 2014 and accommodates a dwelling house currently under construction. The site slopes from the front south-western boundary upwards to the rear north-eastern boundary over approximately 22 metres.

The site contains several significant canopy trees, bushland vegetation and natural rock outcrops.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by detached dwellings in a low density residential setting. The site adjoins McKay Reserve to the north-east.

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:

N0446/17

Development Application for Construction of a new dwelling and associated excavation for garage. Withdrawn on 10 November 2017.

DA2018/0563

Development Application for Construction of a new dwelling house with internal lift and garage. Approved on 14 December 2018.

Mod2020/0447

Modification Application for Modification of Development Consent DA2018/0563 granted for Construction of a new dwelling house with internal lift and garage. Approved on 21 December 2020.

Mod2021/0190

Modification Application for Modification of Development Consent DA2018/0563 granted for the construction of a new dwelling house with internal lift and garage.

Approved on 25 August 2021.

Mod2022/0112

Modification Application for Modification of Development Consent DA2018/0563 granted for the construction of a new dwelling house with internal lift and garage.

Approved on 25 May 2022.

Mod2023/0016

Modification Application for Modification of Development Consent DA2018/0563 granted for the construction of a new dwelling house with internal lift and garage.

Approved on 7 February 2023.

CC2023/0204

Construction Certificate for Construction of a new dwelling house with internal lift and garage.

Approved on 1 March 2023.

APPLICATION HISTORY

Following the preliminary assessment of the application, additional information was requested in relation to amended plans to detail proposed works and retrospective works. Additionally, a Flood Report was requested from Council's Flood Engineering Officer, and a Bushfire Cover Letter to reflect the proposal. Subsequently, the applicant submitted amended Master Plans, a Flood Report, and a Bushfire Cover Letter. The amended plans constituted an altered environmental impact and therefore, the application was required to be formally re-notified from 19 February 2025 to 5 March 2025, in accordance with the Northern Beaches Community Participation Plan (CPP).

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 DA2018/0563, Mod2020/0447, Mod2021/0190, Mod2022/0112 and Mod2023/0016 in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55(1A) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	Yes The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons: • It is considered that the infill of the lower ground floor will be of a minimal environmental impact. • The proposal as modified is located within the approved building footprint and as such will not give rise to any unacceptable environmental impacts.
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	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 DA2018/0563 for the following reasons: • 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 DA2018/0563.
(c) it has notified the application in accordance with:	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.
(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	
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on “Notification & Submissions Received” in this report.

Section 4.15 Assessment

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

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent. <u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application. <u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to amended plans to detail proposed works and retrospective works. Additionally, a Flood Report was requested from Council's Flood Engineering Officer, and a Bushfire Cover Letter to reflect the proposal. Subsequently, the applicant submitted amended Master Plans, a Flood Report, and a Bushfire Cover Letter. <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. <u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home

Section 4.15 'Matters for Consideration'	Comments
	Building Act 1989. This matter has been addressed via a condition of consent. <u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (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 classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

A Bush Fire Report was submitted with the Development Application that included a certificate (prepared by Bushfire Planning Services, dated 18 July 2017) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection.

A Bush Fire Cover Letter was submitted with this application that details the following:

This letter is to provide an update on the bushfire risk assessment for the proposed alterations and additions to an existing building to the existing dwelling at the address mentioned above. Revised plans have been submitted, prompting a review of the original Bushfire Risk Assessment completed

on 18/07/2017.

The revised plans have been assessed against the recommendations and findings of the original report. No new variables introduced by the proposed changes are found to alter the compliance outcomes or recommendations of the previous assessment.

Based on this review, the revised proposal remains consistent with the previous bushfire protection requirements and does not compromise the outcomes of the original assessment.

The Bush Fire Cover Letter is recommended to be included as a condition of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 19/02/2025 to 05/03/2025 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:
Ms Karen Dawne Hackett Mr Grant Richards	948 Barrenjoey Road PALM BEACH NSW 2108

The following issues were raised in the submissions:

- **Storeroom**

The submissions raised concerns that the proposed storeroom on the southern side that is located under window W6 is contained within the existing walls and no further excavation is required. Concern is raised in relation to flooding and the location of the storeroom in proximity to the creek.

Comment:

As detailed on the amended Plans - Master Set, the proposed storeroom on the southern side is within the building footprint and has been constructed. As detailed on the the plans, the store is highlighted in green and is subject will be subject to a Building Information Certificate. Notwithstanding, Council's Flood Engineer and Council's Riparian Lands and Creek Officers have reviewed the proposal, and are supportable subject to the recommended conditions.

- **Rainwater Tanks**

The submissions raised concerns that there is an existing rainwater tank that was installed at the time of initial excavation. Concern is raised how another rainwater tank can be located here without using the creek as access.

Comment:

Council's Riparian Lands and Creek Officer has reviewed the proposal, and is in support of the proposed modifications. It is noted existing conditions of consent (Condition 16 and Condition 31 of DA2018/0563) apply for the preparation of a Construction Environmental Management

Plan (CEMP) that ensure the construction works protect the native fauna and vegetation during the construction phase. These conditions still apply, and it is a matter for the Certifier/Principal Certifier to ensure these conditions are met and satisfied.

- **Windows W6, W11 and W12**

The submissions raised concerns surrounding Windows W6, W11 and W12, and that the plans under this application do not reflect the requirements of Condition 2 - Amendments to the approved plans. Further concern is raised that the amendment of Condition 2 under Mod2022/0112 included a typographical error that omitted part of the condition.

Comment:

There are no changes to the Windows W6, W11 and W12 under this application, and the existing Condition 2 - Amendment to the approved plans applies. As previously advised, in the event of any inconsistency with the approved plans and a condition of consent, the condition prevails. Under this application the modification of Condition 2 - Amendments to the approved plans, is recommended to include the words that were omitted from Mod2022/0122.

In summary, Condition 2 is applicable and still required to be complied with. If the applicant has not complied with this condition of consent, the Certifier should be contacted in the first instance, followed by Council's Building Compliance team to ensure the requirements of Condition 2 have been satisfied.

- **Inconsistency between Lower Ground Floor Plan and Construction**

The submissions raised concerns that there are inconsistencies between the lower ground floor plan and construction, namely the construction of a planter that was not detailed on the Plans - Master Set.

Comment:

During the assessment of the application, amended plans were requested from the Applicant to detail the current site conditions. It was noted that works had been undertaken without prior approval. Amended plans were subsequently submitted by the Applicant that details the works highlighted in green have been constructed. The amended plans were formally re-notified in accordance with Council's Community Participation Plan. These works highlighted in green will not form part of this application, and these works are subject to obtaining a Building Information Certificate. A suitable condition is recommended to clearly define the works that are recommended to be approved under this application, noting that approval for retrospective works is not recommended under this application.

- **Condition 18 of Mod2023/0016**

The submissions raised concerns that they are unable to find the landscaping working drawings and specifications required by Condition 18 of Mod2023/0016.

Comment:

The detailed landscape working drawings and specifications as required by Condition 18 of Mod2023/0016 can be obtained via a request to the Certifier or through Council by lodging a *Government Information (Public Access) Act 2009 (GIPA)* Application on Council's website.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	The application is for modification to development consent DA2018/0563 as described in reports and as illustrated on plans. The proposed modifications do not impact upon the landscape outcomes.
NECC (Bushland and Biodiversity)	The application is for modifications to Development Consent DA2018/0563. As the proposed modifications are located within the approved building envelope, there are no additional impacts to biodiversity.
NECC (Flooding)	This proposal is for the modification of Development Consent DA2018/0563, as modified under MOD2024/0697. The proposal includes the construction of a new lower ground floor level and a reconfiguration of the internal stairway. The proposal is assessed against Section B3.11 of the Pittwater DCP and Clause 5.21 of the Pittwater LEP. The proposal is located within the Medium and Low Flood risk precincts. The flood characteristics vary across the site due to the topography. The FFL of the proposed storeroom under the stairs is below the 1% AEP level of that location. An additional flood assessment provided justification for the the floor level at that location. As such, subject to conditions, the proposal generally complies with Section B3.11 of the Pittwater DCP and Clause 5.21 of the Pittwater LEP.
NECC (Riparian Lands and Creeks)	This application was assessed in consideration of: - Supplied plans and reports; - Coastal Management Act 2016; - State Environmental Planning Policy (Resilience and Hazards) 2021; - Relevant LEP and DCP clauses; and - Northern Beaches Council Water management for development policy. No objection. Modifications are minor and are not expected to impact the riparian environment.

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.

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 (Sustainable Buildings) 2022

A BASIX certificate has been submitted with the application (see Certificate No.959247S_05 dated 28 November 2024).

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

The site is subject to Chapter 2 of the SEPP. Accordingly, an assessment under Chapter 2 has been

carried out as follows:

Division 1 Coastal Wetlands and littoral rainforest area

2.7 Development on certain land within coastal wetlands and littoral rainforests area

- 1) The following may be carried out on land identified as “coastal wetlands” or “littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map only with development consent:
 - a) the clearing of native vegetation within the meaning of Part 5A of the Local Land Services Act 2013,
 - b) the harm of marine vegetation within the meaning of Division 4 of Part 7 of the Fisheries Management Act 1994,
 - c) the carrying out of any of the following:
 - i) earthworks (including the depositing of material on land),
 - ii) constructing a levee,
 - iii) draining the land,
 - iv) environmental protection works,
 - d) any other development

Comment:

The subject site has portions at the north-eastern read of the land identified as "littoral rainforest", however these portions of land are not located in the area for the proposed development. Therefore, the proposed works will not impact upon the land identified as "littoral rainforest".

2.8 Development on land in proximity to coastal wetlands or littoral rainforest

- 1) Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:
 - a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or
 - b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.

Comment:

The proposed development is located on land identified as "proximity area for littoral rainforest". The proposed development will not significantly impact on the biophysical, hydrological or ecological integrity of the adjacent littoral rainforest, and the quantity and quality of surface and ground water flows to and from the adjacent littoral rainforest.

Division 3 Coastal environment area

2.10 Development on land within the coastal environment area

- 1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:
 - a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,
 - b) coastal environmental values and natural coastal processes,

- c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,
- d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,
- e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
- f) Aboriginal cultural heritage, practices and places,
- g) the use of the surf zone.

Comment:

The subject site is located within land identified as "coastal environment area". The proposed development as modified is not likely to cause adverse impact to items listed under Clause 2.10(1)(a-g) inclusive.

- 2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:
 - a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or
 - b) if that impact cannot be reasonably avoided—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 proposed development has been designed, sited, and managed to avoid an adverse impact to items listed under Clause 2.10(1)(a-g) inclusive.

Division 4 Coastal use area

2.11 Development on land within the coastal use area

- 1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:
 - a) has considered whether the proposed development is likely to cause an adverse impact on the following:
 - i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
 - ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
 - iv) the visual amenity and scenic qualities of the coast, including coastal headlands, Aboriginal cultural heritage, practices and places, cultural and built environment heritage, and
 - b) is satisfied that:
 - i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or
 - ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or

if that impact cannot be minimised—the development will be managed to mitigate that impact, and

- c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

The subject site is located within land identified as "coastal use area". The proposed development is not likely to cause an adverse impact to items listed under Clause 2.11(1)(a)(i-v) inclusive. The proposal has been designed, sited, and managed to avoid any adverse impacts as detailed under Clause 2.11(1)(a)(i-v) inclusive.

Division 5 General

2.12 Development in coastal zone generally—development not to increase risk of coastal hazards

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

Comment:

The proposed development is not likely to cause an increased risk of coastal hazards on the land or other land.

2.13 Development in coastal zone generally—coastal management programs to be considered

Development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land.

Comment:

There is no certified coastal management program applicable to the land.

As such, it is considered that the application complies with the requirements of Chapter 2 of the State Environmental Planning Policy (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	11.07m	unaltered	-	N/A

Compliance Assessment

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

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 as modified will continue to provide for 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 as modified 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 as modified will provide a development of 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.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
Front building line	10m	Nil	unaltered	N/A
Rear building line	6.5m	35m	unaltered	Yes
Side building line	2.5m	SE: 7.18m	unaltered	Yes
	1m	NW: 1m	unaltered	Yes
Building envelope	3.5m	SE: Within envelope	unaltered	Yes
	3.5m	NW: Outside envelope	unaltered	N/A
Landscaped area	60%	78.9%	unaltered	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.2 Bushfire Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B4.17 Littoral Rainforest - Endangered Ecological Community	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.23 Eaves	Yes	Yes
D12.1 Character as viewed from a public place	Yes	Yes
D12.3 Building colours and materials	Yes	Yes
D12.5 Front building line	N/A	N/A
D12.6 Side and rear building line	Yes	Yes
D12.8 Building envelope	Yes	Yes
D12.10 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D12.12 Fences - Flora and Fauna Conservation Areas	Yes	Yes
D12.13 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D12.14 Scenic Protection Category One Areas	Yes	Yes

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2024

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

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

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

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

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

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

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2024/0697 for Modification of Development Consent DA2018/0563 granted for Construction of a new dwelling house with internal lift and garage on land at Lot 27 DP 28669,950 Barrenjoey Road, PALM BEACH, subject to the conditions printed below:

Modification Summary

The development consent is modified as follows:

MODIFICATION SUMMARY TABLE

Application Number	Determination Date	Modification description
PAN-494082 Mod2024/0697	The date of this notice of determination	Modification of Development Consent DA2018/0563 granted for Construction of a new dwelling house with internal lift and garage

		Add Condition 1C - Modification of Consent - Approved Plans and supporting documentation Modify Condition 2 - Amendments to the approved plans Modify Condition 5B - Compliance with Other Department, Authority or Service Requirements Add Condition 5C - Approval for Prospective Works Only Add Condition 13A - Flood effects caused by development Add Condition 13B - Building components and structural soundness Add Condition 13C - Floor levels Add Condition 13D - Storage of Goods Add Condition 36A - Certification of Works as Executed Add Condition 36B - Building Components and Structural Soundness
PAN-297835 Mod2023/0016	7 February 2023	Modification of Development Consent DA2018/0563 granted for the construction of a new dwelling house with internal lift and garage Modify Condition 18 - Provision of Landscape Working Drawings
PAN-201503 Mod2022/0112	25 May 2022	Modification of Development Consent DA2018/0563 granted for the construction of a new dwelling house with internal lift and garage Add Condition No.1A - Modification of Consent - Approved Plans and supporting Documentation Modify Condition 2 - Amendments to the approved plans Modify Condition 18 - Provision of Landscape Working Drawings
PAN-89320 Mod2021/0190	25 August 2021	Modification of Development Consent DA2018/0563 granted for the construction of a new dwelling house with internal lift and garage Add Condition No.1B - Modification of Consent - Approved Plans and supporting Documentation Modify Condition 14 - Delineation Asset Protection Zone Modify Condition 18 - Provision of Landscape Working Drawings Delete Condition 22a - Garage Roof Add Condition 52 - Landscape Maintenance
PAN-33506 Mod2020/0447	21 December 2020	Modification of Development Consent DA2018/0563 granted for Construction of a new dwelling house with internal lift and garage Add Condition No.1A - Modification of Consent - Approved Plans and supporting Documentation Add Condition 5a - Ausgrid Modify Condition 2 - Amendments to the approved plans Add Condition 22a - Garage Roof

Modified conditions

A. Add Condition 1C - 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
DA.01	B	Site & Roof Plan	Sarah Blacker Architect + Interior Designer	3 February 2025
DA.02B	B	Lower Ground Floor Plan	Sarah Blacker Architect + Interior Designer	7 February 2025
DA.03	B	Ground Floor Plan	Sarah Blacker Architect + Interior Designer	3 February 2025
DA.04	B	Level One Plan	Sarah Blacker Architect + Interior Designer	3 February 2025
DA.05	B	Front Elevation	Sarah Blacker Architect + Interior Designer	3 February 2025
DA.06	B	Rear Elevation (North East)	Sarah Blacker Architect + Interior Designer	28 November 2024
DA.07	B	South East Side Elevation	Sarah Blacker Architect + Interior Designer	7 February 2025
DA.08	B	North West Side Elevation	Sarah Blacker Architect + Interior Designer	7 February 2025
DA.09	B	Section AA	Sarah Blacker Architect + Interior Designer	7 February 2025
DA.09a	A	Section BB	Sarah Blacker Architect + Interior Designer	26 November 2024

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate	959247S_05	Bonnefin Consulting Pty Ltd	28 November 2024
Bushfire Cover Letter	-	Bushfire Planning Services	5 February 2025
Finishes Schedule - DA.10	A	Sarah Blacker Architect + Interior Designer	26 November 2024
Flood Report	20180219-L07	S&G Consultants Pty Ltd	14 February 2025

NatHERS Certificate	0009779976-02	Certified Energy	16 October 2024
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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 2 - Amendments to the approved plans, to read as follows:

The following amendments are to be made to the approved plans:

(a) Windows W6, W11 and W12 on the south-east side elevation are to:

(i) comprise frosted glass, or

(ii) have a minimum sill height of 1.7m above the FFL of the associated room, or

(iii) comprise fixed external privacy screens, with a minimum height of 1.7m above the FFL of the associated room, comprised of fixed vertical members that restrict overlooking of the adjoining dwelling at 948 Barrenjoey Road.

(b) Fixed privacy screening is to be incorporated on the south-eastern side elevation of the level one rear deck/pergola. The privacy screen is to be opaque and 1.7m in height above the FFL of the associated deck and is to be designed to blend with the treatment of the proposed balustrade and restrict overlooking of the adjoining dwelling at 948 Barrenjoey Road.

Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the construction certificate.

Reason: To ensure development minimises unreasonable impacts upon surrounding land.

C. Add Condition 5B - 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	16 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.

D. Add Condition 5C - Approval for Prospective Works Only, to read as follows:

No approval is granted or implied under this Modification of Development Consent for any works that are coloured green on the Approved Plans as detailed in Condition 1C. Additionally, no approval is

granted or implied under this Modification of Development Consent for works that are annotated with reference to a BIC Application on the Approved Plans as detailed in Condition 1C.

Reason: To ensure compliance with the relevant Local Environmental Plan.

E. Add Condition 13A - Flood effects caused by development, to read as follows:

There is to be no filling of the land or any other reduction of the available flood storage which results in a net loss of storage below the 1% AEP flood level of 30.04m AHD.

Details demonstrating compliance are to be submitted to the Certifier for approval.

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

F. Add Condition 13B - Building components and structural soundness, to read as follows:

B1 - All new development below the Flood Planning Level of each site shall be designed and constructed from flood compatible materials.

B2 - All new development must be designed to ensure structural integrity up to the Flood Planning Level of each location, taking into account the forces of floodwater, debris load, wave action, buoyancy and immersion.

B3 - All new and existing electrical equipment, power points, wiring and connections must be located above the Flood Planning Level of each site, protected from flood water or have residual current devices installed to cut electricity supply during flood events.

Details demonstrating compliance are to be submitted to the Certifier for approval.

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

G. Add Condition 13C - Floor levels, to read as follows:

C1 - New floor levels within the development shall be set at or above the Flood Planning Level for each site.

C2 - New floor levels within the development shall be set at or above the Probable Maximum Flood Level.

C3 - The underfloor area of the dwelling below the 1% AEP flood level is to be designed to allow clear passage of floodwaters. At least 50% of the perimeter of the underfloor area must be of an open design from the natural ground level up to the 1% AEP flood level.

Details demonstrating compliance are to be submitted to the Certifier for approval.

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

H. Add Condition 13D - Storage of Goods, to read as follows:

Storage areas for hazardous or potentially polluting materials shall not be located below the Flood Planning Level of 30.54m AHD unless adequately protected from floodwaters in accordance with industry standards.

Details demonstrating compliance are to be submitted to the Certifier for approval.

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

I. Add Condition 36A - Certification of Works as Executed, to read as follows:

A suitably qualified engineer and/or registered surveyor is to certify that the completed works have been constructed in accordance with this consent and the approved plans with respect to the following:

1. Floor levels for ground floor, shelter in place refuge and garage are set at or above the required level
2. There has been no filling on the land other than what has been approved
3. Openings are provided under floor areas where required for the free passage of flood waters

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

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

J. Add Condition 36B - Building Components and Structural Soundness, to read as follows:

B2 - A suitably qualified structural engineer is to certify the structural integrity of the new development up to the Flood Planning Level. The depth, velocity, debris load, wave action, buoyancy and immersion must all be considered.

B3 - A suitably qualified electrician or contractor is to certify that all new and existing electrical equipment, power points, wiring and connections are located above the Flood Planning Level, are protected from flood water or have residual current devices installed to cut electricity supply during flood events.

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

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

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

Signed



Olivia Ramage, Planner

The application is determined on 17/03/2025, under the delegated authority of:



Adam Richardson, Manager Development Assessments