

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

|                            |              |
|----------------------------|--------------|
| <b>Application Number:</b> | Mod2024/0659 |
|----------------------------|--------------|

|                                           |                                                                                                       |
|-------------------------------------------|-------------------------------------------------------------------------------------------------------|
| <b>Responsible Officer:</b>               | Anaiis Sarkissian                                                                                     |
| <b>Land to be developed (Address):</b>    | Lot 18 DP 21687, 49 Elaine Avenue AVALON BEACH NSW 2107                                               |
| <b>Proposed Development:</b>              | Modification of consent to DA2024/0994 granted for new boundary fencing being 49 and 51 Elaine Avenue |
| <b>Zoning:</b>                            | R2 Low Density Residential                                                                            |
| <b>Development Permissible:</b>           | Yes                                                                                                   |
| <b>Existing Use Rights:</b>               | No                                                                                                    |
| <b>Consent Authority:</b>                 | Northern Beaches Council                                                                              |
| <b>Land and Environment Court Action:</b> | No                                                                                                    |
| <b>Applicant:</b>                         | Richard Temple Menhinick                                                                              |

|                                  |                                  |
|----------------------------------|----------------------------------|
| <b>Application Lodged:</b>       | 04/12/2024                       |
| <b>Integrated Development:</b>   | No                               |
| <b>Designated Development:</b>   | No                               |
| <b>State Reporting Category:</b> | Refer to Development Application |
| <b>Notified:</b>                 | Not Notified                     |
| <b>Advertised:</b>               | Not Advertised                   |
| <b>Submissions Received:</b>     | 0                                |
| <b>Clause 4.6 Variation:</b>     | Nil                              |
| <b>Recommendation:</b>           | Approval                         |

### PROPOSED DEVELOPMENT IN DETAIL

This modification application is for the amendment of Condition 5 - Fencing to alter the prescribed size of the boundary fence openings from a minimum of 75mm x 75mm to 60mm x 60mm.

The fencing type proposed as part of the original development application was black chainwire with timber frame to match the existing chainwire fence from the garage to the front boundary. The openings in the chainwire fence are a 60mm x 60mm diamond pattern, and therefore Condition 5 of DA2024/0994 requires amending to accommodate this specific type of fencing.

No physical changes are proposed to the approved fencing structure.

### 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 - 5.21 Flood planning  
Pittwater 21 Development Control Plan - B3.11 Flood Prone Land

## SITE DESCRIPTION

|                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|-----------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Property Description:</b>      | Lot 18 DP 21687 , 49 Elaine Avenue AVALON BEACH NSW 2107                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>Detailed Site Description:</b> | <p>The subject site consists of one (1) allotment located on the eastern side of Elaine Avenue.</p> <p>The site is irregular in shape with a frontage of 17.36m along Elaine Avenue and a depth of up to 47.89m. The site has a surveyed area of 672.5m<sup>2</sup> and has an easement for drainage channel to the rear.</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a two storey dwelling house with attached garage and carport.</p> <p>The site has a relatively flat topography and is gently sloping to the rear, with a crossfall of approximately 0.5m from the west down to the east until the drainage channel.</p> <p>The site contains several trees and lawn areas. The Careel Creek watercourse runs along the eastern boundary of the site.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> |

Adjoining and surrounding development is characterised by predominantly 1-2 storey detached dwelling houses. To the east of the site is Barrenjoey High School.

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:

### **N0905/00**

Development Application for construction of a deck with roof over.  
Approved 24 October 2000

### **CC0729/00**

Construction Certificate issued for construction of a deck with roof over.  
Approved 1 December 2000

### **N0412/10**

Development Application for alterations and additions to the existing dwelling.  
Approved 23 June 2011

### **CC0206/12**

Construction Certificate (2012/4814) issued for alterations and additions to the existing dwelling.  
Approved 1 August 2012

### **DA2020/0779**

Development Application for alterations and additions to a dwelling house.  
Approved 22 September 2020

### **MOD2021/0127**

Modification of Development Consent DA2020/0779 granted for alterations and additions to a dwelling house.

Approved 1 April 2021

**CC2021/0388**

Construction Certificate (2021/6220) issued for alterations and additions to a dwelling house.  
Approved 7 April 2021

**CC2022/1225**

Modification of Construction Certificate (2021/6220A) issued for alterations and additions to a dwelling house.  
Approved 14 November 2022

**DA2024/0994**

Development Application for new boundary fencing being 49 and 51 Elaine Avenue.  
Approved 6 September 2024

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)**

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

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

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

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2024/0994, 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: |

| Section 4.55(1A) - Other Modifications                                                                                                                                                                                                                                                                                                                                            | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (a) it is satisfied that the proposed modification is of minimal environmental impact, and                                                                                                                                                                                                                                                                                        | <p><b>Yes</b></p> <p>The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons:</p> <ul style="list-style-type: none"> <li>• No changes are proposed to the approved fencing structure.</li> <li>• The modification relates only to a numerical change to the prescribed size of the boundary fence openings within one of the conditions of consent.</li> </ul>                                                                                                                                                                             |
| (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and                                                                                                                   | <p>The consent authority can be satisfied that the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted under DA2024/0994 for the following reasons:</p> <ul style="list-style-type: none"> <li>• No changes are proposed to the approved fencing structure. The proposal therefore maintains the form and function of the approved development.</li> <li>• The modification relates only to a numerical change to the prescribed size of the boundary fence openings within one of the conditions of consent.</li> </ul> |
| (c) it has notified the application in accordance with:<br><br>(i) the regulations, if the regulations so require,<br><br>or<br><br>(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 | <p>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.</p>                                                                                                                                                                                                                                                                                                                                                                             |
| (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.                                                                                                                                                                                  | <p>This application did not require notification.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |

#### 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)                                                          | <p><u>Part 4, Division 2</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 61</u> of the EP&amp;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.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> |
| Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality | <p>(i) <b>Environmental Impact</b><br/>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.</p> <p>(ii) <b>Social Impact</b><br/>The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b><br/>The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>                                                                                                                                                                                                                                          |

| Section 4.15 'Matters for Consideration'                                               | Comments                                                                                                            |
|----------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------|
| 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 was not notified.

## REFERRALS

| Internal Referral Body | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| NECC (Flooding)        | <p>The proposal is for a modification to the existing Development Consent DA2024/0830, altering condition 5 concerning the fencing of the development consent.</p> <p>The proposal to alter the openings of the fencing from 75mm x 75mm openings to 60mm x 60mm openings is generally compliant with the DCP due to the type of fencing being proposed.</p> <p>Subject to the following condition, the proposal is generally compliant with Section B3.11 of the Pittwater DCP and Clause 5.21 of the Pittwater LEP.</p> |

## 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)

Nil

### 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 |

### Compliance Assessment

| Clause                      | Compliance with Requirements |
|-----------------------------|------------------------------|
| 5.21 Flood planning         | Yes                          |
| 7.1 Acid sulfate soils      | Yes                          |
| 7.2 Earthworks              | Yes                          |
| 7.6 Biodiversity protection | Yes                          |

### Detailed Assessment

#### 5.21 Flood planning

Under this clause, development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development:

- (a) *is compatible with the flood function and behaviour on the land, and*
- (b) *will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and*
- (c) *will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and*
- (d) *incorporates appropriate measures to manage risk to life in the event of a flood, and*
- (e) *will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.*

#### Comment:

The approved fence line is partially located within the mapped Floodway extent and the High Risk Flood Precinct. This modification does not seek any physical changes to the approved fencing, but rather a change to the size of the openings specified within the consent. Council's Flood Engineer has reviewed the proposed modification and concluded that the fencing is compliant due to the type of chainwire fencing proposed. It can therefore be satisfied that the proposal complies with the above requirements.

In deciding whether to grant development consent on land to which this clause applies, the consent authority must consider the following matters:



- (a) the impact of the development on projected changes to flood behaviour as a result of climate change,
- (b) the intended design and scale of buildings resulting from the development,
- (c) whether the development incorporates measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood,
- (d) the potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion.

Comment:

The proposed fencing material is chainwire metal to comply with flooding requirements and not impede flood flows. Council's Flood Engineer is supportive of the proposal. It can therefore be satisfied that the above matters have been adequately considered.

## **Pittwater 21 Development Control Plan**

### Compliance Assessment

| Clause                                                      | Compliance with Requirements | Consistency Aims/Objectives |
|-------------------------------------------------------------|------------------------------|-----------------------------|
| A1.7 Considerations before consent is granted               | Yes                          | Yes                         |
| A4.1 Avalon Beach Locality                                  | Yes                          | Yes                         |
| B3.11 Flood Prone Land                                      | Yes                          | Yes                         |
| B4.17 Littoral Rainforest - Endangered Ecological Community | Yes                          | Yes                         |
| B5.15 Stormwater                                            | Yes                          | Yes                         |

### Detailed Assessment

#### **B3.11 Flood Prone Land**

Council's Flood Engineer is supportive of the proposed change to the size of the prescribed openings in the fencing.

#### **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. Mod2024/0659 for Modification of consent to DA2024/0994 granted for new boundary fencing being 49 and 51 Elaine Avenue on land at Lot 18 DP 21687,49 Elaine Avenue, AVALON 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-490913<br>MOD2024/0659 | The date of this notice of determination | Modification of consent to DA2024/0994 granted for new boundary fencing being 49 and 51 Elaine Avenue<br><br>Modify Condition 5 - Fencing |

## **Modified conditions**

### **A. Modify Condition 5 - Fencing, to read as follows:**

New fencing (including pool fencing, boundary fencing, balcony balustrades and accessway balustrades) shall be open to allow for the unimpeded movement of flood waters. It must be designed with a minimum of 50% open area along any straight length, from the natural ground level up to the 1% AEP flood level. Openings shall be a minimum of 60mm x 60mm.

Details demonstrating compliance are to be submitted to the Principal 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.

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

### **Signed**



**Anais Sarkissian, Planner**

The application is determined on 05/12/2024, under the delegated authority of:



**Adam Richardson, Manager Development Assessments**