

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2024/0593
Responsible Officer:	Phil Lane
Land to be developed (Address):	Lot A DP 347026, 132 McCarrs Creek Road CHURCH POINT NSW 2105 Lot LIC 570209, 132 McCarrs Creek Road CHURCH POINT NSW 2105
Proposed Development:	Modification of Development Consent N0363/16 granted for demolition of existing dwelling and construction of a new dwelling house, secondary dwelling and inclinorator
Zoning:	C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Applicant:	Josko Simundza

Application Lodged:	07/11/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	15/11/2024 to 29/11/2024
Advertised:	Not Advertised
Submissions Received:	3
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

The modification application proposes the addition of a second bedroom and ensuite to the approved secondary dwelling at the rear of the site.

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 - 5.4 Controls relating to miscellaneous permissible uses

Pittwater 21 Development Control Plan - B6.3 Off-Street Vehicle Parking Requirements

Pittwater 21 Development Control Plan - C1.4 Solar Access

Pittwater 21 Development Control Plan - C1.5 Visual Privacy

Pittwater 21 Development Control Plan - C1.11 Secondary Dwellings and Rural Worker's Dwellings

Pittwater 21 Development Control Plan - D4.8 Building envelope

SITE DESCRIPTION

Property Description:	Lot A DP 347026 , 132 McCarrs Creek Road CHURCH POINT NSW 2105 Lot LIC 570209 , 132 McCarrs Creek Road CHURCH POINT NSW 2105
Detailed Site Description:	The site is legally referred to as Lot A in Deposited Plan 347026 and is commonly known as 132 McCarrs Creek Road, Church Point. The site has a 15.09m wide frontage to McCarrs Creek Road to the east, a 81.07m long side boundary to the north, a 85.7m long side boundary to the south, an irregular boundary along the MHWL fronting Pittwater to the west, and a total site area of 1252m ² . The site currently contains a two storey dwelling that is located at the front and middle of the site, with a garage allowing vehicular access from McCarrs Creek Road. A secondary dwelling is located to the rear portion of the site. The site contains a detached boatshed that is located across the rear property boundary, primarily on Crown Land, and a concrete landing area, jetty and pontoon. The site is considerably steep with a fall of approximately 36m from the upper front boundary down towards the MHWL, with a slope of 44%.

Map:



SITE HISTORY

27 June 2013 - Development Application N0105/13 for a new single dwelling, new pool and inclinor at the subject site was withdrawn by the applicant in response to several issues raised with regards to non-compliances with Council's built form controls.

02 June 2014 - Development Application N0103/14 for construction of a new dwelling, double garage, elevated access driveway, swimming pool, associated landscaping, and the retention of the existing dwelling to be converted into a studio at the subject site was refused by Council. The application was refused with regards to bulk and scale, foreshore building line, geotechnical hazard, landscaping and tree impact, estuarine hazard and bushfire hazard.

09 March 2015 - Development Application N0084/15 for construction of a new dwelling house, driveway, swimming pool and landscaping, conversion of the existing dwelling to ancillary floor space at the subject site was lodged with Council. The application was refused with regards to building height, building envelope, bulk and scale, solar access, driveway design, tree removal and development on foreshore area.

19 January 2017 - Development Application N0363/16 for demolition of existing dwelling and construction of a new dwelling house, secondary dwelling and inclinor was approved subject to conditions.

15 February 2017 - Development Application N0518/16 for extension of jetty, addition of berth piles and berth area, ramp and pontoon was approved subject to conditions.

30 August 2024 - Modification Application Mod2024/0477 was returned due to owner(s) consent, stormwater plans and updated specialist reports:-

- Bushfire Report
- Geotechnical Report
- Arborist Report

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 N0363/16, 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	<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 N0363/16 for the following reasons:</p> <ul style="list-style-type: none"> • Approved land use remains unchanged; and • The extent of modification to the secondary dwelling relates the provision of an additional bedroom. This additional does to readily change the function, design or arrangement of the secondary dwelling, nor does it have a material impact on the treed setting of the site.
(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	Development Application N0363/16 did not require concurrence from the relevant Minister, public authority or approval body.

Section 4.55 (2) - Other Modifications	Comments
<p>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</p>	
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require,</p> <p>or</p> <p>(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>	<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>
<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>	<p>See discussion on “Notification & Submissions Received” in this report.</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 (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
<p>Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument</p>	<p>See discussion on “Environmental Planning Instruments” in this report.</p>

Section 4.15 'Matters for Consideration'	Comments
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&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&A Regulation 2021 allow Council to request additional information. Additional information was requested for a Statement of Modifications and the applicant has submitted that information.</p> <p><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.</p> <p><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.</p> <p><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.</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) 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.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(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.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

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 application (prepared by Bush Fire Planning Services, dated 17 September 2024). The report stated that the proposal does not comply with Planning for Bush Fire Protection.

The application was referred to the NSW Rural Fire Service for further assessment. The NSW RFS raised no objections to approval, subject to conditions. The recommendations of the Bush Fire Report , along with the conditions from the NSW RFS have been included as part of the recommended conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 15/11/2024 to 29/11/2024 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 3 submission/s from:

Name:	Address:
Mr Jeffrey Robert Niven	PO Box 129 CHURCH POINT NSW 2105
Withheld	CHURCH POINT NSW 2105
Withheld	TERREY HILLS NSW 2084

The following issues were raised in the submissions:

- ***Parking and illegal parking***

The submissions raised concerns over parking on the site and illegal parking.

Comment: The approved garage has provision for three (3) spaces with a car lift allow for a

vehicle to be parked on the southern side of the garage under the second position in the double garage. It is noted that parking is limited along this section of McCarrs Creek Road, however the site and the proposed development has the adequate provision for parking in accordance with Clause B6.3 Off-Street Vehicle Parking Requirements of Pittwater 21 Development Control Plan (P21DCP).

Illegal parking is enforced by Council's Rangers and the NSW Police Force. Any illegal parking should be reported to the appropriate authorities.

- ***Secondary dwelling used as a rental***

The submissions raised concerns that the secondary dwelling maybe used as a rental property.

Comment: The secondary dwelling can be used by family members, friends or rented out to other person(s). This type of development offers alterative type of accommodation for people.

- ***Signs removed***

The submissions raised concerns that parking/traffic signs had been removed from outside and near the vicinity of the subject site.

Comment: It is noted there were no parking/traffic signs visible outside the site during the site inspection of 11 December 2024. An email has been forward to Council's Manager, Transport Network to investigate this concern. This matter is however unrelated to the proposed modifications.

- ***Notification sign***

One (1) submission raised concern that the notification sign was not displayed during the notification period.

Comment: Council received photo confirmation via email from the applicant/owner on 14 November 2024 that the notification sign was displayed in accordance with Council's Community Participation Plan (CPP).

- ***Privacy***

The submissions raised concerns that over privacy to dwelling house at 134 McCarrs Creek Road.

Comment: A site inspection was undertaken 11 December 2024 and a detailed assessment has been completed under Clause 1.5 Visual Privacy of P21DCP with the concluding comments below:-

"Regarding the modified secondary dwelling, visual privacy is considered adequate. Although a window is provided for the second bedroom and the ensuite, the secondary dwelling is situated more than 9m away from neighbouring properties private open space, which prevents direct overlooking. Additionally, existing landscaping effectively screens the secondary dwelling, further enhancing privacy."



Photo 1: Taken from rear deck

- **Shadowing**

One (1) submission raised concerns over shadowing create by the additional second bedroom and ensuite to the southern side of the secondary dwelling.

Comment: A detailed assessment has been completed under Clause C1.4 Solar Access of P21DCP with the following concluding comments:-

"A submission was received with regard to potential overshadowing of the proposed additional bedroom and ensuite to the approved secondary dwelling on the adjoining residence at 134 McCarrs Creek Road. Based on the submitted shadow diagrams, whilst the proposed secondary dwelling will cast a shadow over the northern and eastern facades of the dwelling during morning hours, adequate solar access will be maintained from 12 noon onward. The proposed development is therefore considered to satisfy the technical requirements of this clause."

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The application is for modification to development consent N0363/16.</p> <p>The Arboricultural Impact Assessment states that there will be no impact to existing trees and as such the proposed amendments will</p>

Internal Referral Body	Comments
	not change the landscape outcome approved in N0363/16. The original conditions remain.
NECC (Bushland and Biodiversity)	The application seeks to modify Development Consent N0363/16. The proposed modifications do not increase impacts to biodiversity within the site. This is supported by the Arborist Report which identifies that the additional bedroom and staircase will not affect retained trees onsite. As such, there are no objections in relation to biodiversity.
NECC (Coast and Catchments)	The proposed modifications are minor in nature and do impact the assessment of coastal matters considered for N0363/16
NECC (Development Engineering)	The Statement of Modification and associated documents have been reviewed. Development engineering raises no objections to the proposed development, subject to the retention of the existing engineering conditions of consent.

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 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 (Sustainable Buildings) 2022

A BASIX certificate has been submitted with the application (see Certificate No. 1748464_03 dated 7 February 2025).

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

SEPP (Housing) 2021

Part 1 – Secondary Dwellings

Clause 52 – Development may be carried out with consent	
Standard	Compliance/Comment
<p>(2) Development consent must not be granted for development to which this Part applies unless—</p> <p>(a) No dwellings, other than the principal dwelling and the secondary dwelling, will be located on the land, and</p> <p>(b) The total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area permitted for a dwelling house on the land under another environmental planning instrument, and</p> <p>(c) The total floor area of the secondary dwelling is:</p> <ul style="list-style-type: none"> (i) no more than 60m², or (ii) if a greater floor area is permitted for a secondary dwelling on the land under another environmental planning instrument - the greater floor area. 	<p>Yes. No dwellings other than the principal dwelling and secondary dwelling will be located on the land.</p> <p>N/A. No floor space ratio control applies to the site.</p> <p>Yes. The total floor area of the secondary dwelling is 57.5m².</p>

Clause 53 – Non-discretionary development standards—the Act, s 4.15	
Standard	Compliance/Comment
<p>(a) For a detached secondary dwelling - a minimum site area of 450m².</p>	<p>Yes. The site has an area of 1252m².</p>
<p>(b) The number of parking spaces provided on the site is the same as the number of parking</p>	<p>Yes. The number of parking spaces (three (3) spaces) provided on the site is the same as the number of parking spaces provided on the site</p>

spaces provided on the site immediately before the development is carried out.

immediately before the development is carried out.

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 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 proposed development consists of alterations and additions to the existing secondary dwelling. The works are not considered likely to cause an adverse impact on the above matters.

- 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 and sited to avoid adverse impacts on the above matters.

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
 - ii) platform for members of the public, including persons with a disability,
 - iii) overshadowing, wind funnelling and the loss of views from public places to
 - iv) foreshores,
 - v) 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
 - ii) adverse impact referred to in paragraph (a), or
 - iii) 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 proposed development has been designed and sited to avoid adverse impacts on the coastal use area.

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 increased risk of coastal hazards.

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:

The proposal has been reviewed with regards to all relevant legislation and policies.

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:	10m	9m*	5.4m	-	Yes

* Principal dwelling approved pursuant Clause 4.3 (2D) as the building footprint was situated on a slope of 38.3%.

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
5.4 Controls relating to miscellaneous permissible uses	Yes
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.7 Geotechnical hazards	Yes
7.8 Limited development on foreshore area	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 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 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 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.

5.4 Controls relating to miscellaneous permissible uses

In accordance with Clause 5.4(9), the proposed secondary dwelling has a internal floor space of 57.5m² and is compliant with Part (9) Secondary dwellings (a) total floor area of the secondary dwelling must not exceed 60m².

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
Front building line	6.5m	53.9m	56.3m	Yes
Rear building line	FBL	Outside Foreshore Area	Outside Foreshore Area	Yes
Side building line	2.5m (North)	3m	10m	Yes
	1m (South)	4.3m	1.5m	Yes
Building envelope	3.5m (South)	Outside envelope	Outside envelope*	No
	3.5m (North)	Outside envelope	Within envelope	Yes
Landscaped area	60% (751.2m ²)	69% (864m ²)	66.1% (827.5m ²)	Yes

* Minor breach of the southern elevation (breach between nil and 0.4m for a length of 0.6m).

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
Section A Shaping Development in Pittwater	Yes	Yes
A1 Introduction	Yes	Yes
A1.7 Considerations before consent is granted	Yes	Yes
A4 Localities	Yes	Yes
A4.4 Church Point and Bayview Locality	Yes	Yes
B1 Heritage Controls	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3 Hazard Controls	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.2 Bushfire Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.7 Estuarine Hazard - Low density residential	Yes	Yes
B3.8 Estuarine Hazard - Medium Density Residential	Yes	Yes
B4 Controls Relating to the Natural Environment	Yes	Yes
B4.16 Seagrass Conservation	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B4.19 Estuarine Habitat	Yes	Yes
B5 Water Management	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy		
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.11 Secondary Dwellings and Rural Worker's Dwellings	No	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.14 Separately Accessible Structures	Yes	Yes
C1.23 Eaves	Yes	Yes
D4.1 Character as viewed from a public place	Yes	Yes
D4.3 Building colours and materials	Yes	Yes
D4.5 Front building line	Yes	Yes
D4.6 Side and rear building line	Yes	Yes
D4.8 Building envelope	No	Yes
D4.10 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D4.13 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D4.14 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

B6.3 Off-Street Vehicle Parking Requirements

Three (3) parking spaces provided within the principle dwelling garage, consistent with the technical requirement of the control. A sharing arrangement of the garage is considered appropriate in this instance noting the opportunity to provide a separate space for the secondary dwelling is restricted by the slope of the site and availability of parking along McCarrs Creek Road.

C1.4 Solar Access

A minimum of 3 hours of direct sunlight is provided to private open space areas and windows associated with living areas between 9am and 3pm in mid-winter to the proposed development and adjoining neighbours.

A submission was received with regard to potential overshadowing of the proposed additional bedroom and ensuite to the approved secondary dwelling on the adjoining residence at 134 McCarrs Creek Road. Based on the submitted shadow diagrams, whilst the proposed secondary dwelling will cast a shadow over the northern and eastern facades of the dwelling during morning hours, adequate solar access will be maintained from 12 noon onward. The proposed development is therefore considered to satisfy the technical requirements of this clause.

C1.5 Visual Privacy

Visual privacy for the adjoining residences at 134 and 136 McCarrs Creek Road is maintained through a combination of strategic building layout, thoughtful window design and placement, ample horizontal and vertical spatial separation, and the retention of landscaping along the boundaries. This approach ensures that private open spaces, decks, and living areas remain protected from direct overlooking.

Regarding the modified secondary dwelling, visual privacy is considered adequate. Although a window is provided for the second bedroom and the ensuite, the secondary dwelling is situated more than 9m away from neighboring properties private open space, which prevents direct overlooking. Additionally, existing landscaping effectively screens the secondary dwelling, further enhancing privacy.

C1.11 Secondary Dwellings and Rural Worker's Dwellings

Description of non-compliance

Under Clause C1.11 Secondary Dwellings and Rural Worker's Dwelling of Pittwater 21 Development Control the following is stipulated:

A secondary dwelling or rural worker's dwelling contains not more than two (2) bedrooms and not more than one (1) bathroom.

The proposed modified secondary dwelling will contain two (2) bedrooms, and one (1) bathroom, and one (1) ensuite.

As the proposal is supportable in this instance as the secondary dwelling is otherwise consistent with the maximum floor space that maybe apportioned to a secondary dwelling under the LEP as well as providing for the minimum landscaped area specified by the DCP, it is considered that the variation is supportable in this instance. Notwithstanding, a detailed assessment has been conducted against the outcomes of the control, and it is considered that outcomes have been satisfied in this instance.

Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying Outcomes of the Control as follows:

- ***Limitation of the visual bulk and scale of development. (En, S)***

Comment:

The secondary dwelling is of single storey scale (split levels), and as such will present limited visual bulk and scale. Furthermore, the secondary dwelling is compliant with the required setback controls, and landscaped area.

- ***Provision of design flexibility for second storey development.***

Comment:

The secondary dwelling is a single storey (split levels) development, and therefore the design is acceptable.

- ***Restriction of the footprint of development site. (En)***

Comment:

The footprint of the development is restricted by Clause 5.4 Controls relating to miscellaneous permissible uses that prescribes a secondary dwelling must not exceed 60m² or 25% of the total floor area of the principal dwelling. In this instance the total floor area of the principal dwelling is less than 60m², and the proposal is compliant with this control.

- ***Retention of natural vegetation and facilitation planting of additional landscaping. (En)***

Comment:

The proposal includes retention of existing vegetation, and enhanced vegetation.

- ***Provision of rental accommodation. (S)***

Comment:

The proposed secondary dwelling has the provisions to be used as rental accommodation, that may provide housing opportunities for residents.

D4.8 Building envelope

Detailed description of non-compliance

This control requires development to be sited within a building envelope determined by projecting planes at 45 degrees from a height of 3.5m above ground level at the side boundaries. Where the building footprint is situated on a slope over 16.7 degrees (30%), variation to this control will be considered on a merits basis. The development is situated on a slope over 16.7 degrees and therefore qualifies for consideration for a variation.

The proposal encroaches the southern side building envelope between nil and 0.4m for a length of 0.6m (see Figure 1 below).

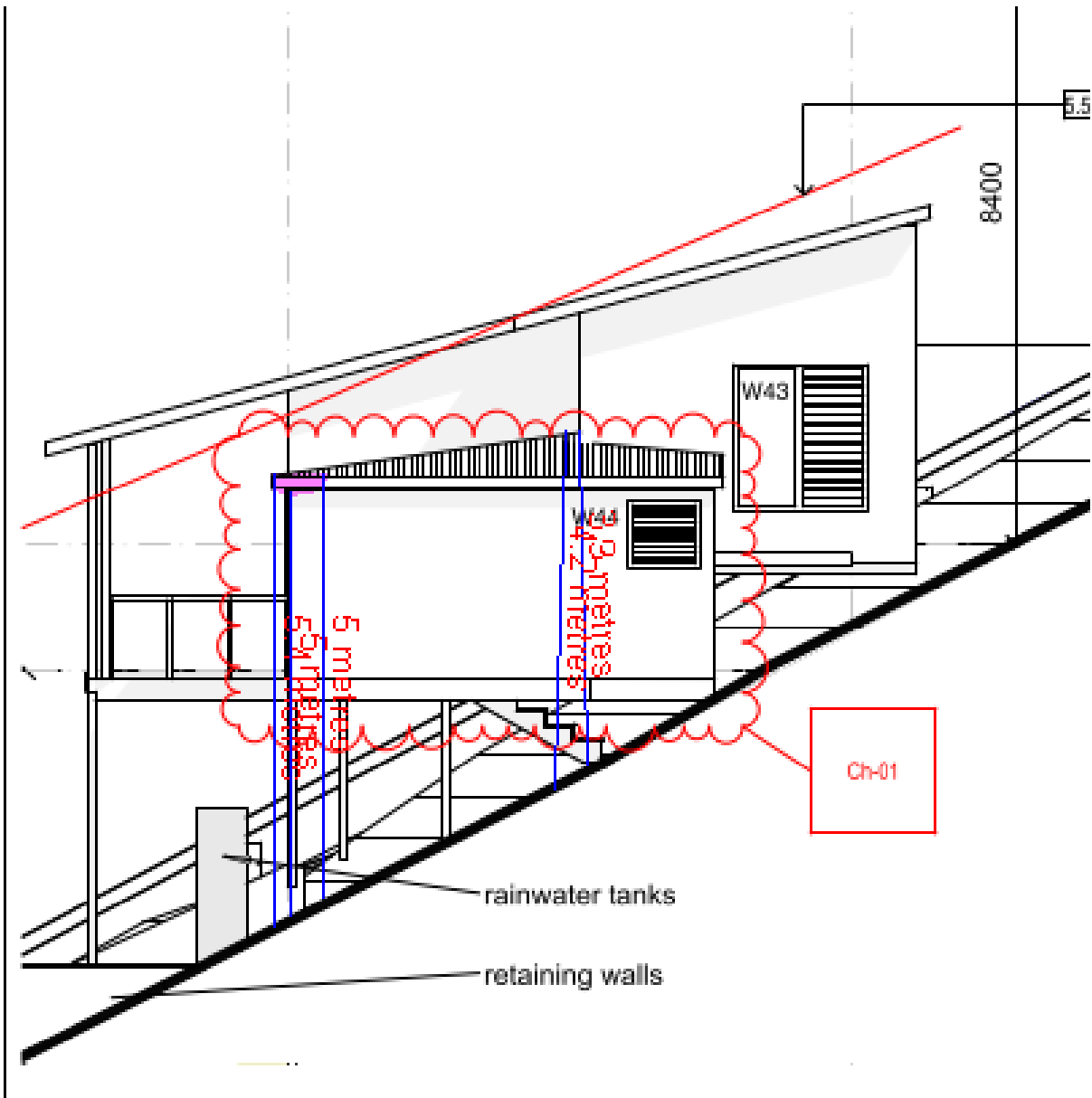


Figure 1: Boundary envelope encroachment shaded in purple (roof façade, guttering and small portion of the upper wall - southwest)

Merit consideration

With regard to the consideration of a variation, the proposed development is considered against the underlying outcomes of the control as follows:

- *To achieve the desired future character of the Locality. (S)*

Comment:

The proposal maintains the low density residential form of the area and therefore achieves the desired future character of the Locality.

- *To enhance the existing streetscapes and promote a building scale and density that is below the height of the trees of the natural environment.*

Comment:

The site is located on the low side of McCarrs Creek Road whereby the proposed additions to the secondary dwelling at the rear (behind the principal dwelling) will not be immediately visible from the street. The proposed works comply with the height standard and sit below the height of the trees of the natural environment.

- *To ensure new development responds to, reinforces and sensitively relates to spatial characteristics of the existing natural environment.*

Comment:

The modification includes the addition of a second bedroom and a small ensuite to the secondary dwelling, integrating well with the spatial characteristics of the existing natural environment.

- *The bulk and scale of the built form is minimised. (En, S)*

Comment:

The development will feature a terraced design that follows the natural slope of the land, ensuring a consistent appearance from the public domain and neighboring properties. While the building's mass respects side setback rules, some small breaches occur due to the land's steep topography. The additional breach pertains to the new roof and part of the upper wall of the second bedroom in the secondary dwelling, but the overall bulk and scale remain minimised.

- *Equitable preservation of views and vistas to and/or from public/private places. (S)*

Comment:

The proposal maintains existing views and vistas to and/or from public/private places.

- *To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties. (En, S)*

Comment:

The modification proposes amendments to the secondary dwelling will maintain a reasonable level of privacy, amenity and solar access.

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

Comment:

The proposal retains a significant quantum of vegetation across the site to assist with visually reducing the built form.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PLEP 2014 / P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

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. Mod2024/0593 for Modification of Development Consent N0363/16 granted for demolition of existing dwelling and construction of a new dwelling house, secondary dwelling and inclinators on land at Lot A DP 347026, 132 McCarrs Creek Road, CHURCH POINT, Lot LIC 570209, 132 McCarrs Creek Road, CHURCH POINT, 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 - 466446 MOD2024/0593	The date of this notice of determination	<p>Section 4.55 (2) Environmental Impact - Modification of Development Consent N0363/16 granted for demolition of existing dwelling and construction of a new dwelling house,- secondary dwelling and inclinorator</p> <p>A. Prescribed Conditions</p> <p>Add Condition No.1A - Modification of Consent - Approved Plans and supporting documentation</p> <p>Add Condition 2A - Compliance with Other Department, Authority or Service Requirements</p> <p>D. Matters to be satisfied prior to commencement of works and maintained during the works</p> <p>Add 3A - Installation and Maintenance of Sediment and Erosion Control</p> <p>Add 4A - Stockpiling materials</p>

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
DD001	-	Site Analysis	Acacia Building Designs	13/9/2024
DD101	-	Garage, Level 1, 2 Floor Plan	Acacia Building Designs	13/9/2024
DD200	-	Level 3, Secondary Dwelling	Acacia Building Designs	13/9/2024
DD201	-	North Elevation	Acacia Building Designs	13/9/2024

DD202	-	East/West Elevation	Acacia Building Designs	13/9/2024
DD250	-	Section 1	Acacia Building Designs	13/9/2024
D1	D	Legend, Notes, Details, Calculations	Storm Civil	5/9/2024
D2	D	Stormwater Management Plan	Storm Civil	5/9/2024

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Arboricultural Impact Assessment	-	Arbor Express	12/9/2024
Bushfire Risk Assessment	-	Bushfire Planning Services	17/9/2024
BASIX Certificate (17484645_03)	3	Mr Tim Broome	7/2/2025
Section 4.55 Modification Letter	-	ASCENTGEO	3/9/2024

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. Add Condition 2A - Compliance with Other Department, Authority or Service Requirements to read as follows:

Added Condition No. 2A - 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	Referral Ausgrid	6 December 2024
Aboriginal Heritage Office	Referral Aboriginal Heritage Office	8 November 2024

(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. Add 3A - Installation and Maintenance of Sediment and Erosion Control

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban

Stormwater: Soils and Construction' (2004). Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

Reason: To protect the surrounding environment from the effects of sedimentation and erosion from the site.

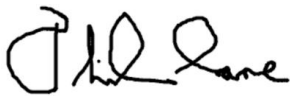
D. Add 4A - Stockpiling materials

During construction, all material associated with works is to be contained at source, covered and must be within the construction area. All material is to be removed off site and disposed of according to local regulations. The property is to be kept clean and any building debris removed as frequently as required to ensure no debris enters receiving waters.

Reason: To ensure pollution control measures are effective to protect the aquatic habitats within receiving waters throughout the construction period.

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 10/02/2025, under the delegated authority of:



Adam Richardson, Manager Development Assessments