

28 August 2025

The General Manager
Northern Beaches Council
PO Box 82
MANLY NSW 1655

Dear Sir,

**APPLICATION TO MODIFY DEVELOPMENT CONSENT
SECTION 4.55 (2) ENVIRONMENTAL PLANNING & ASSESSMENT ACT**

Development Application No:	DA2023/1780
Date of Determination:	2 July 2024 (subsequently modified Mod2024/0436 determined 18 August 2024 and Mod2025/0063 determined 28 April 2025)
Premises:	Lot 122 within DP 8394 No. 89 Marine Parade, Avalon Beach
Proposed Development:	Demolition works and construction of a dwelling house including swimming pool

On behalf of Ms Jennifer Hempton & Annabelle Chapman Architect, this submission has been prepared to assist Council in the consideration of an application pursuant to Section 4.55(2) of the Environmental Planning & Assessment Act 1979 to alter the development as approved by Development Consent DA2023/1780, which was determined on 2 July 2024 (subsequently modified under Mod2024/0436 determined 18 August 2024 and Mod2025/0063 determined 28 April 2025).

The application involves modifications to the form of the approved development, with the amendments detailed in the revised architectural plans prepared by Annabelle Chapman Architect, Project No 2506, comprising Drawings No. 101 – 105, 201 – 204, 301 - 307, 401 - 403 , 910 dated 13 August 2025.

The proposed modifications involves minor architectural changes to the plans which will be discussed in further detail in this submission.

BACKGROUND

An application for consent for *“Demolition works and construction of a dwelling house including swimming pool”* was approved by Council by Notice of Determination of DA2023/1780 dated 2 July 2024.

Two subsequent Modification Applications have been approved to modify the development. Mod2024/0436 was lodged to correct an error in the conditions detailed within the Notice of

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Determination and the modified consent was determined 18 August 2024) and Mod 2025/0063 was

lodged to undertake minor internal and external amendments to the building design, which was determined on the 28 April 2025.

The construction of the proposed new dwelling has commenced in accordance with Construction Certificate CC2024/1011 issued on 11 September 2024 however the works which of the subject of this application have not been commenced.

PROPOSED MODIFICATIONS

The application involves changes to the form of the approved development, which are detailed in the modified architectural plans prepared by Annabelle Chapman Architect, Project No 2506, comprising Drawings No. 101 – 105, 201 – 204, 301 - 307, 401 - 403 , 910 dated 13 August 2025.

The proposed modifications are as follows:

- Increase of 0.36m to the main roof ridge from RL 43.11 to RL 43.47
- Increase of 0.374m the rear roof ridge from RL 43.26 to RL 43.63
- Increase in the width of the Upper Ground Floor northern courtyard by 1m
- Removal of the vergola over the ocean deck
- Increase in the roof area, including skylights, over the ocean deck
- Addition of decking servicing Bedroom 1

To assist Council in its assessment, the following documentation is provided to support the proposal:

- Revised BASIX Certificate No A1782378_02 dated 27 August 2025
- Addendum to the Coastal Engineering Advice has been prepared by Horton Coastal Engineering, dated 28 July 2025 confirming the drawing changes do no alter the findings in the Horton DA Report 28 September 2023.

The amendments do not change fundamentally affect any previously approved setbacks, or bulk and scale of the previously approved development as the works are generally within the footprint of the approved dwelling.

COMPLIANCE TABLE				
Site Area: 1034m ²				
PLEP 2014				
Control	Required	Approved	Proposed	Comment
Zone	C4 Environmental Living	The proposed retains the approved land use for a new dwelling house which remains consistent with the objectives of the zone.	No change	Complies
Building height	8.5m	8.5m	Increase of 0.36m to the main roof ridge from RL 43.11 to RL 43.47 and increase of 0.374m the rear roof ridge from RL 43.26 to RL 43.634	Complies
Pittwater Development Control Plan 21				
Front building line	10m	Swimming pool: 10m Dwelling: 20.9m	No change	Complies
Rear building line	6.5m	Dwelling: 6.5m	No change	Complies
Side building line	Southern boundary 1m	1.0m - 2.15m (dwelling)	1.5m courtyard	Complies
	Northern Boundary 2.5m	2.5m (dwelling)	No change	Complies
Landscaped area	60% (418m ²)	50.4% (521.5m ²) +6% impervious = 56.4%	No change	Complies

The modifications are contained within the approved building envelope such that the building height, appearance, drainage and landscape outcomes as approved are not compromised.

Importantly, the spatial relationship of the proposal to adjoining development is maintained together with a complimentary and compatible presentation and appropriate residential amenity outcomes. To that extent Council can be satisfied that the modifications involve minimal environmental impact and the development as modified represents substantially the same development as originally approved. Accordingly, the application is appropriately dealt with by way of Section 4.55(2) of the Act.

State Environmental Planning Instruments

State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 2 of the State Environmental Planning Policy (Biodiversity and Conservation) 2021 (Biodiversity & Conservation SEPP) establishes planning controls for the removal of vegetation within non-rural areas of New South Wales. The intent of the policy is to protect the biodiversity values of trees and other vegetation, and to preserve the amenity of non-rural areas through their retention.

Landscaping works were approved under Development Application DA2023/1780 (as modified), as determined by Northern Beaches Council. The current modification does not involve any tree removal and remains consistent with the original approval, with no change to the previously approved landscape areas. As no additional vegetation removal is proposed, the provisions of Chapter 2 of the Biodiversity and Conservation SEPP do not apply further to this application.

State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

Chapter 4 of the State Environmental Planning Policy (Resilience and Hazards) 2021 (Resilience and Hazards SEPP) relates to provisions for remediation of land. Clause 4.6 requires the consent authority to consider whether land is contaminated and if land can be remediated and made suitable for the proposed development prior to granting development consent to the DA.

As part of the original application consent authority was satisfied that the issue of contamination was sufficiently assessed.

Coastal Hazard

The subject site is identified within both the Coastal Use Area and Coastal Environment Area under the Coastal Environment Area Map. Accordingly, the provisions of Chapter 2 of the State Environmental Planning Policy (Resilience and Hazards) 2021 are applicable to the modified development.

The proposed modification continues to satisfy the relevant requirements of the SEPP. The works maintain compatibility with the existing pattern of coastal land uses and do not introduce any new impacts that would compromise the environmental, scenic, or cultural values of the coastal environment. No additional vegetation removal or landscape alterations are proposed, ensuring the modified development remains consistent with the previously approved landscape outcomes.

Further, the modification avoids adverse environmental impacts on the coastal environment by retaining the existing landscape treatments, protecting natural features, and ensuring that drainage and stormwater management measures remain appropriate to the site context. The works are considered to support the long-term resilience of the locality by minimising potential risks associated with coastal processes and hazards. On this basis, the modified development is consistent with the objectives of the SEPP (Resilience and Hazards) and ensures the ongoing protection and sustainable use of the coastal environment.

State Environmental Planning Policy (Sustainable Buildings) 2022

The proposal continues to meet the relevant water, thermal and energy standards required by SEPP BASIX. An amended BASIX certificate has been submitted with the subject modification application.

Pittwater Local Environment Plan

Clause 2.2 Zone objectives and Land Use Table

The site is zoned C4 Environmental Living under the provisions of the PLEP 2014. The proposed modification to the existing dwelling are permissible with the consent of Council.

The development of and use of the land for residential purposes within the C4 Environmental Living Zone is consistent with the zone objectives, which are noted as:

- *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.*
- *To provide for residential development of a low density and scale integrated with the landform and landscape.*
- *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*

It is considered that the proposed modifications to the approved existing dwelling will be consistent with the objectives of the C4 zone and the desired future character of the surrounding locality for the following reasons:

- The modified proposal will be consistent with and complement the existing detached style housing within the locality.
- The modified development respects the scale and form of approved development and other new development in the vicinity and therefore complements the locality.
- The setbacks continue to be compatible with the existing surrounding development.
- No new works within the foreshore area
- The modified proposal does not have any adverse impact on long distance views.

Clause 4.3 – Height of Buildings

In accordance with clause 4.3(2D) of PLEP 2014, the maximum building height for development at the subject site can be considered up to 10m.

The modified development increasing the overall building height of the main roof ridge from RL 43.11 to RL 43.47 (an increase of 0.36m) and increase of the rear roof ridge from RL 43.26 to RL 43.634 (an increase of 0.374m).

The minor amendment to the roof height is a technical adjustment arising from detailed design development. The change is primarily the result of refining roof construction

While the modification results in a building height exceeding the maximum under Clause 4.3 of the PLEP 2014 being 8.5m but compliant with the maximum building height under Clause 4.3(D) of the PLEP 2014, the application is lodged under Section 4.55 of the Environmental Planning and Assessment Act 1979, which permits modification of an approved development despite any breach of standards.

Accordingly, no Clause 4.6 variation is required, however the proposal has been assessed against the objectives of Clause 4.3 as follows.

(a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,

The proposed increase in building height of 0.36m and 0.374m is negligible and imperceptible in the context of the site and surrounding development. The variation does not alter the overall roof form and remains consistent with the site's topography, prevailing building heights, and the desired future streetscape character. As such, the minor increase maintains consistency with the desired character of the locality and will have no discernible impact on the locality's visual amenity.

(b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,

The proposed increase in building height of 0.36m and 0.374m is not visually perceptible from neighbouring sites, the streetscape, or public spaces, and has no measurable effect on the building's bulk or scale. The overall massing remains compatible with surrounding development to the north and south, ensuring consistency with the height and scale of nearby buildings.

(c) to minimise any overshadowing of neighbouring properties,

The proposed increase in building height of 0.36m and 0.374m is negligible and imperceptible in the context of the site. Shadow diagrams confirm that the modification will not result in any additional overshadowing of neighbouring properties beyond what was previously approved. Accordingly, the proposal minimises overshadowing impacts and maintains adequate solar access to surrounding development.

(d) to allow for the reasonable sharing of views,

The proposed increase in building height of 0.36m and 0.374m will not result in any measurable change to existing view lines when compared with the approved development. The minor variation does not obstruct or diminish existing views from neighbouring properties to the waterways, streetscape, or other valued outlooks. The proposal therefore continues to allow for the reasonable sharing of views between properties and the public domain

(e) to encourage buildings that are designed to respond sensitively to the natural topography,

The proposed increase in building height of 0.36m and 0.374m remains minor and does not alter the approved built form or its relationship to the natural topography of the site. The development continues to follow the natural slope of the land and retains a roof form and building profile that sit comfortably within the existing landscape setting.

(f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.

The proposed increase in building height of 0.36m and 0.374m is negligible and will not alter the approved building form or appearance. The modification does not introduce any additional bulk, scale, or visual intrusion when viewed from neighbouring properties, the public domain, or the natural environment. No heritage items or heritage conservation areas are affected by the proposal. Accordingly, the development continues to minimise visual impacts on the natural environment and heritage values

Accordingly, the additional proposed increase in building height of 0.36m and 0.374m is considered acceptable in this instance, given its negligible impact on building form, surrounding amenity, and compliance with the relevant planning objectives.

Clause 7.1 – Acid Sulfate Soils

The site is identified as being within an area affected by Acid Sulfate Soils (Class 5). The modified proposal will not require any additional site excavation or disturbance than has already been undertaken and therefore it is not anticipated that any additional acid sulfate soils will be disturbed and a further assessment of the site conditions not considered necessary in this instance.

Clause 7.2 – Earthworks

The modified proposal does not involve any additional site disturbance or excavation beyond that already undertaken.

All on-site works will continue to be undertaken under the strict supervision of the appointed Structural Engineers.

7.8 Limited development on foreshore area

The modified works include the removal of the previously approved vergola over the ocean deck, thereby eliminating an approved structure from the foreshore building area. The modification does, however, introduce a small balcony associated with Bedroom 1, a minor portion of which is located within the foreshore building area.

Under Clause 7.8 Limited Development on Foreshore Area, development consent must not be granted for development on land in the foreshore area except for the following purposes:

*the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area, but only if the development will not result in the footprint of the building extending further into the foreshore area,
boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).*

The proposed minor deck area will not result in the footprint of the building extending further into the foreshore area than already approved therefore satisfying the above exception.

The balcony is lightweight, modest in scale, and does not increase the overall bulk or dominance of the dwelling when viewed from the foreshore or the public domain. It is integrated with the existing building form and maintains a sympathetic relationship with the natural topography and coastal setting.

The works do not restrict access to the foreshore, do not detract from the scenic qualities of the locality, and do not result in adverse environmental or visual impacts.

Pittwater 21 Development Control Plan

Council's Pittwater 21 DCP and Section A4.1 Avalon Beach Locality Statement provide a range of outcomes and controls which form the primary criteria control for development within the subject locality.

Section A Introduction

The proposed minor modifications, including minor architectural changes to the dwelling, are consistent with the desired future character and design objectives of the Avalon locality.

The modified works:

- Maintain the low-scale built form and coastal character typical of the locality
- Do not alter the height, bulk or scale of the approved development in a way that would adversely impact the surrounding visual or natural environment
- Preserve the visual relationship of the development to the escarpment, ridgelines and vegetation, with no additional unreasonable view loss or overshadowing impacts
- Incorporate materials and finishes that remain sympathetic to the natural coastal context
- Retain appropriate setbacks and landscape elements, preserving the amenity and privacy of neighbouring properties.

The minor nature of the modifications ensures that the overall integrity and compatibility of the development within the Avalon locality is maintained, and that the proposal continues to meet the objectives and required performance criteria.

B5.15 Stormwater

The controls seek to achieve the outcomes:

Improve the quality of water discharged to our natural areas to protect and improve the ecological and recreational condition of our beaches, waterways, riparian areas and bushland;
Minimise the risk to public health and safety;
Reduce the risk to life and property from any flooding and groundwater damage; Integrate Water Sensitive Urban Design measures in new developments to address stormwater and floodplain management issues, maximise liveability and reduce the impacts of climate change.
Mimic natural stormwater flows by minimising impervious areas, reusing rainwater and stormwater and providing treatment measures that replicate the natural water cycle Reduce the consumption of potable water by encouraging water efficiency, the reuse of water and use of alternative water sources
Protect Council's stormwater drainage assets during development works and to ensure Council's drainage rights are not compromised by development activities.

The modified works make no change to the previously approved stormwater management system on the site.

B6.1 Access Driveways and Works on the Public Road Reserve

This control seeks to achieve the outcomes:

Safe and convenient access.
Reduce visual impact of driveways

Pedestrian safety.
An effective road drainage system.
Maximise the retention of trees and native vegetation in the road reserve

The modification application does not include any amendments to the road reserve, layback or access driveway.

B6.2 Internal Driveways

This control seeks to achieve the outcomes:

Safe and convenient access. (S)
Reduce visual impact of driveways. (S)
Pedestrian safety. (S)
An effective road drainage system. (En, S)
Maximise the retention of trees and native vegetation.
Reduce contaminate run-off from driveways.

The application does not propose amendment to the driveway. The driveway will continue to be in accordance with the relevant provisions of AS2890.1.

B6.3 Off-Street Vehicle Parking Requirements

This control seeks to achieve the outcome:

An adequate number of parking and service spaces that meets the demands generated by the development.
Functional parking that minimises rainwater runoff and adverse visual or environmental impacts while maximising pedestrian and vehicle safety.
Safe and convenient parking.

No change to the existing approved off-street parking spaces provided within the proposed new garage, consistent with the minimum requirement for 2 spaces prescribed by this control. The proposed parking spaces within the proposed garage will continue to be in accordance with AS2890.1.

B8.1 Construction & Demolition – Excavation and Landfill

The controls seek to achieve the outcomes:

Site disturbance is minimised. (En)
Excavation, landfill and construction not to have an adverse impact. (En)
Excavation and landfill operations not to cause damage on the development or adjoining property. (S)

The modified proposal involves no further site disturbance beyond that already undertaken.

All on-site works will continue to be undertaken under the strict supervision of the appointed Structural Engineers.

B8.3 Construction and Demolition – Waste Minimisation

The controls seek to achieve the outcomes:

Reduction management of demolition, excavation and construction works is to be minimised by reuse on-site, recycling, or disposal at an appropriate waste facility. (En)

Any demolition material will be removed and recycled off site where possible or taken to an approved waste disposal facility.

Section C Development Type Controls

The Development Controls applicable to the proposed new dwelling and including a new garage and swimming pool are summarised as:

C1.1 Landscaping

The controls seek to achieve the outcomes:

A built form softened and complemented by landscaping. (En)

Landscaping reflects the scale and form of development. (En)

Retention of canopy trees by encouraging the use of pier and beam footings. (En)

Development results in retention of existing native vegetation. (En)

Landscaping results in the long-term retention of Pittwater's locally native tree canopy. (En)

Landscaping retains and enhances Pittwater's biodiversity by using locally native plant species (En)

Landscaping enhances habitat and amenity value. (En, S)

Landscaping results in reduced risk of landslip. (En, Ec)

Landscaping results in low watering requirement. (En)

The modified proposal does not alter the approved landscaped areas, thereby maintaining and enhancing the established landscaped setting of the site.

The development continues to contribute to the open, green, and vegetated character of properties along this section of Marine Parade.

The modified works retain the visual and environmental benefits of substantial landscaping, support the integration of the built form with the natural surroundings, and reinforce a positive contribution to the streetscape and waterway presentation.

C1.2 Safety and Security

The controls seek to achieve the outcomes:

On-going safety and security of the Pittwater community. (S)

Opportunities for vandalism are minimised. (S, Ec)

Inform applicants of Council's requirements for crime and safety management for new development. (S)

Improve community awareness in relation to Crime Prevention through Environmental Design (CPTED), its principle strategies and legislative requirements (S)

Identify crime and safety priority areas in Pittwater LGA (S, Ec)

Improve community safety and reduce the fear of crime in the Pittwater LGA (S)

Develop and sustain partnerships with key stakeholders in the local area who are involved in community safety. (S)

The modified works continue to allow for casual surveillance of persons entering the site and the street area.

C1.3 View Sharing

The controls seek to achieve the outcomes:

A reasonable sharing of views from public places and living areas. (S)

Views and vistas from roads and public places to water, headland, beach and/or bush views are to be protected, maintained and where possible, enhanced. (S)

Canopy trees take priority over views (En, S)

The modified works do not introduce any additional bulk or scale beyond the approved development. The changes are minor in nature and do not result in any further obstruction of iconic or significant views, including views to the water, bushland, or district, particularly when considered from 87A Marine Parade.

An assessment of view sharing in accordance with the *Tenacity v Warringah [2004]* planning principles was undertaken as part of the original development application and the proposal was found to achieve a reasonable balance between the applicant's development rights and the protection of neighbouring views. The current modifications do not alter this outcome, as they do not add any additional built form or elements that would impact view corridors beyond those already assessed and approved.

The proposal therefore continues to satisfy the principles of equitable view sharing under *Tenacity*, ensuring that any impact is reasonable in the context of the site's zoning and development potential.

C1.4 Solar Access

The controls seek to achieve the outcomes:

Residential development is sited and designed to maximise solar access during mid-winter. (En)

A reasonable level of solar access is maintained to existing residential properties, unhindered by adjoining development. (En)

Reduce usage and/dependence for artificial lighting. (En)

The modification does not unreasonably alter the previously assessed solar access impacts on either the subject site or adjoining dwellings. The submitted solar diagrams indicate a very minor increase in overshadowing to No. 87 Marine Parade at 12 noon. This additional shadowing is negligible in extent and does not materially change the overall solar access outcomes previously assessed and approved.

The development continues to achieve compliance with the objectives by maintaining reasonable solar access to the principal living areas and private open spaces of adjoining properties, while also ensuring suitable solar amenity for the subject site.

C1.5 Visual Privacy

The controls seek to achieve the outcomes:

Habitable rooms and outdoor living areas of dwellings shall achieve and maintain visual privacy through good design. (S)

A sense of territory and safety is provided for residents. (S)

The modification includes a minor 1m extension of the courtyard to the north. Despite this change, the setback remains sufficient at 1.5m and does not directly adjoin the neighbouring windows of No. 91 Marine Parade. Accordingly, the modification does not introduce any additional overlooking or privacy impacts beyond those previously assessed and approved.

The modified works also introduce a small deck adjoining Bedroom 1. This deck is modest in scale, orientated to the east towards the ocean, and designed primarily to provide outlook and amenity for the subject dwelling. Importantly, the orientation ensures that direct sightlines are directed away from adjoining southern properties and do not create overlooking opportunities into private open space or habitable room windows. The limited size and location of the deck further restricts its capacity to be used as an extended entertainment space, ensuring its use remains low-key and residential in character.

Overall, the development maintains appropriate spatial separation and ensures a suitable level of privacy for adjoining properties.

C1.6 Acoustic Privacy

The controls seek to achieve the outcomes:

Noise is substantially contained within each dwelling and noise from any communal or private open space areas are limited. (S)

Noise is not to be offensive as defined by the Protection of the Environment Operations Act 1997, including noise from plant, equipment and communal or private open space areas (S)

The modified development is unlikely to result in any unreasonable acoustic privacy impacts.

C1.7 Private Open Space

The controls seek to achieve the outcomes:

Dwellings are provided with a private, usable and well-located area of private open space for the use and enjoyment of the occupants. (S)

Private open space is integrated with, and directly accessible from, the living areas of dwellings. (S)

Private open space receives sufficient solar access and privacy (En, S).

The increase to the courtyard area represents a logical and functional extension of the kitchen, lounge, and living spaces, enhancing the usability and overall amenity of the site's private open space. Similarly, the new balcony adjoining Bedroom 1 provides an additional opportunity for outlook and residential amenity for future occupants.

The arrangement of outdoor and landscaped areas, orientated towards the Pittwater waterway, achieves an appropriate balance between private open space and landscaping. The modified development continues to provide a variety of well-connected and usable outdoor living spaces at both ground level and upper levels, ensuring a high standard of residential amenity while integrating sensitively with the site's natural setting.

C 1.12 Waste and Recycling Facilities

The controls seek to achieve the outcomes:

Waste and recycling facilities are accessible and convenient, and integrate with the development. (En)

Waste and recycling facilities are located such that they do not adversely impact upon amenity of the adjoining development or natural environment. (En, S)

The required controls to achieve the outcomes are to ensure that adequate area remains for the storage of waste and recyclable materials.

The bin storage and storage area in the basement remains as previously approved and will provide an adequate and functional space for the on-site storage of waste and recyclables. Waste will continue to be collected by Council contractors via the standard household garbage service, ensuring compliance with waste management requirements.

Section D Locality Specific Development Controls

The D1 Avalon Beach Locality Statement contains a number of outcomes for development. The proposal has been assessed in regard to the Locality Statement and is summarised in the following table.

The design and scale of the modifications respect the established character of Avalon, which is defined by a high level of residential amenity, substantial landscaping, and a sensitive relationship with the natural environment.

The modifications do not result in an increase in visual bulk, do not impact significant view corridors, and maintain the existing landscaped setting of the site. The proposal retains the low-density residential character of the area and is sympathetic to the topography, vegetation, and coastal context typical of Avalon. The built form remains consistent with the height, setbacks, and site coverage controls applicable to the locality.

Accordingly, the proposed modifications support the planning principles of the D1 Locality Statement by maintaining the scenic quality, privacy, and environmental character that define the Avalon Beach area.

A summary of the DCP controls for the D.3 Avalon Beach Locality Statement is provided below:

D1.1 Character As Viewed From A Public Place

The control seeks to achieve the outcomes:

To achieve the desired future character of the Locality.

To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing built and natural environment. (En, S, Ec)

To enhance the existing streetscapes and promote a scale and density that is in scale with the height of the natural environment.

The visual impact of the built form is secondary to landscaping and vegetation, or in commercial areas and the like, is softened by landscaping and vegetation. (En, S, Ec)

High quality buildings designed and built for the natural context and any natural hazards. (En, S)

Buildings do not dominate the streetscape and are at 'human scale'.

To preserve and enhance district and local views which reinforce and protect the Pittwater's natural context.

To enhance the bushland vista of Pittwater as the predominant feature of the landscape with built form, including parking structures, being a secondary component.

To ensure that development adjacent to public domain elements such as waterways, streets, parks, bushland reserves and other public open spaces, compliments the landscape character, public use and enjoyment of that land. (En, S)

The modifications do not increase the visual prominence of the development when viewed from surrounding public places, including streets or adjoining waterways. The changes are minor in scale and remain visually recessive, maintaining the low-density, landscaped character typical of the Avalon locality.

No significant alterations are proposed to the approved building envelope that would disrupt the visual harmony of the streetscape or the broader landscape setting. In particular, the proposal retains appropriate landscaping and avoids excessive built form that could dominate views from public vantage points.

Accordingly, the modified works uphold the visual character objectives of the locality by maintaining a built form that integrates with the coastal and bushland setting and remains visually unobtrusive from public places.

D3.3 Building colours and materials

The controls seek to achieve the outcomes:

Achieve the desired future character of the Locality.

The development enhances the visual quality and identity of the streetscape. (S)

To provide attractive building facades which establish identity and contribute to the streetscape.

To ensure building colours and materials compliments and enhances the visual character its location with the natural landscapes of Pittwater.

The colours and materials of the development harmonise with the natural environment. (En, S)

The visual prominence of the development is minimised. (S) Damage to existing native vegetation and habitat is minimised. (En)

There is no change to the previously approved external colours and finishes, with the modification remaining consistent with the approved schedule of finishes under the original consent.

D3.6 Front Building Line

The controls seek to achieve the outcomes:

Achieve the desired future character of the Locality.

Equitable preservation of views and vistas to and/or from public/private places. (S) The amenity of residential development adjoining a main road is maintained. (S) Vegetation is retained and enhanced to visually reduce the built form. (En)

Vehicle manoeuvring in a forward direction is facilitated. (S)

To preserve and enhance the rural and bushland character of the locality. (En, S)

To enhance the existing streetscapes and promote a scale and density that is in keeping with the height of the natural environment.

To encourage attractive street frontages and improve pedestrian amenity.

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

There is no change to the previously approved front setback.

D1.9 Side and rear building line

The controls seek to achieve the outcomes:

To achieve the desired future character of the Locality. (S) The bulk and scale of the built form is minimised. (En, S)

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

To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.

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

Substantial landscaping, a mature tree canopy and an attractive streetscape. (En, S) Flexibility in the siting of buildings and access. (En, S)

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

To ensure a landscaped buffer between commercial and residential zones is achieved.

The relevant controls to achieve this outcome are to provide a minimum setback of 2.5m for one side and minimum 1.0m setback for the other side.

There is no change to the approved southern side or to the minimum setback approved to the mean high water mark.

The modification introduces a minor change to the northern side setback of the courtyard, reducing it to 1.5m. This remains consistent with the minimum numerical requirement of the DCP and continues to provide adequate separation between the subject dwelling and the adjoining property at No. 91 Marine Parade. The setback allows for the incorporation of landscaping along the northern boundary, which will soften the built form, enhance visual amenity, and assist in maintaining privacy between properties.

The amended setback does not introduce any additional bulk or scale to the building envelope and does not result in unreasonable impacts on solar access, outlook, or privacy for adjoining properties. As no windows directly align with neighbouring habitable room windows, there is no increase in opportunities for overlooking.

D1.9 Building Envelope

The controls seek to achieve the outcomes:

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

To enhance the existing streetscapes and promote a building scale and density that is 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.

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

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

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

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

There is no change to the previously approved building envelope.

D1.11 Landscaped Area – Environmentally Sensitive Land

The controls seek to achieve the outcomes:

Achieve the desired future character of the Locality. (S) The bulk and scale of the built form is minimised. (En, S)

A reasonable level of amenity and solar access is provided and maintained. (En, S) Vegetation is retained and enhanced to visually reduce the built form. (En) Conservation of natural vegetation and biodiversity. (En)

Stormwater runoff is reduced, preventing soil erosion and siltation of natural drainage channels. (En)

To preserve and enhance the rural and bushland character of the area. (En, S)

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

There is no change to the previously approved landscaped area.

The modified works maintain the visual and environmental benefits of substantial landscaping, reinforce the integration of the built form with its natural surroundings, and enhance the streetscape presentation.

JUSTIFICATION

The Environmental Planning & Assessment Act 1979 provides for the modification of a consent under Section 4.55(2) which notes:

(2) Other modifications

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*
- b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*
- (c) it has notified the application in accordance with:*
 - (i) the regulations, if the regulations so require, or*
 - (ii) a development control plan, if the consent authority is a council that has made a development control plan 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 the period prescribed by the regulations or provided by the development control plan, as the case may be.*

Subsections (1) and (1A) do not apply to such a modification.

Accordingly, for the Council to approve the S4.55 Modification Application, the Council must be 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.

Legal Tests

To assist in the consideration of whether a development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted, Justice Bignold established the following test in the *Moto Projects (No 2) Pty Ltd v North Sydney Council (1999) 106 LGERA 289* where His Honours states:

[54] The relevant satisfaction required by s96(2)(a) to be found to exist in order that the modification power be available involves an ultimate finding of fact based upon the primary facts found. I must be satisfied that the modified development is substantially the same as the originally approved development.

[55] The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is “essentially or materially” the same as the (currently) approved development.

[56] The comparative task does not merely involve a comparison of the physical features or components of the development as currently approved and modified where that comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted).

In my opinion, in terms of a “qualitative comparison”, the Modification Application is substantially the same development as that which was approved within Consent No. DA2023/1780 and as subsequently modified.

The works seek to provide for “*Demolition Works and Construction of a dwelling house including swimming pool*”.

As the proposed modifications to the approved design will largely maintain the visual bulk and scale of the development remains consistent with the original approval, when viewed from the street, the neighbours or coastal waters. The modified proposal is reasonably considered to be substantially the same development as originally approved.

The revised design does not introduce any issues for the neighbouring properties in terms of view loss or privacy.

When viewed from the public domain or from the neighbouring properties, the development will present the same visual impact and appearance to that originally approved.

Similarly, the application is substantially the same development when subjected to a “quantitative comparison”, as the works will continue to provide for “*Demolition Works and Construction of a dwelling house including swimming pool*” in a location and in a form which is consistent with the consent.

In my view, this application is substantially the same as the original application when considered in the context of the Bignold J determination and the application can be reasonably assessed by Council under S4.55 of the Act.

Conclusion

The test established in **Moto** requires both a quantitative and a qualitative assessment.

In terms of the quantitative extent of the changes to the originally approved development, the works which are the subject of the application are minor and do not inherently alter the nature and form of the approved outbuilding and carport as originally approved by Council.

The proposal also satisfies the qualitative assessment required by the Moto test. The modifications will result in a development which remains generally as approved, for the same purpose and with no significant or adverse implications for the physical appearance of the approved building and the site's contribution to the local streetscape.

Consistent with the Court decision in **Moto**, the Council would be satisfied that the development as modified would remain essentially or materially the same as the approved development.

This Court decision also makes clear that the Council has the power to approve the Modification Application.

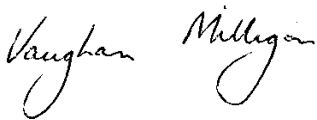
The proposed modification is justified on the basis that:

- The proposed works are generally consistent with the application as initially lodged and as detailed under the original Notice of Determination dated 2 July 2024 (subsequently modified 18 August 2024 (Mod2024/0436) and on the 28 April 2025 (Mod2025/0063). The proposal is "substantially" the same development, as defined by the Environmental Planning & Assessment Act.

Council's support of the modification to the form of the proposed development is sought in this instance.

Please contact me on 9999 4922 or 0412 448 088 should you wish to discuss these proposed amendments.

Yours faithfully,

A handwritten signature in black ink, reading "Vaughan Milligan". The signature is written in a cursive, flowing style.

VAUGHAN MILLIGAN