

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2025/0240
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Responsible Officer:	Phil Lane
Land to be developed (Address):	Lot 151 DP 6937, 40 Sunrise Road PALM BEACH NSW 2108
Proposed Development:	Modification of Development Consent DA2021/0900 granted for Construction of a dwelling house including a swimming pool and spa
Zoning:	C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Applicant:	Susan Elizabeth Rothwell

Application Lodged:	20/05/2025
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	28/05/2025 to 11/06/2025
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

The proposed modification seeks a number of changes to the approved dwelling house as follows:-

"General

a1. Replacement of all external doors and windows from timber frame to aluminium frame

Lower Ground

b1. Minor internal planning modifications

b2. Lowering the FFL by 170mm

b3. Enclosing the void under the approved lawn and pool to form a new A/C Plant Room

b4. Modification of the eastern boundary concrete block retaining wall to be constructed with corten sheets supported by steel framing

- b5. Replacement of windows W101, W106, W108 and W111 with sliding doors*
- b6. Deletion of window W112*
- b7. Modification to the sizes of windows along the east façade, including windows W102, W103, W104 & W105, and the addition of one new window W102a*
- b8. Modification of the south-west terraced concrete block planter walls to stone boulder garden walls*
- b9. Addition of external steps at the northern end of the eastern setback passage*
- b10. Addition of external access steps on the western façade to the lawn area*
- b11. Increasing the length of the pool by decreasing the width of the concourse on the western end of the pool*
- b12. Extension of the lawn area on the eastern side of the pool*
- b13. Modification of the external pool wall finish from stone cladding to painted banded render*

Ground floor

- c1. Lowering the FFL by 170mm*
- c2. Deletion of the Dining Room fireplace (including associated flue to roof)*
- c3. Replacement of windows W210 and W211 with sliding doors*
- c4. Replacement of bifold door W212 with sliding doors*
- c5. Replacement of bifold door W204 with a window*

First Floor

- d1. Minor planning modifications, including shifting the location of an external pier on the northern facade*
- d2. Replacement of bifold doors W304 and W306 with sliding doors*
- d3. Modification to the sizes of windows W301 and W301c*
- d4. Deletion of façade glazing panels located on the lift shaft*
- d5. Replacement of the timber framed pergola with a retractable pergola*
- d6. Raising the height of the western fireplace flue*

Roof Level

- e1. Deletion of the turret on the pyramid roof, and raising the gutter level, pitch and ridge height of the associated roof*
- e2. Deletion of the Dining Room fireplace flue.*

The applicant provided the following justification for the above modifications:-

- *"Provide additional ceiling height amenity to the Lower Ground and Ground Floor without raising the approved height of the dwelling (b2, c1)*
- *Provide a more structurally efficient means of retaining the excavation along the eastern boundary (b4)*
- *Provide additional services amenity within the approved envelope (b3)*
- *Provide a more natural means of landscaping treatment (b8)*
- *Provide a more uniform detail to the roof and more articulation to the street facing façade (e1)"*

Amended Plans

On 15 August 2025, Council received amended plans and a Statement of Environmental Effects addendum. The amended plans include a reduction in the overall building height. It is considered that the amended proposal would result in a lesser environmental impact and, as such, re-notification is not required.

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 - 4.3 Height of buildings

Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection

Pittwater 21 Development Control Plan - C1.3 View Sharing

Pittwater 21 Development Control Plan - C1.6 Acoustic Privacy

Pittwater 21 Development Control Plan - C1.23 Eaves

Pittwater 21 Development Control Plan - D12.5 Front building line

Pittwater 21 Development Control Plan - D12.6 Side and rear building line

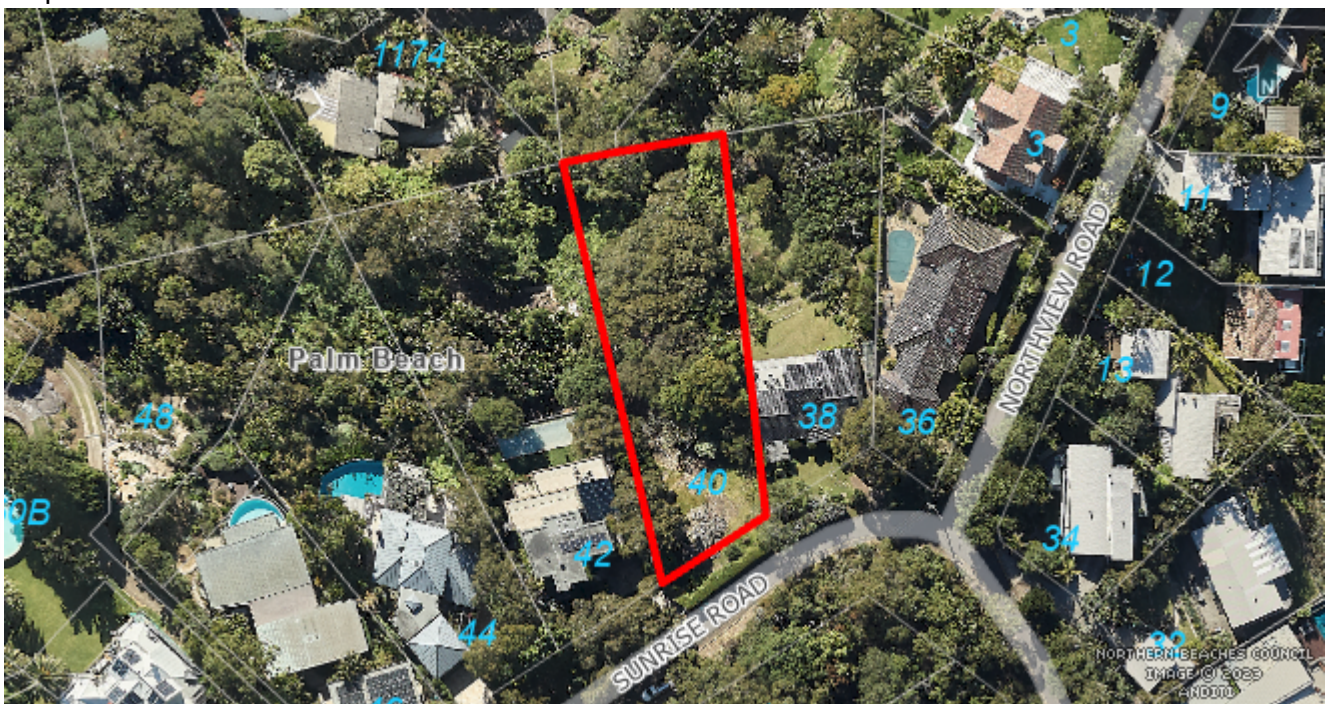
Pittwater 21 Development Control Plan - D12.8 Building envelope

SITE DESCRIPTION

Property Description:	Lot 151 DP 6937 , 40 Sunrise Road PALM BEACH NSW 2108
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Detailed Site Description:	The subject site consists of one (1) allotment located on the northern side of Sunrise Road. The site is irregular in shape with a frontage of 20.42m along Sunrise Road and a depth of 71.09m. The site has a surveyed area of 1528m². The site is located within the C4 Environmental Living zone and is currently under construction via the original Development Application (DA2021/0900 - Construction of a dwelling house including a swimming pool and spa). The site has a crossfall of approximately 28m from the south (street frontage) to the north (rear). Numerous native and non-native trees and vegetation is located on the site. The rear of the site is densely vegetated. Rock outcrops are located throughout the site. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by two, three and four storey dwelling houses of varying architectural styles. Sunrise reserve is located to the south of the site.
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Map:



SITE HISTORY

N0094/12 - Development Application for the demolition of the existing dwelling - Approved 05/09/2012

DA2021/0900 - Construction of a dwelling house including a swimming pool and spa approved 23 March

2022.

DA2025/0887 - Demolition Works and boundary adjustments to allow for Torrens Title subdivision of six (6) lots into eight (8) lots currently under assessment by Council.

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 DA2021/0900, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55 (2) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The consent authority can be satisfied that the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted under DA2021/0900 for the following reasons: • The existing pedestrian and vehicular access arrangements will remain consistent with the previously approved development. • The height and footprint of the modified development remains generally consistent with the approved development. • The modified proposal will not have a materially different impact when compared to the approved development.

Section 4.55 (2) - Other Modifications	Comments
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application DA2021/0900 was subject of concurrence from TfNSW. The application has been referred to TfNSW.
(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 under section 72 that requires the notification or advertising of applications for modification of a development consent, and	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.
(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.	No submissions were received in relation to this application.

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining a modification application made under Section 4.55 (2) the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.

Section 4.15(1) is addressed in the table below.

The reasons given by the consent authority for the grant of the consent that is sought to be modified is discussed as follows:

Comment on reasons for determination of DA2021/0900

Review of the Assessment Report Conclusion:

The conclusion of the assessment report focuses on the following key points:

- Consistency with the objectives of relevant planning policies;
- The amended proposal results in a development of reasonable scale and density, compatible with the surrounding newer development; and
- No unreasonable impacts on neighbouring properties, subject to conditions that ensure a reasonable level of privacy is maintained between properties.

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	Part 4, Division 2 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. Clauses 36 and 94 of the <i>Environmental Planning and Assessment Regulation 2021</i> permits Council to request additional information. Further information was sought in relation to reducing the overall height of the lightwell at the front of the proposed dwelling. On 15 August 2025, Council received amended plans which reduced the overall height of the proposal by 0.7m. Accordingly, it is considered that the proposal demonstrates compliance with Clause 4.3 (Height of Buildings) of the <i>Pittwater Local Environmental Plan 2014</i>. Clause 61 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. Clause 69 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. Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 28/05/2025 to 11/06/2025 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	The application is for modification to development consent DA2021/0900 as described in reports and as illustrated on plans. The landscape setting outcomes are not altered and thus Landscape Referral do not raise concerns with the modification proposal.
NECC (Bushland and Biodiversity)	The comments in this referral relate to the following applicable controls and provisions: • Biodiversity Conservation Act 2016 • Pittwater LEP cl. 7.6 Biodiversity Protection • Pittwater 21 DCP cl. B4.2 Flora and Fauna Conservation Category 1 and Wildlife Corridor • Pittwater 21 DCP cl. B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor The submitted modifications would not alter the conclusions of the original Biodiversity Referral. Additional impacts to native flora and fauna are unlikely and no additional removal of vegetation is being proposed by the modifications. Original conditions still apply.
NECC (Water Management)	NECC Water Management has no objection to the proposed modifications.

Internal Referral Body	Comments		
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS		
	Discussion of reason for referral		
	The proposal has been referred to Heritage as the subject site adjoins two heritage items		
	'Villa D'este' (house) - 3 Northview Road Palm Beach C6 Sunrise Hill Heritage Conservation Area - Sunrise Road		
	Details of heritage items affected		
	Villa D'Este		
	<u>Statement of Significance</u> Villa D'este at 3 Northview Road in Palm Beach, was built in 1933 to the design of Fred Verrills as a holiday house, has historic and aesthetic significance as a rare and intact example of Spanish Mission House typical of the early Pittwater subdivisions.		
	<u>Physical Description</u> The house is located on a slightly raised site screened by a short stone fence and vegetation with scenic views over Ocean Beach. The house comprises of a rendered brick two-storey building characterised by typical Spanish Mission style features. These include: the asymmetrical facade, shaped gable facade, barley-twist columns, semi-circular arches, rendered brick walls, decorative sunrise motif, wrought-iron door hardware, gabled chimney stack, arched veranda, timber shutters, front steps, timber pergola, stucco finish and decorative parapet.		
	Sunrise Hill Heritage Conservation Area		
	<u>Statement of Significance</u> The Sunrise Hill Heritage Conservation Area includes the curtilage of a number of historic properties representing the earliest phase of residential development at Palm Beach.		
	<u>Physical Description</u> Conservation area includes houses at 50, 52, 54, 56, 58-60,35 and public reserve at summit of Sunrise Hill.		
	Other relevant heritage listings		
	SEPP (Biodiversity and Conservation) 2021	No	
Australian Heritage Register	No		
NSW State Heritage Register	No		
National Trust of Aust (NSW) Register			
RAIA Register of 20th Century Buildings of Significance	No		

Internal Referral Body	Comments		
	Other	No	
	Consideration of Application		
	The proposal seeks consent for modifications to an approved new dwelling. Changes include but are not limited to internal reconfiguration, adjustments to windows and external materials and the raising and adjustment of the roof above the central access corridor. Villa D'Este joins the property at the rear, the conservation area adjoins at the front and includes the Sunrise Road road reservation. The proposed changes are considered to not impact upon either the heritage item, or the conservation area and their significance. Therefore Heritage raises no objections and requires no conditions. Consider against the provisions of CL5.10 of PLEP. Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No		

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.

External Referral Body	Comments
Roads and Maritime Service - Roads Act 1993, s138 (Non-integrated)	TfNSW has reviewed the material and advises that the proposed development will have a negligible impact on the surrounding state road network. As such, TfNSW has no objections regarding the application subject to previously provided TfNSW conditions dated 3 November 2021.

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. 1163660S_08 dated 12 May 2025).

The embodied emissions have been quantified in the above BASIX Certificate.

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

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

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

Comment:

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

Transport for NSW (TfNSW)

Section 2.119 - Development with frontage to classified road states:

The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that—

- (a) where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and*
- (b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of—*
 - (i) the design of the vehicular access to the land, or*
 - (ii) the emission of smoke or dust from the development, or*
 - (iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*
- (c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

Comment: TfNSW has reviewed the material and advises that the proposed development will have a negligible impact on the surrounding state road network. As such, TfNSW has no objections regarding the application subject to previously provided TfNSW conditions dated 3 November 2021.

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

Pittwater Local Environmental Plan 2014

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	10m *Clause 2D Applies	9.9m	9.2m	-	Yes

Compliance Assessment

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

Detailed Assessment

Zone C4 Environmental Living

The proposed modifications to the approved new dwelling house, garage, swimming pool and associated landscaping works. Dwelling houses are permissible with consent in the C4 Environmental Living zone. The proposal is considered against the objectives of the zone as follows:

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

Comment: The area of the site that is subject to the development has been subject to previous disturbance by previous development. The proposed development will maintain sufficient landscape open space and subject to conditioning suitable native plants, shrubs and trees will be able to be planted and grow which will soften the visual impacts of the development when viewed from Whale Beach Road. Furthermore, the proposed development will be appropriately sited and scaled, such that the works will not unreasonably detract from the visual qualities of the locality.

Overall, the development is considered to have an acceptable impact upon the ecological, scientific or aesthetic values of the area.

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

Comment: As demonstrated above, the proposed development does not have an adverse effect on the ecological, scientific or aesthetic values listed above.

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

Comment: The proposed development will have appropriate landscaping both on site and at the front of the site. Furthermore, the building height steps down with the slope of the land, which visually reduces the built form and sensitively responds to the natural topography. The proposal also does not change the existing low density residential land use and the scale of the development is commensurate with nearby residential development within the locality. Overall, the proposal meets this objective.

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

Comment: Conditions have been included within the original consent to mitigate impacts to this vegetation and incorporate plants surrounding the dwelling including planter boxes above the garage and the balcony on level 1.

Conclusion

As demonstrated above, the proposed development satisfies the objectives of the C4 Environmental Living zone.

4.3 Height of buildings

The site is located within Area I on the Pittwater LEP 2014 Height of Buildings Map. Within this area, the maximum building height permitted is 8.5m above the existing ground level. The maximum height of the proposed development is 10m above the existing ground level, which exceeds the 8.5m prescribed requirement.

Notwithstanding, Clause 4.3(2D) of the Pittwater LEP 2014 contains an exemption provision that stipulates that the maximum building height within Area I can be increased to 10m, providing the following is demonstrated:

(a) the consent authority is satisfied that the portion of the building above the maximum height shown for that land on the Height of Buildings Map is minor, and

Comment: The areas of the dwelling house that protrude above the 8.5m height plane are confined to minor portion of the lightwell at the front of the dwelling. The breaches occur for a horizontal length of 3.1m for a vertical length of 0.7m on the roof terrace. Figure 3 (Section 1) below depicts the areas that protrude above the 8.5m height plane. These areas above the 8.5m height limit are considered minor given the low percentage these areas demonstrate overall versus the high percentage of the building demonstrates compliance with the 8.5m height control.

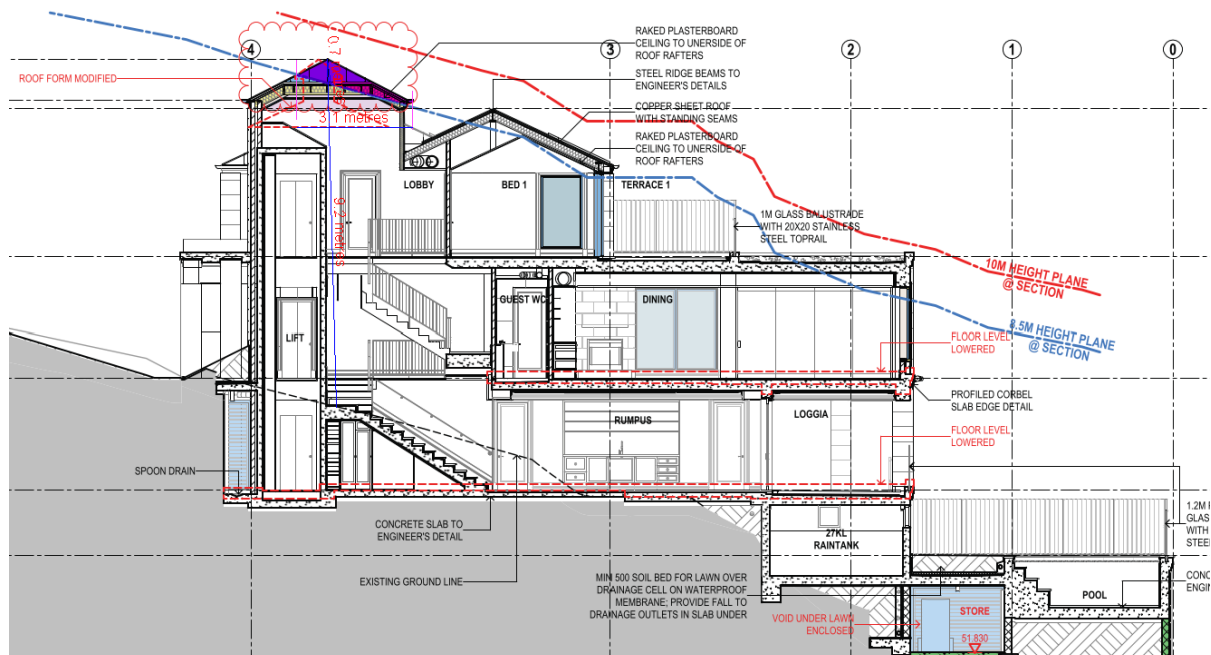


Figure 1: Area above 8.5m height plane highlighted in purple

(b) the objectives of this clause are achieved

Comment: A detailed assessment against the objectives of Clause 4.3 of Pittwater LEP 2014 is provided below. In summary, the proposal is found to be consistent with the objectives of this clause.

(c) the building footprint is situated on a slope that is in excess of 16.7 degrees (that is, 30%)

Comment: The slope of the land under the building footprint is 21.6 degrees (39.5%).

(d) the buildings are sited and designed to take into account the slope of the land to minimise the need for cut and fill by designs that allow the building to step down the slope.

Comment: The building provides a terraced style design that steps down in height with the slope of the land to integrate with the landform and landscape.

When considered against the objectives of Clause 4.3 of Pittwater LEP 2014, it is noted as follows:

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

Comment: The built form is considered consistent with the desired scale of development within low density residential areas. Sufficient areas of landscaped open space will be maintained allowing for the planting of native plants, shrubs and trees to be into the proposal.

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

Comment: The height, bulk and scale of the proposed development is commensurate with established low density residential development within the Palm Beach area.

(c) to minimise any overshadowing of neighbouring properties,

Comment: Shadow diagrams supplied with the application indicate that the proposed modification will not create adverse overshadowing impacts. All surrounding dwellings receive direct sunlight consistent with the requirements of the PDGP. It is further noted that overshadowing is limited to the frontages and side passages of nearby dwellings for short periods of time.

(d) to allow for the reasonable sharing of views

Comment: The proposal is considered to allow for a reasonable sharing of views. It is noted that the site and adjoining sites are at the upper reaches of a hillslope and enjoy views to the north that would be unaffected by the modified proposal. Land immediately south of the dwelling is undeveloped bushland and would therefore be unaffected.

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

Comment: The development steps down with the sloping topography, responding appropriately to site conditions. With reference to the non-compliant lightwell, the addition is minor and will not meaningfully discourage building design that responds to topography.

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

Comment: It is noted that the addition will be visible only from adjoining dwellings and functionally invisible from the street. It is considered that the minor addition will not have an adverse visible impact on nearby environmental features, heritage items or conservation areas.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of the control 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.

7.6 Biodiversity protection

This modification will not alter the conclusions of the original Biodiversity Referral. Additional impacts to native flora and fauna are unlikely and no additional removal of vegetation is being proposed by the modifications. Original conditions applied in DA2021/0900 remain.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
Front building line	6.5m	5.2m (garage) 4.9m (Porch) 5.9m (Lift) 6.0m (Laundry)	Unaltered	No (As Previously Approved)

Rear building line	6.5m	35m	Unaltered	Yes
Side building line	2.5m (W)	2.1m (Bed 6) 2.2m (Terrace 4)	Unaltered	No (As Previously Approved)
	1m (E)	1m	Unaltered	Yes
Building envelope	3.5m (W)	Outside envelope	Unaltered	No (As Previously Approved)
	3.5m (E)	Outside envelope	Unaltered	No (As Previously Approved)
Landscaped area	60% (916.8m ²)	71% (1087m ²)	71% (1087m ²)	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach Locality	Yes	Yes
B1.2 Heritage Conservation - Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.2 Flora and Fauna Conservation Category 1 and Wildlife Corridor	Yes	Yes
B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor	Yes	Yes
B5.15 Stormwater	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
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.14 Separately Accessible Structures	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C1.23 Eaves	No	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D12.1 Character as viewed from a public place	Yes	Yes
D12.3 Building colours and materials	Yes	Yes
D12.5 Front building line	No	Yes
D12.6 Side and rear building line	No	Yes
D12.8 Building envelope	No	Yes
D12.10 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D12.13 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D12.14 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

C1.3 View Sharing

A detailed analysis was completed within the original assessment (DA2021/0900) with the concluding comments:-

"Overall, the view loss associated with the proposal is considered minor when put in context of the entirety of views obtained from this property and the location of existing vegetation. As such, the proposal is not considered to result in an unreasonable view loss for the neighbouring dwelling at No.38 Sunrise Road and will satisfy the provisions of this clause.

Overall, in consideration of the existing views obtained from the road reserve, location of existing screen planting, the nature of the site being a vacant lot and the character and scale of surrounding development in the vicinity, the proposed view loss is considered reasonable in this instance."

Council received no submissions in relation to the current modification application. Given that the height of the proposed lightwell is consistent with the previously approved height for this front roof portion of the building, it is considered that the detailed assessment undertaken as part of the original Development Application remains unchanged.

C1.6 Acoustic Privacy

A detailed analysis was completed in relation to visual privacy within the original assessment (DA2021/0900) within the following comments:-

"The proposed development is considered capable of providing a sense of territory and safety for residents on the subject site and adjoining properties.

Having regard to the above assessment, it is concluded that the applicable outcomes of the control have been achieved. Therefore, the application is supported on merit, subject to conditions."

Council received no submissions in relation to the current modification application and it is considered that the detailed assessment completed within the original DA remains unaltered.

C1.23 Eaves

There are no proposed changes to the eaves under this application. Therefore, no further assessment is required as a detailed assessment was conducted under DA2021/0900.

D12.5 Front building line

The proposed modification will not alter the previously approved front setbacks under DA2021/0900. A further assessment is not required in this instance.

D12.6 Side and rear building line

The proposed modification will not alter the previously approved side setbacks under DA2021/0900. A further assessment is not required in this instance.

D12.8 Building envelope

The proposed modification will not alter the previously approved building envelope under DA2021/0900. A further assessment is not required in this instance.

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. Mod2025/0240 for Modification of Development Consent DA2021/0900 granted for Construction of a dwelling house including a swimming pool and spa on land at Lot 151 DP 6937,40 Sunrise Road, PALM BEACH, subject to the conditions printed below:

Modification Summary

The development consent is modified as follows:

MODIFICATION SUMMARY TABLE

Application Number	Determination Date	Modification description
PAN - 535822 MOD2025/0240	The date of this notice of determination	Section 4.55 (2) Environmental Impact - Modification of Development Consent DA2021/0900 granted for Construction of a dwelling house including a swimming pool and spa Add Condition No. 1A - Modification of Consent - Approved Plans and supporting documentation Amend Condition No. 2 - Compliance with Other Department, Authority or Service Requirements

PAN-310109 Mod2023/0109	20/09/2023	Section 4.55 (2) Environmental Impact -Modification of Development Consent DA2021/0900 granted for Construction of a dwelling house including a swimming pool and spa
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Modified conditions

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

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

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
DA100	F	Site and Roof Plan	Susan Rothwell Architects	13 August 2025
DA101	F	Lower Ground Floor Plan	Susan Rothwell Architects	14 May 2025
DA102	F	Ground Floor Plan	Susan Rothwell Architects	14 May 2025
DA 103	F	First Floor Plan	Susan Rothwell Architects	14 May 2025
DA 104	F	North Elevation	Susan Rothwell Architects	13 August 2025
DA105	G	South Elevation	Susan Rothwell Architects	13 August 2025
DA106	H	West Elevation	Susan Rothwell Architects	13 August 2025
DA107	F	Section	Susan Rothwell Architects	13 August 2025
DA108	G	Sections	Susan Rothwell Architects	13 August 2025
DA109	F	Sections	Susan Rothwell Architects	13 August 2025
DA110	E	Sections	Susan Rothwell Architects	13 August 2025
DA111	A	Pool and AC Plant Level	Susan Rothwell Architects	14 May 2025

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document

BASIX CERTIFICATE (1163660S_08)	8	Andrew Spaile and Associates Pty Ltd	12 May 2025
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In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency with the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

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

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	23 May 2025
Transport for NSW	TfNSW Referral Response (SYD25/00989/01)	29 August 2025

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

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

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 30/08/2025, under the delegated authority of:



Adam Richardson, Manager Development Assessments