

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2018/0117
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Responsible Officer:	Kevin Short
Land to be developed (Address):	Lot 1 DP 1203970, 190 Barrenjoey Road NEWPORT NSW 2106
Proposed Development:	Modification of consent N0106/12 for landscaping works including a viewing deck and spa
Zoning:	E2 Environmental Conservation E4 Environmental Living
Development Permissible:	Yes - Zone E2 Environmental Conservation Yes - Zone E4 Environmental Living
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Brooke William Stuart
Applicant:	Brooke William Stuart

Application lodged:	12/03/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	16/03/2018 to 30/03/2018
Advertised:	Not Advertised
Submissions Received:	0
Recommendation:	Approval

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

There are no assessment issues.

SITE DESCRIPTION

Property Description:	Lot 1 DP 1203970 , 190 Barrenjoey Road NEWPORT NSW 2106
Detailed Site Description:	<p>The subject site is generally rectangular in shape and is located on the low eastern side of the road with an easterly aspect. The upper front boundary of the property is on the crest of a hill and the lot extends over the eastern slope which falls at an average of 7°. Fill, up to 3.0m, has been provided within the middle of the site to provide a level building platform for the existing two (2) storey dwelling house and recently constructed swimming pool. The fill merges into the natural slope that falls to the rear of the site where it meets the escarpment with average 50° downward slopes.</p> <p>Landscaping comprises retained garden areas with medium size canopy trees and shrubs. The rear of site comprises dense vegetation adjacent to the escarpment.</p> <p>From the rear boundary of the subject site, Bungan beach is located approximately 50m to the east. The subject site is zoned E4 Environmental Living and Land Zoning Map - E2 Environmental Conservation, identified as being affected by landslip and located within a Coastal Bluff Management Area. Adjoining and surrounding development is characterised by a mixture of modern and traditional style two storey dwelling houses in landscaped settings.</p>

Map:



SITE HISTORY

Development Consent N0106/12 for Landscaping works including a viewing deck and spa was granted 17 December 2012.

PROPOSED DEVELOPMENT IN DETAIL

Section 96 (1A) Modification of Development Consent N0106/12 seeks minor modifications to the approved landscaping works, retaining and planter walls, finished grass lawn levels and deck areas as a consequence of the location of the sewer main.

Changes to three retaining walls are also proposed, including modifications to excavation depths, cut and fill and height. These changes are to provide the level areas for the modification works.

The approved spa, spillover catchment pond and associated retaining walls at the northern end of the existing pool are proposed to be deleted and replaced with soft landscaping. The deck located around the existing sewer manhole is proposed to be raised by 360mm from R.L. 36.40 to R.L. 36.76 to provide the required vertical clearance set by Sydney Water.

All changes are shown on and denoted in red on the Site Plan Sheet 1 of 3 (Issue B) prepared by Paul Scrivener Landscape Architect dated 2.3.18.

In consideration of the application a review of (but not limited) documents as provided by the applicant in support of the application was taken into account detail provided within Attachment C.

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 N0106/12, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.15(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15(1A) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	Yes The modification, as proposed in this application, is considered to be of minimal environmental impact.
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under N0106/12.
(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 2000, Pittwater Local Environment Plan 2011 and Pittwater Development Control 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 an modification application made under Section 4.55 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development

the subject of the application.

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
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 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No Additional information was requested.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p>

Section 4.15 'Matters for Consideration'	Comments
	Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.
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 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Public Exhibition” 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.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

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

MEDIATION

No requests for mediation have been made in relation to this application.

REFERRALS

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	Council's Bushland and Biodiversity section raise no objection to the modification, subject to original conditions for Development Application N0106/12.

Internal Referral Body	Comments
	<p>Council's Bushland and Biodiversity section has assessed the development application against the following Pittwater 21 DCP 2014 Controls:</p> <p>B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor Outcomes: Conservation, enhancement and/or creation of habitats for locally native flora and fauna to ensure the long-term viability of locally native flora and fauna and their habitats.</p> <p>The development application complies with this control.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

All, Environmental Planning Instruments (SEPPs, REPs 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, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

Nil

Pittwater Local Environmental Plan 2014

Is the development permissible?	Zone E2 : Yes Zone E4 : Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Zone E2 : Yes Zone E4 : Yes

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies

Height of Buildings:	8.5m	series of retained lawn and small deck areas Height of deck from NGL to top of balustrade is 7m	no change	N/A	Yes
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Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
7.7 Geotechnical hazards	Yes

Pittwater 21 Development Control Plan - 2014

Built Form Controls

No change to the approved built form controls with exception of a small increase in landscaped area due to the removal of a small section of an approved deck adjacent to the location of a sewer man hole.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A4.10 Newport Locality	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.4 Coastline (Bluff) Hazard	Yes	Yes
B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
D10.18 Scenic Protection Category One Areas	Yes	Yes

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly effect 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

Pittwater Section 94 Development Contributions Plan

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 2000;
- 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. Mod2018/0117 for Modification of consent N0106/12 for landscaping works including a viewing deck and spa on land at Lot 1 DP 1203970, 190 Barrenjoey Road, NEWPORT, subject to the conditions printed below:

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

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Issue B, Sheet 1 of 3, 2-of 3 & 3 of 3	2.3.18	Paul Scrivener

S96-0.0, S96-3.1 & S96-3.2	01-03/17	GV Architecture
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Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Risk Management Report (letter)	2 March 2018	Jack Hodgson Consultants

b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans. (DACPLB01)

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

Signed




Kevin Short, Planner

The application is determined under the delegated authority of:



Matthew Edmonds, Manager Development Assessments





















ATTACHMENT A

Notification Plan	Title	Date
 2018/170716	Plans - Notification	13/03/2018

ATTACHMENT B

No notification map.

ATTACHMENT C

Reference Number	Document	Date
 2018/170634	Report - Current CC	06/03/2018
 2018/170635	Report - Geotechnical Letter	06/03/2018
 2018/170636	Report - Pegout-service protection	07/03/2018
 2018/170643	Plans - External	07/03/2018
 2018/170644	Plans - Master Set	07/03/2018
 2018/170638	Report - Statement of Modification	07/03/2018
 MOD2018/0117	190 Barrenjoey Road NEWPORT NSW 2106 - Section 96 Modifications - Section 96 (1a) Minor Environmental Impact	12/03/2018
 2018/169860	DA Acknowledgement Letter - Brooke William Stuart	13/03/2018
 2018/170645	Plans - Survey	13/03/2018
 2018/170640	Fee Form	13/03/2018
 2018/170641	Applicants Details	13/03/2018
 2018/170642	Development Application Form	13/03/2018
 2018/170716	Plans - Notification	13/03/2018
 2018/174210	DA Acknowledgement Letter (not integrated) - Brooke William Stuart	14/03/2018
 2018/174371	Notification Letter - DA	14/03/2018
 2018/182447	Aboriginal Heritage Referral Response	19/03/2018
 2018/185946	AHO Advice	20/03/2018
 2018/186400	Aboriginal Heritage Referral Response - Revised	20/03/2018
 2018/247272	Natural Environment Referral Response - Biodiversity	19/04/2018
 2018/249224	Stamped Plans	20/04/2018