

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2017/0351
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<b>Responsible Officer:</b>	Nick Armstrong
<b>Land to be developed (Address):</b>	Lot 10 DP 12435, 25 Kevin Avenue AVALON BEACH NSW 2107
<b>Proposed Development:</b>	Modification of Development Consent N0115/16 granted for the construction of new secondary dwelling
<b>Zoning:</b>	R2 Low Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	David William Hancock Sonja Adrian Hancock
<b>Applicant:</b>	David William Hancock Sonja Adrian Hancock

<b>Application lodged:</b>	27/12/2017
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - New second occupancy
<b>Notified:</b>	15/01/2018 to 29/01/2018
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Recommendation:</b>	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

Pittwater 21 Development Control Plan - 2014 - C1.5 Visual Privacy

Pittwater 21 Development Control Plan - 2014 - D1.13 Landscaped Area - General

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 10 DP 12435 , 25 Kevin Avenue AVALON BEACH NSW 2107
<b>Detailed Site Description:</b>	The site is known and 25 Kevin Avenue, Avalon Beach and legally referred to as Lot 10 in DP 12435. The site is rectangular in shape and the total area of the site is 1393m <sup>2</sup> with a frontage of 18.29m, facing the southwestern side of Kevin Avenue. The site contains a 1 and 2 storey brick and weatherboard house that is located towards the rear with a pool and garage located centrally. Adjoining the site are similar low density residential dwellings. The slope of the site is 12.5% and falls from the rear boundary to the road frontage.

Map:



## SITE HISTORY

The land has been used for residential purposes for an extended period of time. A search of Council's

records has revealed the following relevant history:

**Application History**

20/06/2016

Development Application N0115/16 for the construction of a secondary dwelling was granted approval.

**PROPOSED DEVELOPMENT IN DETAIL**

The application seeks to modify the consent for the approved secondary dwelling in the following ways:

- Alteration of the roof design from hipped to skillion;
- Addition of window W9 to northern elevation;
- Extension of existing decking;
- Alteration of window style along southern and eastern elevations; and
- Deletion of window and door along western elevation.

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 N0115/16, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 96(2) of the Environmental Planning and Assessment Act, 1979, are:

Section 96(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

Section 96(2) - Other Modifications	Comments
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 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 N0115/16.
(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 N0115/16 did not require concurrence from the relevant Minister, public authority or approval body.
(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 2014 and Pittwater 21 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 79C Assessment

In accordance with Section 96(3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 96 the consent authority must take into consideration such of the matters referred to in section 79C(1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 79C of the Environmental Planning and Assessment Act, 1979, are:

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 79C (1) (a)(ii) – Provisions of any draft environmental planning	None applicable.

Section 79C 'Matters for Consideration'	Comments
instrument	
Section 79C (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 79C (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 79C (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;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&amp;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&amp;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&amp;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&amp;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&amp;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&amp;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> <p><u>Clause 143A</u> of the EP&amp;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.</p>
Section 79C (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and	(i) The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report. (ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.

Section 79C 'Matters for Consideration'	Comments
economic impacts in the locality	(iii) The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 79C (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Public Exhibition” in this report.
Section 79C (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
Building Assessment - Fire and Disability upgrades	The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.  <i>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</i>
Landscape Officer	Supported subject to conditions.
NECC (Development Engineering)	The proposed modification does not impact upon the original assessment of the application by Development Engineering. No objection to approval with no additional or modified conditions of approval recommended.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	No concerns.

## 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)

#### SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 710120S\_04, dated 13/11/2017).

The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	40	47

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

#### 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:	8.5m	5.4m	5.32m	N/A	Yes

#### Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes

Clause	Compliance with Requirements
5.4 Controls relating to miscellaneous permissible uses	Yes

### Pittwater 21 Development Control Plan - 2014

#### Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
Front building line	6.5m	9.5m	Unaltered	Yes
Rear building line	6.5m	N/A	Unaltered	Yes
Side building line	2.5m	8m	Unaltered	Yes
	1m	1.35m	Unaltered	Yes
Building envelope	3.5m	Within Envelope	Unaltered	Yes
	3.5m	Within Envelope	Unaltered	Yes
Landscaped area	50%	51.1%	49.7%	No

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.1 Avalon Beach Locality	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.11 Secondary Dwellings and Rural Worker's Dwellings	Yes	Yes
D1.1 Character as viewed from a public place	Yes	Yes
D1.13 Landscaped Area - General	No	Yes

#### Detailed Assessment

##### C1.5 Visual Privacy

The proposed window additions/alterations do not impact upon the existing visual privacy arrangement.

##### D1.13 Landscaped Area - General

The proposed increase to the existing secondary dwelling decking creates a minor landscaped area non-compliance of 0.3% below the minimum 50% requirement. This minimal breach is considered acceptable on merit as the development complies with all other aspects of Council's built form controls and does not contribute to a residential amenity impact to the neighbouring properties.

#### 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. Mod2017/0351 for Modification of Development Consent N0115/16 granted for the construction of new secondary dwelling on land at Lot 10 DP 12435,25 Kevin Avenue, AVALON BEACH, subject to the conditions printed below:

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

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
001, 002, 003, 004, 005, 006, All Revision A	04/04/2017	Multidwell

<b>Reports / Documentation – All recommendations and requirements contained within:</b>		

Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate 710120S_04	13/11/2017	N/A
Arboricultural Impact Assessment Report, 25 Kevin Avenue	06/12/2017	Naturally Trees

**Add Conditions:**

**B13.**

- a) A Project Arborist with minimum qualification equivalent to AQF Level 5 is to be appointed prior to commencement of works.***
- b) The Project Arborist is to oversee all tree protection measures for the existing trees identified in the Arboricultural Impact Statement prepared by Naturally Trees, dated 6 December 2017, including T1 to T6 inclusive.***
- c) The Project Arborist is to familiarise themselves with and ensure compliance with any other tree and environmental requirements conditioned under this consent.***
- d) All ground works in the vicinity of the existing trees shall be conducted under the supervision of the Project Arborist, to comply with section 4 - Arboricultural Method Statement, and Appendix 7.***
- e) all tree protection shall be in accordance with the recommendations provided within the approved Arboricultural Impact Assessment report (as applicable) and AS4970-2009 Protection of Trees on Development Sites, with particular reference to Section 4***
- f) tree pruning to enable construction shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2009 Pruning of Amenity Trees***
- g) all tree protection measures, including fencing, are to be in place prior to the commencement***
- h) to minimise the impact on trees and vegetation to be retained and protected, no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained.***
- i) no tree roots greater than 50mm diameter are to be cut from protected trees unless authorized by a qualified Arborist on site***
- j) all structures are to bridge tree roots greater than 50mm diameter unless directed a qualified Arborist on site***
- k) should either or both i) and j) occur during site establishment and construction works, details shall be submitted by the Arborist to the Certifying Authority.***

*Reason: To ensure compliance with the requirement to retain and protect significant planting on development sites, and protect the existing environmental amenity, and satisfy C1.1.*

**B14.**

***Documentary evidence including photographic material shall be submitted by the Project Arborist to the Certifying Authority that the proposed works have not impacted on the health of the existing trees.***

*Reason: To ensure compliance with the requirement to retain and protect significant planting on development sites, and protect the existing environmental amenity.*

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

**Signed**




**Nick Armstrong, Planner**

The application is determined under the delegated authority of:



**Matthew Edmonds, Manager Development Assessments**

























## ATTACHMENT A

Notification Plan	Title	Date
 2018/020085	Plan - Notification	11/12/2017

## ATTACHMENT B

No notification map.

## ATTACHMENT C

Reference Number	Document	Date
 2018/020092	Report - BASIX Certificate	22/11/2017
 2018/020084	Owner's Consent	22/11/2017
 2018/020088	Plans - Master Set	22/11/2017
 2018/020090	Plans - Survey	24/11/2017
 2018/020091	Report - Arborist	07/12/2017
 2018/020086	Plans - External	08/12/2017
 2018/020087	Plans - Internal	08/12/2017
 2018/020093	Report - S96 Statement of Environmental Effects	11/12/2017
 2018/020085	Plan - Notification	11/12/2017
 MOD2017/0351	25 Kevin Avenue AVALON BEACH NSW 2107 - Section 96 Modifications - Section 96 (2) Environmental Impact	27/12/2017
 2018/020057	DELETE	08/01/2018
 2018/020058	DA Acknowledgement Letter - Sonja Adrian Hancock - David William Hancock	08/01/2018
 2018/020082	Development Application Form	08/01/2018
 2018/020083	Fee Form	08/01/2018
 2018/020080	Applicant Details	08/01/2018
 2018/020081	DA Checklist Complete	08/01/2018
 2018/024277	Building Assessment - Fire and Disability upgrades - Assessment Referral - Mod2017/0351 - 25 Kevin Avenue AVALON BEACH NSW 2107	08/01/2018
 2018/035327	DA Acknowledgement Letter (not integrated) - Sonja Adrian Hancock - David William Hancock	10/01/2018
 2018/035409	Notification Letter - Mod	10/01/2018
 2018/035815	Referral - External - Ausgrid: (SEPP Infra)	10/01/2018
 2018/063189	Building Assessment Referral Response	17/01/2018
 2018/112435	Development Engineering Referral Response	13/02/2018
 2018/182711	Landscape Referral Response	19/03/2018
 2018/230424	Stamped Plans	11/04/2018