

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2020/0325
----------------------------	--------------

Responsible Officer:	Gareth David
Land to be developed (Address):	Lot 171 DP 16902, 51 Plateau Road AVALON BEACH NSW 2107
Proposed Development:	Modification of Development Consent DA2019/0364 granted for alterations and additions to a dwelling house
Zoning:	E4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Ashley Kevin Joyce
Applicant:	Ashley Kevin Joyce

Application Lodged:	22/07/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	31/07/2020 to 14/08/2020
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks to modify Development Application No DA2019/0364 by:

- Excavating the northern side of the approved rumpus room to allow for the introduction of a small bathroom and wet bar.

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 - 5.10 Heritage conservation

Pittwater Local Environmental Plan 2014 - 7.2 Earthworks

Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection

Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards

Pittwater 21 Development Control Plan - B6.1 Access driveways and Works on the Public Road Reserve

Pittwater 21 Development Control Plan - B8.3 Construction and Demolition - Waste Minimisation

Pittwater 21 Development Control Plan - B8.6 Construction and Demolition - Traffic Management Plan

Pittwater 21 Development Control Plan - C1.1 Landscaping

Pittwater 21 Development Control Plan - C1.14 Separately Accessible Structures

Pittwater 21 Development Control Plan - D3.1 Character as viewed from a public place

Pittwater 21 Development Control Plan - D3.6 Front building line

Pittwater 21 Development Control Plan - D3.15 Scenic Protection Category One Areas

SITE DESCRIPTION

Property Description:	Lot 171 DP 16902 , 51 Plateau Road AVALON BEACH NSW 2107
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the southern side of Plateau Road.</p> <p>The site is regular in shape with a frontage of 15.24m along Plateau Rd and a depth of 42.67m. The site has a surveyed area of 650.3m².</p> <p>The site is located within the E4 Environmental Living zone and accommodates a two storey dwelling house with attached carport.</p> <p>The site slopes steeply from front (north) to rear (south) with stormwater from roof areas currently dispersed within the site.</p> <p>The site is heavily vegetated.</p>

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by detached dwellings on sloping sites in landscaped settings.

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:

- **DA2019/0364** (Subject of this modification) - Alterations and additions to a dwelling house - Approved 12/07/2019

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 DA2019/0364, in full, with amendments detailed and assessed as follows:

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

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	<p>The 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 DA2019/0364 for the following reasons:</p> <p>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 <i>Moto Projects (No 2) Pty Ltd v North Sydney Council</i> (1999) 106 LGERA 289 where His Honours states:</p> <p><i>"[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.</i></p> <p><i>[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.</i></p> <p><i>[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)."</i></p> <p>The applicant has provided the following justification to support their argument that the modifications are</p>

Section 4.55 (2) - Other Modifications	Comments
	<p>substantially the same:</p> <ul style="list-style-type: none"> • The works seek to provide for minor additional excavation to the rumpus room level below the approved double carport, to allow for the inclusion of a bathroom and wet bar, to be used in conjunction with the rumpus room. As the works are largely below existing ground level, and are located within the approved building footprint, the proposed scale and form of the development is generally unchanged • When viewed from the public domain or from the neighbouring properties, the development will largely present the same visual impact and appearance to that originally approved. • The works will continue to provide for a "Alterations and additions to a dwelling house" in a location and in a form which is consistent with the consent. • The works will have minimal impact to adjoining neighbours in terms of view loss or privacy. <p>Reviewing the above comments and the court judgement by Justice Bignold established in the <i>Moto Projects (No 2) Pty Ltd v North Sydney Council (1999) 106 LGERA 289</i> it is concurred that the proposed modification is consistent with the (original) consent and can be considered under Section 4.55 of the Act.</p>
(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 DA2019/0364 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,	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Pittwater Local Environmental Plan 2014 and Pittwater 21

Section 4.55 (2) - Other Modifications	Comments
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	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.	See discussion on "Notification & Submissions Received" in this report.

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 96 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	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
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)(iia) – 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)	<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. <u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building

Section 4.15 'Matters for Consideration'	Comments
	<p>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 allow Council to request additional information. No additional information was requested in this case.</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 matter has been addressed via a condition in the original consent.</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> <p><u>Clause 143A</u> 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.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

A Bush Fire Report was submitted with the original application (prepared by Sydney Bushfire Consultants, dated 21 March 2019). The report stated that the bushfire attack level of the site is "Flame Zone" and the report recommended an alternative solution to comply with Planning for Bush Fire Protection. A letter has been provided with this modification application (prepared by Sydney Bushfire Consultants, dated 29 June 2020) stating that the parameters of the original bushfire assessment remain unchanged, and as such the recommendations and requirements of the original bushfire assessment (and subsequent DA Conditions of Consent) remain relevant and current.

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

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 31/07/2020 to 14/08/2020 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 process council is in receipt of 1 submission/s from:

Name:	Address:
Mr Malcolm Stuart Graham	53 Plateau Road AVALON BEACH NSW 2107

The following issues were raised in the submissions and each have been addressed below:

- Impacts of additional excavation on neighbouring property
- Impact on surrounding trees

The matters raised within the submissions are addressed as follows:

- Impacts of additional excavation on neighbouring property

Comment:

Concern has been raised by the adjoining neighbour to the west regarding the potential impact of the additional excavation on the adjoining rock shelf which traverses the boundary of No.51 and No.53. The application has been supported by a Geotechnical report which certifies that an acceptable risk is achievable for the proposed changes and that the proposed works do not

impact recommendations of the original Geotechnical report. The proposal has also been reviewed by Council's Engineer's who have raised no objection to the proposal. Furthermore, conditions have been imposed on the original consent (which will remain as part of any modification consent) which: Incorporate Geotechnical Report recommendations into structural plans; Ensure structural adequacy of proposed excavation work; Ensure the shoring of the adjoining property; Ensure retaining wall design is prepared and certified by a qualified Structural Engineer.

In addition, Council has imposed conditions as part of this consent ensuring that all rock outcrops outside of the area of approved works are to be preserved and protected at all times during demolition excavation and construction works.

Subject to compliance with these imposed conditions, the proposal is considered acceptable in this instance.

- Impact on surrounding trees

Comment:

Concern has been raised by the adjoining neighbour to the west regarding the potential impact of the additional excavation on surrounding trees. The proposal has been reviewed by Council's Landscape Officer and Bushland & Biodiversity who have raised no objection to the proposal subject to recommended conditions. Furthermore, conditions have been imposed on the original consent (which will remain as part of any modification consent) which: Ensure all works within 5 metres of the existing trees to be retained to be carried under the supervision of an experienced and minimally AQF Level 5 qualified Arborist; Ensure Hand digging when working in the Tree Protection Zone.

In addition, Council has imposed additional conditions as part of this consent ensuring the protection of all surrounding trees.

Subject to compliance with these conditions, proposal is considered acceptable in this instance.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The modification proposal includes changes to the extent of the rumpus room under the approved carport, requiring additional excavation near the existing Phoenix Palm and to a lesser extent the existing Gum. Exposed rock ledges not impacted by excavation shall be preserved to the line of such excavation.</p> <p>Conditions of consent shall be imposed to ensure the protection of the existing vegetation in close proximity to the modification works.</p>
NECC (Bushland and Biodiversity)	The proposed modification will not result in a significant impact to the local environment. The previous assessment and consent conditions are to apply.
NECC (Development)	The submitted Geotechnical report certifies that an acceptable risk is

Internal Referral Body	Comments
Engineering)	achievable for the proposed changes. No objection to approval, subject to conditions
Parks, reserves, beaches, foreshore	The modification proposal includes changes to the extent of the rumpus room under the approved carport. The site adjoins Hewitt Park and Hamilton Reserve located downslope, and no additional conditions of consent over and above the Parks conditions under DA2019/0364 are required.

External Referral Body	Comments
NSW Rural Fire Service – local branch (s4.14 EPAA)	The proposal was referred to the RFS, who have raised no objections to the development subject to compliance with the recommended conditions.

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 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 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 Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No.A344290_03 dated 12 July 2020).

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

SEPP (Infrastructure) 2007

Ausgrid

Clause 45 of the SEPP 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. 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.

SEPP (Coastal Management) 2018

The site is subject to SEPP Coastal Management (2018). Accordingly, an assessment under the SEPP has been carried out as follows:

11 Development on land in proximity to coastal wetlands or littoral rainforest

- (1) *Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:*
- (a) *the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or*
 - (b) *the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.*

Comment:

The proposal will not impact upon the matters identified by this clause.

13 Development on land within the coastal environment area

- (1) *Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:*
- (a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
 - (b) *coastal environmental values and natural coastal processes,*

- (c) *the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
- (d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
- (e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
- (f) *Aboriginal cultural heritage, practices and places,*
- (g) *the use of the surf zone.*

Comment:

The proposed works are not likely to cause an adverse impact upon the matters identified in this clause. The proposed works do not discourage public access or amenity along the foreshore area nor impact on natural foreshore processes.

- (2) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*
 - (a) *the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or*
 - (b) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
 - (c) *if that impact cannot be minimised—the development will be managed to mitigate that impact.*

Comment:

Council is satisfied the proposed works are designed, and can be managed, to avoid adverse impacts based upon the matters identified in this clause.

14 Development on land within the coastal use area

- (1)
 - (a) has considered whether the proposed development is likely to cause an adverse impact on the following:
 - (i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
 - (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
 - (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,
 - (iv) Aboriginal cultural heritage, practices and places,
 - (v) cultural and built environment heritage, and
 - (b) is satisfied that:
 - (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or
 - (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and
 - (c) has taken into account the surrounding coastal and built environment, and the bulk,

scale and size of the proposed development.

Comment:

The proposed development is not likely to cause an impact on the existing access along the foreshore for members of the public, including persons with a disability and will not cause any overshadowing, wind tunnelling or unreasonable impact on the loss of views from public places to foreshores. The visual amenity and scenic qualities of the coast, including the coastal headlands will be preserved. The proposed development will also not have an adverse impact on the cultural and built environment heritage.

It is considered that the proposed development has satisfied the requirement to be designed, sited and will be managed to avoid an adverse impact to the aforementioned cultural and environmental aspects. Furthermore, the proposed development is considered to be of an acceptable bulk, scale and size that is generally compatible with the surrounding coastal and built environment, which consist of low-density residential dwellings.

The proposed works are not likely to cause an adverse impact upon the matters identified in this clause. A condition of consent has been placed on the original consent to stop works and report the findings to the AHO if any Aboriginal Engravings or Relics are unearthed.

15 Development in coastal zone generally—development not to increase risk of coastal hazards

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

Comment:

Council is satisfied that the proposed development is unlikely to cause increased risk of coastal hazards on the subject land or other land.

As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

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:	8.0m	5.9m	5.9m (No Change)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
--------	------------------------------

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

5.10 Heritage conservation

The site is not identified as being of heritage significance, however it is within the vicinity of a number of heritage items. These include a grove of Cabbage Tree Palms to the rear (Item No. 2270031), Walter Burley Griffin Lodge, Stella James House and the reserve on the northern side of Plateau Road (Item No. 2270124), and sandstone kerb and gutter along Palmgrove Road (Item No. 2270460).

The proposed modification works would not be readily visible from the street and will have no impact on the heritage significance of these items.

7.2 Earthworks

The objective of Clause 6.2 - 'Earthworks' requires development to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

In this regard, before granting development consent for earthworks, Council must consider the following matters:

(a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality of the development

Comment: The proposal is unlikely to unreasonably disrupt existing drainage patterns and soil stability in the locality.

(b) the effect of the proposed development on the likely future use or redevelopment of the land

Comment: The proposal will not unreasonably limit the likely future use or redevelopment of the land.

(c) the quality of the fill or the soil to be excavated, or both

Comment: The excavated material will be processed according to the Waste Management Plan for the development submitted with the original application.

(d) the effect of the proposed development on the existing and likely amenity of adjoining properties

Comment: The proposed earthworks will not result in unreasonable amenity impacts on adjoining properties. Conditions have been included in the recommendation of this report and within the original

consent to limit impacts during excavation/construction. The proposal has also been supported by a Geotechnical Report

(e) the source of any fill material and the destination of any excavated material

Comment: The excavated material will be processed according to the Waste Management Plan for the development submitted with the original application.

(f) the likelihood of disturbing relics

Comment: The original development was referred to the Aboriginal Heritage Office who provided comments and conditions that have been included in the original consent.

(g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area

Comment: The site is not located in the vicinity of any watercourse, drinking water catchment or environmentally sensitive areas.

(h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

Comment: Conditions are included in the recommendation of this report and the original consent that will minimise the impacts of the development.

(i) the proximity to and potential for adverse impacts on any heritage item, archaeological site or heritage conservation area.

Comment: The proposed earth works will not result in an adverse impact on surrounding heritage items as the works would not be visible from the public domain.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of PLEP 2014, Pittwater 21 DCP and the objectives specified in s.5(a)(i) and (ii) 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

Before determining a development application for development on land to which this clause applies, this clause requires the consent authority to consider:

(a) whether the development is likely to have:

- (i) any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and*
- (ii) any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and*
- (iii) any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and*
- (iv) any adverse impact on the habitat elements providing connectivity on the land, and*

Comment:

The development has been assessed by Council's Biodiversity Team, who raised no objections to approval. Therefore, Council can be satisfied that the development will not have any adverse impact on

the condition, ecological value and significance of the fauna and flora on the land; the importance of the vegetation on the land to the habitat and survival of native fauna; or the habitat elements providing connectivity on the land. Council is also satisfied that the development will not unreasonably fragment, disturb, or diminish the biodiversity structure, function, or composition of the land.

(b) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

Comment:

The development has been assessed by Council's Biodiversity Team, who raised no objections to approval. Therefore, Council can be satisfied that the proposal includes appropriate measures to avoid, minimise, or mitigate the impacts of the development.

Before granting development consent, this clause also requires the consent authority to be satisfied that:

(a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or

(b) if that impact cannot be reasonably avoided by adopting feasible alternatives—the development is designed, sited and will be managed to minimise that impact, or

(c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment:

The development has been assessed by Council's Biodiversity Team, who raised no objections to approval. Therefore, Council can be satisfied that the development is designed, sited and will be managed to any significant adverse environmental impact.

7.7 Geotechnical hazards

Under Clause 7.7 Geotechnical Hazards, before determining a development application for development on land to which this clause applies, the consent authority must consider the following matters to decide whether or not the development takes into account all geotechnical risks:

(a) site layout, including access,

(b) the development's design and construction methods,

(c) the amount of cut and fill that will be required for the development,

(d) waste water management, stormwater and drainage across the land,

(e) the geotechnical constraints of the site,

(f) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

Comment:

The proposed development is supported by a geotechnical risk assessment that demonstrate geotechnical risks have been taken into account and specifies that the modification works do not alter the recommendations or the risk assessment in the original report. The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent.

Development consent must not be granted to development on land to which this clause applies unless:

(a) the consent authority is satisfied that the development will appropriately manage waste water, stormwater and drainage across the land so as not to affect the rate, volume and quality of water leaving the land, and

Comment:

The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent.

(b) the consent authority is satisfied that:

(i) the development is designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development, or

(ii) if that risk or impact cannot be reasonably avoided - the development is designed, sited and will be managed to minimise that risk or impact, or

(iii) if that risk or impact cannot be minimised - the development will be managed to mitigate that risk or impact.

Comment:

The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent. As such, Council can be satisfied that the proposed development has been designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
Front building line	6.5m	Nil	Nil (unaltered) 1.2m (rumpus extension)	No
Rear building line	6.5m	N/A	unaltered	Yes
Side building line	2.5m (West)	2.64m	unaltered	Yes
	1m (East)	5.0m	unaltered	Yes
Building envelope	3.5m (East)	Within envelope	unaltered	Yes
	3.5m (West)	Within envelope	unaltered	Yes
Landscaped area	60%	74.4%	unaltered	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.3 Bilgola 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
B3.2 Bushfire Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.17 Littoral Rainforest - Endangered Ecological Community	Yes	Yes
B5.1 Water Management Plan	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B5.3 Greywater Reuse	Yes	Yes
B5.4 Stormwater Harvesting	Yes	Yes
B5.7 Stormwater Management - On-Site Stormwater Detention	Yes	Yes
B5.8 Stormwater Management - Water Quality - Low Density Residential	Yes	Yes
B5.10 Stormwater Discharge into Public Drainage System	Yes	Yes
B5.12 Stormwater Drainage Systems and Natural Watercourses	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.2 Construction and Demolition - Erosion and Sediment Management	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	No	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.14 Separately Accessible Structures	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D3.1 Character as viewed from a public place	No	Yes
D3.3 Building colours and materials	Yes	Yes
D3.6 Front building line	No	Yes
D3.7 Side and rear building line	Yes	Yes
D3.9 Building envelope	Yes	Yes
D3.11 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D3.13 Fences - Flora and Fauna Conservation Areas	Yes	Yes
D3.14 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D3.15 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

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

The proposed modifications do not seek to alter the access driveway approved within DA2019/0364.

B8.3 Construction and Demolition - Waste Minimisation

A detailed Waste Management Plan was not submitted with this application. Accordingly, a suitable condition has been included with this consent requiring the applicant to submit a detailed Waste Management Plan to the Certifying Authority prior to the issue of a Construction Certificate. Subject to compliance with the conditions of consent, the application will comply with the requirements of this control

B8.6 Construction and Demolition - Traffic Management Plan

A suitable condition was imposed under DA2019/0364 to ensure compliance with this control

C1.1 Landscaping

Council's Landscape Officer and NECC Bushland and Biodiversity divisions have reviewed the proposal and have raised no objection to the proposal subject to compliance with imposed conditions (within both the original consent and part of this modification) for the protection of surrounding trees and rock outcrops.

Refer to Council's Landscape Officer and NECC Bushland and Biodiversity division comments under the 'Referral' section of this report for further discussion.

Subject to compliance with recommended landscaping and tree planting conditions, the application is seen to meet the outcomes of this clause and is supported on merit.

C1.14 Separately Accessible Structures

In order to ensure compliance with this control, a condition is to be imposed prohibiting cooking facilities within the rumpus room to ensure the area is not used for the purposes of separate habitation or as a secondary dwelling.

D3.1 Character as viewed from a public place

Given the location of the proposed works, it is considered that the proposed modifications would not result in a change in the appearance or character of the development as viewed from a public place to that which was approved within DA2019/0364.

D3.6 Front building line

Description of non-compliance

The proposed development provides a 1.2m setback from the front boundary to the rumpus room

extension, which represents a variation of up to 74.5%.

It should be noted that given the slope of the site and the location of the approved carport, the extension would not be readily visible from the street or surrounding properties.

Merit Consideration

Further consideration of the non-compliance will be given in accordance with the outcomes of the control, as below.

- *Achieve the desired future character of the Locality.*

Comment

The proposed development achieves the desired future character of the Bilgola Locality.

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

Comment

Given the location of the rumpus room extension below the approved carport, the proposed modification would not impact upon views and vistas to and/or from public/private places.

- *The amenity of residential development adjoining a main road is maintained. (S)*

Comment

The subject site adjoins a local road, therefore this outcome is not applicable.

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

Comment

The proposed modification does not seek to remove any trees or vegetation further to that which was approved under DA2019/0364. Suitable conditions have been imposed on both this consent and the original consent ensuring the protection and maintenance of surrounding trees and environmental features.

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

Comment

Not applicable, no change is proposed to the approved parking arrangement

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

Comment

Given the location of the proposed works under the approved carport, it is considered that the proposed modifications would not result in a change in the appearance or character of the development as viewed from a public place to that which was approved within DA2019/0364.

- *To encourage attractive street frontages and improve pedestrian amenity.*

Comment

Given the location of the proposed works under the approved carport, it is considered that the proposed modifications would not result in a change in the appearance or character of the development as viewed from a public place to that which was approved within DA2019/0364.

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

Comment

The proposed development maintains an appropriate scale and relationship with the surrounding area.

Based on the above, the proposed development is consistent with the outcomes of the control and the non-compliance is supported on merit.

D3.15 Scenic Protection Category One Areas

Given the location of the proposed works, it is considered that the proposed modifications would not result in a change in the appearance or character of the development as viewed from a public place to that which was approved within DA2019/0364. The proposal does not seek to remove any additional trees further than what was approved within DA2019/0364. Suitable conditions have been imposed to ensure the protection of surrounding trees and natural features.

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 2019

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 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. Mod2020/0325 for Modification of Development Consent DA2019/0364 granted for alterations and additions to a dwelling house on land at Lot 171 DP 16902,51 Plateau Road, AVALON BEACH, 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
7 Rev C- Rumpus Room Plan	July 2020	Michael Airey
10 Rev C - Section A-A	July 2020	Michael Airey
11 Rev C - East Elevation	July 2020	Michael Airey
12 Rev C - West Elevation	July 2020	Michael Airey

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate (A344290_03)	12 July 2020	Michael Airey

c) Any plans and / or documentation submitted to satisfy the Deferred Commencement Conditions of this consent as approved in writing by Council.

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

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

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
NSW Rural Fire Service	NSW Rural Fire Service - Referral Response (CNR-10448)

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

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

C. Add Condition 32 - Protection of rock and sites of significance to read as follows:

All rock outcrops outside of the area of approved works are to be preserved and protected at all times during demolition excavation and construction works.

Should any Aboriginal sites be uncovered during the carrying out of works, those works are to cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council are to be contacted.

Reason: preservation of significant environmental features.

D. Add Condition 33 - Tree and vegetation protection to read as follows:

a) Existing trees and vegetation shall be retained and protected, including:

- i) all trees and vegetation within the site, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
- ii) all trees and vegetation located on adjoining properties,
- iii) all road reserve trees and vegetation not approved for removal.

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
- iv) 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,
- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v), vi) and vii) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the

Arborist to the Certifying Authority,

viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,

ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site

x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees.

xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Certifying Authority must ensure that:

c) The activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites, do not occur within the tree protection zone of any tree, and any temporary access to, or location of scaffolding within the tree protection zone of a protected tree, or any other tree to be retained on the site during the construction, is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

Note: All street trees within the road verge and trees within private property are protected under Northern Beaches Council development control plans, except where Council's written consent for removal has been obtained. The felling, lopping, topping, ringbarking, or removal of any tree(s) is prohibited.

Reason: tree and vegetation protection.

E. Add Condition 34 - Separately Accessible Structures to read as follows:

The provision of cooking facilities within the "rumpus room" are prohibited in order for the structure to not be used for the purposes of separate habitation or as a secondary dwelling.

Reason: To ensure the resultant development is carried out in accordance with the determination of Council and approved plans.

F. Add Condition 35 - Waste Management Plan to read as follows:

A Waste Management Plan must be prepared for this development. The Plan must be in accordance with the Development Control Plan.

Details demonstrating compliance must be provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure that any demolition and construction waste, including excavated material, is reused, recycled or disposed of in an environmentally friendly manner.

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

Signed



Gareth David, Planner

The application is determined on 19/10/2020, under the delegated authority of:



Steven Findlay, Manager Development Assessments