

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2019/0435
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Responsible Officer:	Thomas Burns
Land to be developed (Address):	Lot 41 DP 6746, 1100 Barrenjoey Road PALM BEACH NSW 2108
Proposed Development:	Modification of Development Consent DA2019/0783 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:	Prudence Abby Rydstrand
Applicant:	Kough Design Prudence Abby Rydstrand

Application Lodged:	09/09/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	19/09/2019 to 03/10/2019
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

Development Consent was granted on 28 August 2019 under DA2019/0783 for alterations and additions to a dwelling house.

This Section 4.55 (2) Modification has been submitted to make the following changes:

- Enclosing the approved timber deck on northern elevation of the approved first floor bedroom to increase the floor area of the bedroom;
- Raise the internal floor level of the approved bedroom on the first floor by 570mm and constructing a new internal stair and landing to access the bedroom;
- Constructing three (3) new skylights on the approved bedroom on the first floor;
- Constructing new external steps to access the approved bedroom on the first floor;
- Re-located the approved external door on the approved bedroom on the first floor;

- Construct a new window on the western elevation of the approved bedroom on the first floor; and
- Modify the approved sliding gate on the western front boundary to include vertical slats.

No trees would be impacted or removed by the proposed development.

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 - B8.2 Construction and Demolition - Erosion and Sediment Management

Pittwater 21 Development Control Plan - D12.3 Building colours and materials

Pittwater 21 Development Control Plan - D12.12 Fences - Flora and Fauna Conservation Areas

SITE DESCRIPTION

Property Description:	Lot 41 DP 6746 , 1100 Barrenjoey Road PALM BEACH NSW 2108
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the eastern side of Barrenjoey Road, Palm Beach.</p> <p>The site is regular in shape with a frontage of 20.115m along Barrenjoey Road and a depth of 60.96m. The site has a surveyed area of 1226sqm.</p> <p>The site is located in the E4 Environmental Living zone and accommodates a two storey detached dwelling house, with the ground floor containing split levels that are developed within the sloping site.</p>

The site experiences a fall of approximately 32m that slopes towards the western front boundary.

The site accommodates some significant vegetation and moderate sandstone boulders in the rear yard.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is largely characterised by one (1), two (2) and three (3) storey detached dwelling houses. The adjoining properties to the north of the subject site contain commercial developments.

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:

- Development Application DA2019/0783 for alterations and additions to a dwelling house approved by Council staff on 28 August 2019.

A site visit was undertaken on 20 September 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 DA2019/0783, 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 DA2019/0783.</p> <p>OR</p> <p>The development, as proposed, has been found to be such that Council is not satisfied that the proposed works are substantially the same as those already approved under DA2019/0783.</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 DA2019/0783 did not require concurrence from the relevant Minister, public authority or approval body.
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require,</p> <p>or</p> <p>(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</p>	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 Development Control Plan.

Section 4.55 (2) - Other Modifications	Comments
(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 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	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>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 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 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the	<p>(i) Environmental Impact</p> <p>The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development</p>

Section 4.15 'Matters for Consideration'	Comments
locality	Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	No submissions were received in relation to this application.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject 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.

REFERRALS

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)

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 revised BASIX Certificate has been submitted with the application (see Certificate No. A354082_02 dated 09 September 2019). 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 front portion of the site is mapped as being located within the 'Coastal Environment Area' and 'Coastal Use Area' under the provisions of the *State Environmental Planning Policy (Coastal Management) 2018* (CM SEPP). Accordingly, the proposed modifications are assessed against the requirements of Clause 13 and Clause 14 of the CM SEPP.

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.*

(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:

The proposed modifications are not likely to adversely impact any of the coastal attributes or qualities identified within the above clause, nor will they impact the provisions for access to the coastal area.

Clause 14 Development on land within the coastal use area

(1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:

- (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 modifications are not likely to impact the visual amenity of the coastal use area or give rise to any view loss impacts within the coastal use area. Furthermore, the proposed modifications are not likely to impact Aboriginal heritage, practices or places within the coastal use area.

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	6.13m	6.13m	Nil	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.3 Flood planning	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
Front building line	10m	Unchanged (West)	Unchanged (West)	N/A
Rear building line	6.5m	Unchanged (East)	Unchanged (East)	N/A

Side building line	2.5m	8.26m (North)	8.26m (North) - Unchanged	Yes
	1m	Unchanged (South)	Unchanged (South)	N/A
Building envelope	3.5m	Within envelope	Within envelope	Yes
	3.5m	Within envelope	Within envelope	Yes
Landscaped area	60% (735.6sqm)	73.95% (906.6sqm)	Unchanged	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach Locality	Yes	Yes
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes
B1.2 Heritage Conservation - Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.7 Estuarine Hazard - Low density residential	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor	Yes	Yes
B5.10 Stormwater Discharge into Public Drainage System	Yes	Yes
B5.12 Stormwater Drainage Systems and Natural Watercourses	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.2 Construction and Demolition - Erosion and Sediment Management	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.23 Eaves	Yes	Yes
D12.1 Character as viewed from a public place	Yes	Yes
D12.3 Building colours and materials	No	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D12.5 Front building line	Yes	Yes
D12.6 Side and rear building line	Yes	Yes
D12.8 Building envelope	Yes	Yes
D12.10 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D12.12 Fences - Flora and Fauna Conservation Areas	No	Yes
D12.14 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

B8.2 Construction and Demolition - Erosion and Sediment Management

Subject to compliance with the previously imposed condition under DA2019/0783 requiring sediment and erosion control measures to be installed and maintained throughout the course of the development, the proposal would meet the requirements of this Control.

D12.3 Building colours and materials

The Statement of Environmental Effects submitted with DA2019/0783 stipulated that the external colours and materials will be complimentary to the existing dwelling. The existing colours do not strictly meet the prescribed controls entailed within Clause D12.3 of the Pittwater 21 Development Control Plan. However, it is considered reasonable in this instance as the existing external colours and materials are seen to be in character with the surrounding developments.

D12.12 Fences - Flora and Fauna Conservation Areas

Subject to compliance with the previously imposed condition under DA2019/0783, the proposed sliding gate will satisfy the requirements of this Control.

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

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. Mod2019/0435 for Modification of Development Consent DA2019/0783 granted for alterations and additions to a dwelling house on land at Lot 41 DP 6746,1100 Barrenjoey Road, PALM BEACH, subject to the conditions printed below:

A. Added 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
4.55 - 2 - SITE PLAN - PROPOSED	05 June 2019	Kough Design
4.55 - 3 - SITE COVERAGE - EXISTING + PROPOSED	05 June 2019	Kough Design
4.55 - 4 - FIRST FLOOR PLAN - PROPOSED	05 June 2019	Kough Design

4.55 - 5 - ROOF PLAN	05 June 2019	Kough Design
4.55 - 7 - WEST ELEVATION - PROPOSED	05 June 2019	Kough Design
4.55 - 8 - NORTH ELEVATION - PROPOSED	05 June 2019	Kough Design
4.55 - 9 - PROPOSED STREET ELEVATION	05 June 2019	Kough Design
4.55 - 10 - PROPOSED SECTIONS	05 June 2019	Kough Design

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. A354082_02	09 September 2019	Nick Kough

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

Signed



Thomas Burns, Planner

The application is determined on 08/10/2019, under the delegated authority of:



Matthew Edmonds, Manager Development Assessments