

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2020/0342
----------------------------	--------------

<b>Responsible Officer:</b>	Catriona Shirley
<b>Land to be developed (Address):</b>	Lot 106 DP 752046, 43 Attunga Road NEWPORT NSW 2106
<b>Proposed Development:</b>	Modification of Development Consent N0478/17 granted for alterations and additions to a dwelling and construction of a new secondary dwelling
<b>Zoning:</b>	E4 Environmental Living SP2 Infrastructure
<b>Development Permissible:</b>	Yes - Zone SP2 Infrastructure Yes - Zone E4 Environmental Living
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Gary Allen Dianne Joan Allen
<b>Applicant:</b>	All About Planning Pty LTD

<b>Application Lodged:</b>	30/07/2020
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	17/08/2020 to 31/08/2020
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	1
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

### PROPOSED DEVELOPMENT IN DETAIL

The modification seeks the approve for the following:

- The deletion of condition C8 (in relation to the reduction in size of the primary dwelling approved level 2 rear deck);
- Increase in the size of the Level 2 deck from approximately 17sqm to 28sqm; and
- The extension of the approved 2.5m high privacy screen along the eastern edge of the Level 2 rear balcony.

## 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 - C1.5 Visual Privacy

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 106 DP 752046 , 43 Attunga Road NEWPORT NSW 2106
<b>Detailed Site Description:</b>	<p>The site is legally identified as Lot 106 in Deposited Plan 752046, and known as 43 Attunga Road Newport. The subject site has a split zoning of E4 Environmental Living and the SP2 zone, as mapped in the Pittwater Local Environment Plan 2014.</p> <p>The site is regular in shape and has a total site area of 709.9m<sup>2</sup>. The property has two street frontages to Attunga Road. The northern front boundary measures 15.2m, with eastern and western side boundaries of 46.195m and 47.25m respectively. The southern front boundary to Attunga Road measures 15.24m.</p> <p>The site has a steep fall from the northern front boundary to the southern front boundary of over 11m, with an approximate gradient of 23.9%.</p> <p>The subject site obtains expansive views of Newport Beach and coastal headlands over the southern front boundary.</p> <p>The site currently contains a three level dwelling house with</p>

an inground swimming pool and parking.

Surrounding sites consist of two and three level dwelling houses, of varying ages, within landscaped settings.

Map:



## SITE HISTORY

A search of Council's records has revealed the following relevant Development Applications:

- Development Application **N0478/17** for the alterations and additions to a dwelling and construction of a new secondary dwelling was approved by Council on the 12 April 2018.

## 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 N478/17, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55(1A) - Other Modifications	Comments
<p>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:</p>	
<p>(a) it is satisfied that the proposed modification is of minimal environmental impact, and</p>	<p><b>Yes</b> The modification, as proposed in this application, is considered to be of minimal environmental impact.</p>
<p>(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and</p>	<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 N487/17 for the following reasons:</p> <ul style="list-style-type: none"> <li>• The proposed works seek to amended the previously approved design for the existing dwelling which will provide improved amenity for the occupants through first floor improvements to the rear balcony .</li> <li>• The proposed works of the modification are of a scale and form which is generally consistent with the original approval.</li> <li>• When viewed from the public domain and from neighbouring properties, the development will largely present the same visual impact and appearance to that originally approved.</li> </ul>
<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>	<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 Environment Plan 2011 and Pittwater 21 Development Control Plan.</p>
<p>(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.</p>	<p>See discussion on “Notification &amp; Submissions Received” in this report.</p>

### Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	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)(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&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>Clauses 54 and 109</u> of the EP&amp;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&amp;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&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). 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 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</p>



Section 4.15 'Matters for Consideration'	Comments
	Australia (BCA). This matter has been addressed via a condition in the original consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> 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) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> 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 not classified as bush fire prone land.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 17/08/2020 to 31/08/2020 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:
Mrs Dale Josephson-Macdougal Dr Graeme Arthur Macdougal	45 Attunga Road NEWPORT NSW 2106

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

- **Height of the privacy screen**

- **Landscaping**
- **Visual amenity**
- **Overshadowing/Ventilation**

The matters raised within the submissions are addressed as follows:

**There is concern with the height of the additional length of privacy screen.**

Comment:

The objector has concern that the height of the privacy screen is 3m. The additional area of privacy screen (approximately 2m in length) is 2.5m in height and is consistent with the previously approved privacy screen along the eastern edge of the Level 2 balcony. As discussed within this report, there is an amendment to the balcony design with the addition of an architectural device (privacy screen) to address any unreasonable impacts associated with visual privacy between the proposed development and the neighbouring properties. The height of the privacy screen complies with the building envelope control as required by clause D10.11 Building Envelope of the Pittwater Development Control Plan and does not create unreasonable amenity impacts such as a visual obstruction of additional overshadowing.

The privacy screen height concerns are not concurred with and the matter does not warrant the refusal or further amendment of the application.

***There is concern with proposed landscaping along the eastern side setback.***

Comment:

There is no landscaping proposed as part of this modification. Consequently, this concern is not considered as part of the assessment. As a result, this matter does not warrant the refusal or further amendment of the application.

***Concern is raised that the additional 2m in length of privacy screen will create unreasonable visual impact to No. 45 Attunga Road.***

Comment:

The proposed privacy screen, matches the height and style of the privacy screen approved within the Development Application. The location of the privacy screen directly adjoins the eastern neighbours existing privacy screen. As a result, the visual impact is considered reasonable and the siting and location of the additional screen minimises the visual impact when viewed from the eastern neighbouring dwelling.

As a result, visual impact concerns are not concurred with and the matter does not warrant the refusal or further amendment of the application.

***The submission raises concern that the privacy screen will overshadow the neighbouring property and restrict/limit ventilation.***

Comment:

The applicant provided solar access plans with the Development Application. The shadow diagrams demonstrate the proposed building between 9am and 3pm on the 21 June. These shadow diagrams demonstrate the upper floor of the dwelling houses creating the solar impact to the eastern adjoining site which is most pronounced between 12am and 3am. As a result, the additional privacy screens do not create any additional overshadowing impact. The overall building design is consistent with the approach made by the NSW LEC under the Planning Principle in dealing with solar access and with clause C1.4 Solar Access of the Pittwater Development Control Plan.

With regards to ventilation, the additional balcony area and associated privacy screen provides more than the required side setbacks along the eastern side of the subject site such that it would not obstruct or

unreasonably prevent ventilation to the submitters property beyond what is currently available. The proposed amendments are consistent with surrounding residential building and, as such, will also not obstruct or unreasonably restrict ventilation to No.45 Attunga Road.

In summary, this issue has been considered in detail and does not warrant refusal of the application.

**REFERRALS**

No referrals were sent in relation to this application

**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 (Coastal Management) 2018**

The subject site is identified as being located within the Coastal Use Area under the provisions of SEPP (Coastal Management) 2018. Upon review of the modified application, Council can continue to be satisfied of the matters prescribed by clauses 13, 14 and 15 of this policy.

**Pittwater Local Environmental Plan 2014**

Is the development permissible?	Zone SP2: Yes Zone E4 : Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Zone SP2: Yes Zone E4 : Yes



Principal Development Standards

Development Standard	Requirement	Approved	Proposed	Complies
Height of Buildings:	8.5m Dwelling House 5.5m Secondary Dwelling	6.7m Secondary Storey Balcony 4.5m Secondary Dwelling	No change second storey balcony 5.2m Proposed privacy screen No change secondary dwelling	Yes

Compliance Assessment

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

**Pittwater 21 Development Control Plan**

Built Form Controls

No change to the previously approved built form controls under application N0478/17.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.10 Newport Locality	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	No	Yes
C1.6 Acoustic Privacy	Yes	Yes

Detailed Assessment

**C1.5 Visual Privacy**

Clause C1.5 requires private open space areas including swimming pools and living rooms of proposed and any existing adjoining dwellings to be protected from direct overlooking within 9.0m by building layout, landscaping, screening devices or greater spatial separation. Elevated decks and pools, verandahs and balconies should incorporate privacy screens where necessary and should be located at the front or rear of the building.

Concern was raised by the Development Assessment Officer of the original scheme in relation to the potential overlooking of from the Level 2 balcony to the large elevated private open space of adjoining site, No. 45 Attunga Road. It is worth noting that No.45 Attunga Road did not submit an objection to the original scheme, which included a balcony area that mimics what is proposed under the modification. However, as a result of the Development Assessment Officers concerns, a condition was imposed that reduced the size of the Level 2 balcony to reduce overlooking.

As part of this modification, privacy mitigation measures, being a privacy screen along the eastern edge of the Level 2 balcony, has been incorporated into the amended balcony design to mitigate the direct overlooking from the additional balcony area to the neighbouring private open space area.

Surrounding site have large private open space areas, such as decks, terraces and pools to take advantage of the expansive view lines to Newport Beach and the coastline. See photos below.



**Photo 1:** *Adjoining private open space area of No.45 Attunga Road.*



**Photo 2:** *Adjoining private open space of No. 41 Attunga Road.*



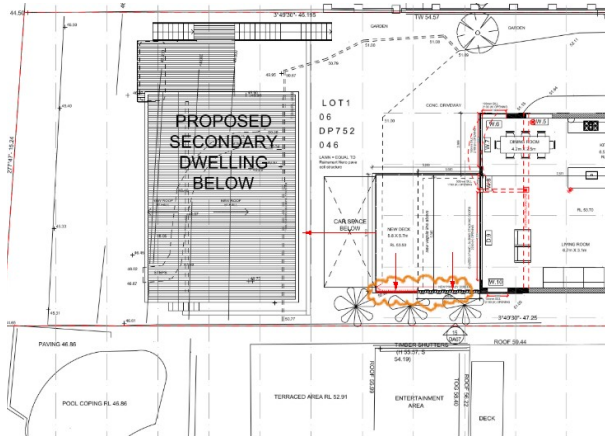
**Photo 3.** *The existing rear built form relationship of the subject site and the adjoining private open space areas (source All About Planning Statement of Modification).*

The amended design of Level 2 balcony is compliant with the required built form controls, does not protrude forward of the neighbouring balcony/terrace areas, is consistent with the surrounding sites and proposes a reasonable solution to prevent overlooking.

No privacy screening is required for the western edge of the amended Level 2 balcony as the adjoining

built form (No. 41 Attunga Road) is more than 9m in spatial distance.

Figure 1 below shows the relationship of the proposed balcony with the existing balcony at 45 Attunga Road. A person standing on the proposed balcony, with an eye height of 1.55m, would have obstructed sight lines into the principle private open space of No. 45 Attunga Road. The sight lines are shown above by red arrows.



**Figure 1:** Line of site from the subject site to the eastern neighbouring site (No. 45 Attunga Road) obstructed by the privacy screens.

The proposed privacy screen also mimics the location and design of the adjoining privacy screen of No. 45 Attunga Road as shown in photo 1 above.

The addition of a privacy screen along the eastern elevation of the balcony area is determined to satisfy the outcome of the control, with the proposed design changes minimising the potential privacy impacts. As a result, there are grounds to change the assessment and determination in relation to privacy impacts.

The development is considered against the underlying Objectives of the Control as follows:

- *To ensure the siting and design of buildings provides a high level of visual and acoustic privacy for occupants and neighbours.*

Comment:

As discussed above, the development includes a rear elevated balcony which will overlook the principal private open space area of the neighbouring property at No. 45 Attunga Road.

The balcony is designed to be used as an outdoor area in which to actively stand and/or sit. Therefore, it is considered that the proposed screening to be installed along the eastern side edge of the balcony to mitigate overlooking opportunity (and the perception of being overlooked) to the private open space area of No. 45 Attunga Road is reasonable.

- *To encourage innovative design solutions to improve the urban environment.*

Comment:

The amended development has provide privacy screening in order to reduce and minimise the overlooking of the the private open space area of No. 45 Attunga Road.

- *To provide personal and property security for occupants and visitors.*

Comment:

The development provides for the personal and property security for occupants and visitors.

As a result, the removal of condition C8 to enable a larger decking area, with a privacy screen would provide an acceptable solution to the privacy impacts that it creates. It would enable the retention of a high amenity outdoor area for the proposed development at No. 43 Attunga Street, whilst maintaining privacy for the neighbouring dwellings.

Having regard to the above assessment, it is concluded that the proposed development, is consistent with the relevant objectives of WLEP 2011/WDCP 2011 and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979.

Accordingly, this assessment finds that the amended proposal is supported in this particular circumstance.

### **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. Mod2020/0342 for Modification of Development Consent N0478/17 granted for alterations and additions to a dwelling and construction of a new secondary dwelling on land at Lot 106 DP 752046,43 Attunga Road, NEWPORT, subject to the conditions printed below:

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

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

a) Modification Approved Plans

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
North and East Elevation Rev C	July 2020	All About Planning
Level 2 Plans Rev C	July 2020	All About Planning

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

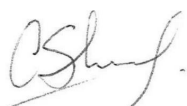
Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

**B. Delete Condition C8 to read as follows:**

DELETE

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

**Signed**



**Catriona Shirley, Planner**



The application is determined on 15/09/2020, under the delegated authority of:



**Rodney Piggott, Manager Development Assessments**