

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2018/0073
<b>Responsible Officer:</b>	Rebecca Englund
<b>Land to be developed (Address):</b>	Lot 6 DP 736961, 10 Fern Creek Road WARRIEWOOD NSW 2102
<b>Proposed Development:</b>	Modification of consent N0460/16 for the construction of a residential flat building comprising 13 dwellings on a yet to be created lot (Lot 21)
<b>Zoning:</b>	R3 Medium Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Pic 10 Warriewood Pty Ltd Paul Ivan Bezinovic
<b>Applicant:</b>	Skycorp Holdings Pty Ltd
<b>Application lodged:</b>	15/02/2018
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - New multi unit
<b>Notified:</b>	26/02/2018 to 28/03/2018
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Recommendation:</b>	Approval

### ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest

- groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

## SUMMARY OF ASSESSMENT ISSUES

Environmental Planning and Assessment Act 1979 - Section 4.56 - Environmental Planning and Assessment Act 1979 - Section 4.56 - with S79C Assessment  
Pittwater 21 Development Control Plan - 2014 - C6.2 Natural Environment and Landscaping Principles

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 6 DP 736961 , 10 Fern Creek Road WARRIEWOOD NSW 2102
<b>Detailed Site Description:</b>	<p>The Site is known as 10 Fern Creek Road and has a legal description of Lot 6 in Deposited Plan 736961. The Site is irregularly shaped, comprising a rectangular northern portion and a triangular southern portion, with a total area of 1.024ha. The western and south western portion of the site is directly adjacent to Fern Creek Road, a cul-de-sac accessed from the northern side of Orchard Street. Access to the site is currently provided via two existing vehicular crossovers along the site's western boundary. The site experiences a decrease in level of approximately 13 metres from south to north, with a slope of approximately 6.6%.</p> <p>The Site forms a part of Sector 901A, as identified on the Urban Release Area Map of Pittwater Local Environmental Plan 2014. The development subject of this Modification Application specifically relates to a yet to be created lot ("Lot 21"), approved pursuant to Development Application N0540/15 ("Subdivision Application"). Lot 21 is situated in the south-western corner of the Site, is irregular in shape, with frontages to both Fern Creek Road (south and west) and a yet to be constructed internal private road (north), and a total area of 949m<sup>2</sup>. Lot 21 is free of existing development, with significant canopy trees along the western property boundary. Lot 21 has a fall of approximately 2.5m from the upper southern corner of the Lot down towards the yet to be constructed internal private road, with a slope of approximately 7%.</p>

Map:



## SITE HISTORY

### Site History

On 15 December 2015, Development Application N0540/15 was lodged with Council, seeking consent for the Community Title Subdivision of the Site into 20 residential allotments and one community allotment.

On 1 March 2016, a Class 1 Appeal was lodged with the NSW LEC against the deemed refusal of N0540/15.

On 20 June 2016, a s34 agreement was reached between the parties, and Development Application N0540/15 was approved by the NSW LEC.

On 11 October 2016, Development Application N0460/16 was lodged with Council, seeking consent for the construction of a residential flat building on the yet to be created Lot 21.

On 23 January 2017, a Class 1 Appeal was lodged with the NSW LEC against the deemed refusal of N0460/16.

On 13 April 2017, a s34 agreement was reached between the parties, and Development Application N0460/16 was approved by the NSW LEC.

### Application History

On 15 February 2018, the subject Modification Application was lodged with Council.

On 4 April 2018, the Applicant was advised of issues that prevented the approval of the subject application, including:

- the absence of an arboricultural impact assessment report, despite additional works in the vicinity of trees nominated for retention, and

- inconsistencies in the plans provided.

On 13 April 2018, the Applicant provided additional information, including amended plans and an arborist report.

## PROPOSED DEVELOPMENT IN DETAIL

The Applicant seeks consent to modify the residential flat building approved pursuant to N0460/16, as follows:

- reduction and redesign of the storage area on the ground floor to provide for a diesel pump room and other services/mains,
- redesign of the internal stairwell and removal of a secondary access stairway, allowing for the redesign of minor basement areas and the enlargement of the balcony of Unit 1, and
- redesign of the Fern Creek Road pedestrian entrance way.

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

## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

## Section 96 Assessment

Section 96AA - Other Modifications	Comments
(1) 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	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 N0460/17. The modifications proposed are

Section 96AA - Other Modifications	Comments
originally granted and before that consent as originally granted was modified (if at all), and	minor in nature, and if approved, the resultant modified development will be essentially and materially the same as that which was originally approved.
(b) it has notified the application in accordance with:  (i) the regulations, if the regulations so require,  or  (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, and Pittwater 21 Development Control Plan.
(c) it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and	No submissions were received in relation to N0460/16.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	No submissions were received in relation to this application.

## Section 79C Assessment

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

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

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (a)(i) – Provisions of any environmental planning instrument	Pittwater Local Environmental Plan 2014 ("PLEP 2014") is applicable to this proposal. The subject modification does not alter the assessment undertaken in regards to N0460/16, and the proposal remains consistent with the objectives and requirements of the relevant provisions of PLEP 2014.



Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 79C (1) (a)(iii) – Provisions of any development control plan	<p>Pittwater 21 Development Control Plan ("P21 DCP") applies to this proposal.</p> <p>The subject modification does not alter the assessment undertaken in regards to N0460/16, and the proposal remains consistent with the objectives and requirements of the relevant provisions of P21 DCP.</p>
Section 79C (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 79C (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider Prescribed Conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation was submitted with the original application.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No Additional information was requested.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p>
Section 79C (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) The environmental impacts of the proposed development on the natural and built environment have been considered in accordance with the provisions of PLEP 2014 and P21 DCP.</p> <p>(ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) 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 79C (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	No submissions were received.
Section 79C (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## NOTIFICATION & SUBMISSIONS RECEIVED

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

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

## MEDIATION

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

## REFERRALS

Internal Referral Body	Comments	
Environmental Health (unsewered lands)	Was sufficient documentation provided appropriate for referral?	YES
	Are the reports undertaken by a suitably qualified consultant?	N/A
	Is there a proposed on site sewage management system or an impact to existing onsite sewage management system?	N/A
	For residential applications have you considered AS1547 and Environmental Health & Protection Guidelines?	N/A
	For commercial applications have you considered Guidelines for Management Private Recycled Water Schemes and applied the residential guidelines where applicable?	N/A
	Are separate land application areas provided for pool water, waste water from the premises and storm water?	N/A
	Is approval to install and approval to operate applicable? - if so, recommend the DAO refer commercial waste water systems to Department of Energy & Water.	N/A
	<b>General Comments</b>	
	The proposed changes to the DA should not effect sewerage management.	
	<b>Recommendation</b>	APPROVAL - no conditions
Comments completed by: James Montgomery		

Internal Referral Body	Comments
	<div data-bbox="520 320 1428 394" style="border: 1px solid black; padding: 5px;">Date: 26 February 2018</div>
Landscape Officer	The landscape component of the modification is acceptable subject to tree protection measures and the engagement and attendance of a Project Arborist for all excavation and construction works near existing trees along Fern Creek Road, identified as T19, T10, T18, T14, T12, and T11, that may be impacted by the modification works.
NECC (Bushland and Biodiversity)	<p>I've inspected this site today and confirmed that there are three trees within the vicinity of the works and one that is likely to be within 5m of the proposed pedestrian ramp. All the trees are <i>Corymbia citriodora</i>, which is locally native to coastal northern NSW and Queensland but not Sydney.</p> <p>I think we would be hard pressed to argue that impact to trees that are either planted or naturalised would have a substantial impact on biodiversity of the site, so my assessment would probably just include a condition for all the arborist recommendations to be implemented as per the report.</p> <p>Impact to those trees would however have a substantial landscape character/amenity impact so I think it would be a good idea to get Joe Tramonte to assess it against the C6.2 landscaping clause.</p> <p>It's also apparent to me that the submitted arborist report does not deliver what was requested in the withdrawal letter (i.e. certification from an appropriately qualified arborist that the works will not compromise the safe retention of the trees). The arborist report provides some general recommendations about how to minimise impact to these trees, but the applicant has not demonstrated how/whether those recommendations will be incorporated into the design. If you want to challenge the validity/adequacy of the arborist report, I'd suggest asking Fenton Beatty's team to have a look at it.</p>

## ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)\*

All, Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and



operational provisions which the proposal is considered to be acceptable against.

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

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

Nil

### Pittwater Local Environmental Plan 2014

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

### Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
6.1 Warriewood Valley Release Area	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.10 Essential services	Yes

### Pittwater 21 Development Control Plan - 2014

### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
B4.22 Preservation of Trees and Bushland Vegetation	Yes	Yes
C6.2 Natural Environment and Landscaping Principles	Yes	Yes

### Detailed Assessment

### C6.2 Natural Environment and Landscaping Principles

The retention of significant trees along the perimeter of the site was a key focus of the assessment of both N0540/15 and N0460/16, with both the subdivision and the residential flat building designed to retain a number of canopy trees along Fern Creek Road. Concern was raised initially as the proposed amendments appeared to demonstrate additional works in the TPZ of the canopy trees to be retained, yet no further arboricultural advice was provided to ensure that they could be safely retained. Upon request, the applicant has subsequently provided such advice and Council's Natural Environment and Landscape Officers are satisfied that the trees can continue to remain, subject to some minor amendments to existing conditions of consent.

## **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

The proposal will not significantly effect threatened species, populations or ecological communities, or their habitats.

## **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

## **POLICY CONTROLS**

### **Pittwater Section 94 Development Contributions Plan**

## **CONCLUSION**

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Pittwater Local Environment Plan;
- Pittwater Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

## **RECOMMENDATION**

THAT Council as the consent authority grant approval to Modification Application No. Mod2018/0073 for Modification of consent N0460/16 for the construction of a residential flat building comprising 13 dwellings on a yet to be created lot (Lot 21) on land at Lot 6 DP 736961, 10 Fern Creek Road, WARRIEWOOD, 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>
Site Plan, A 01.001, revision A	13 February 2018	Ghazi Al Ali Architect
Basement 02 Plan, A 02.001, revision A	13 February 2018	Ghazi Al Ali Architect
Basement 01 Plan, A 02.002, revision A	13 February 2018	Ghazi Al Ali Architect
Ground Floor Plan, A 02.003, revision A	13 February 2018	Ghazi Al Ali Architect
Level 01 Plan, A 02.004, revision B	05 April 2018	Ghazi Al Ali Architect
North & South Elevation, A 03.001, revision A	13 February 2018	Ghazi Al Ali Architect
Section AA, BB, CC, A 04.001, revision B	05 April 2018	Ghazi Al Ali Architect

<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
Supplementary Arboricultural Impact Assessment Report	9 January 2018	Mark Hartley of The Arborist network

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

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

f) The development is to be undertaken generally in accordance with the following:

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

**B. Modify Condition D20 to read as follows:**

*As there are existing trees to be retained within 5 metres of proposed development works, the following requirements must be complied with:*

- Works, erection/demolition of structures, excavation or changes to soil levels within 5 metres of existing trees are not permitted unless part of the development as approved, and the storage of spoil, building materials, soil or the driving and parking of any vehicle or machinery within 5 metres of the trunk of a tree to be retained is not permitted;*
- Tree guards are to be provided to all trees to be retained, and are to be installed prior to the commencement of any work on the site;*
- All works within 5 metres of existing trees including demolition, excavation, civil works, fencing and the like must be carried out by hand and under the supervision of an experienced and*

*suitably qualified AQF Level 5 arborist. In the event that major structural or feeder roots are encountered, the arborist is to advise the builder to carry out appropriate action to ensure the retention of the tree.*

- *Signage is to be erected advising all contractors and visitors to the site that no works or storage are to take place within the dripline of existing trees.*
- *The project arborist is to oversee all tree protection measures, in particular those identified in the approved arborist report referenced in N0460/16 and the Supplementary Arboricultural Impact Assessment Report referenced in this modified consent.*
- *Tree pruning shall not exceed 10% of any tree canopy and shall be undertaken in accordance with AS4373-2009 'Pruning of Amenity Trees'.*
- *to minimise the impact on trees and vegetation to be retained and protected, no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,*
- *no tree roots greater than 25mm diameter are to be cut from protected trees unless authorized by the project Arborist on site,*

***The Project Arborist shall record all on site events during excavation and construction works, and provide documentary details to the Certifying Authority.***

***Reason: Development shall provide for the reasonable retention and protection of existing significant trees, especially near property boundaries, and protect the existing environmental amenity. (Control B4.22 of P21 DCP)***

**C. Amend Condition E17 to read as follows:**


*A report, prepared by an AQF Level 5 arborist, is to be provided to the Certifying Authority to confirm that all works to and within the vicinity of trees 10, 11, 12, 13, 14, 19, 20 and 22 have been carried out in accordance with the requirements of this consent. In particular, the report shall include the following information:*

- *compliance to any Arborist recommendations for tree protection, excavation works and construction techniques,*
- *extent of damage sustained by vegetation as a result of the construction works,*
- *any subsequent remedial works required to ensure the long term retention of the vegetation.*

***Reason: to ensure the long term survival of vegetation to be retained (Control B4.22 of P21 DCP)***

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

**Signed**



**Rebecca Englund, Planner**


The application is determined under the delegated authority of:

*M Edmonds*

**Matthew Edmonds, Manager Development Assessments**



**ATTACHMENT A**

Notification Plan	Title	Date
 2018/120699	Plan - Notification	13/02/2018

**ATTACHMENT B**

No notification map.

## ATTACHMENT C

Reference Number	Document	Date
 2018/120717	Report - Fire	06/02/2018
 2018/120693	Letter of Authority	13/02/2018
 2018/120699	Plan - Notification	13/02/2018
 2018/120715	Plan - Site	13/02/2018
 2018/120712	Report - Statement of Environmental Effects	13/02/2018
 MOD2018/0073	10 Fern Creek Road WARRIEWOOD NSW 2102 - Section 96 Modifications - Section 96 (AA) Court Consent	15/02/2018
 2018/116369	DA Acknowledgement Letter - Skycorp Holdings Pty Ltd	15/02/2018
 2018/120471	Development Application Form	19/02/2018
 2018/120503	Applicant Details	19/02/2018
 2018/120505	DA Referrals, Notification Checklist and Fees	19/02/2018
 2018/120891	Plan - Internal	19/02/2018
 2018/120890	Plans - External	19/02/2018
 2018/120894	Plans - Master Set	19/02/2018
 2018/129084	Environmental Health (unsewered lands) - Assessment Referral - Mod2018/0073 - 10 Fern Creek Road WARRIEWOOD NSW 2102	19/02/2018
 2018/122173	DA Acknowledgement Letter (not integrated) - Skycorp Holdings Pty Ltd	19/02/2018
 2018/122197	Development Application Advertising Document - Skycorp Holdings Pty Ltd	19/02/2018
 2018/122460	Notification Letter - Mod	19/02/2018
 2018/122464	Referral - External - Ausgrid: (SEPP Infra)	19/02/2018
 2018/136805	Northern Beaches Council - Notice of Proposed Development - MOD2018/0073 - 10 Fern Creek Road Warriewood	26/02/2018
 2018/135398	Environmental Health Referral Response - unsewered land	26/02/2018
 2018/208264	Request for Withdrawal of Development Application - Skycorp Holdings Pty Ltd	29/03/2018
 2018/236872	Amended information (includes Amended plans and aboriginal report)	13/04/2018
 2018/237779	10 FERN CREEK, WARRIEWOOD_S96 - Issue B	16/04/2018
 2018/237888	DA-013_REV C	16/04/2018
 2018/243015	10 Fern Creek Rd - Shifting of existing easement	18/04/2018
 2018/294446	Landscape Referral Response	15/05/2018