

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2018/0096
<b>Responsible Officer:</b>	Hugh Halliwell
<b>Land to be developed (Address):</b>	Lot 55 DP 28663, 64 Dolphin Crescent AVALON BEACH NSW 2107
<b>Proposed Development:</b>	Modification of consent N0331/12 for the alterations and additions to the existing dwelling carport and swimming pool
<b>Zoning:</b>	E4 Environmental Living
<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>	Kathryn Suzanne Parker Paul Schulte Victoria Carolin Schulte
<b>Applicant:</b>	Peter Card Design
<b>Application lodged:</b>	28/02/2018
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	09/03/2018 to 23/03/2018
<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

Pittwater Local Environmental Plan 2014 - 4.3 Height of buildings

Pittwater 21 Development Control Plan - 2014 - A1.7 Considerations before consent is granted

Pittwater 21 Development Control Plan - 2014 - D1.9 Side and rear building line

Pittwater 21 Development Control Plan - 2014 - D1.14 Landscaped Area - Environmentally Sensitive Land

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 55 DP 28663 , 64 Dolphin Crescent AVALON BEACH NSW 2107
<b>Detailed Site Description:</b>	The property is known as 64 Dolphin Crescent, Avalon Beach and has a legal description of Lot 55 in Deposited Plan 28663. The site is characterised by a gentle slope to the southeast, has a total site area of 696.8m <sup>2</sup> and is currently occupied by single storey residence. The property is located on the northwestern side of Dolphin Crescent, and is surrounded by residential properties to the north, west and south, and Coral Reserve to the southeast.

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:

1. N0331/12 - On 21 January 2013, Council approved alterations and additions to the existing dwelling, including the construction of a carport and swimming pool.

## PROPOSED DEVELOPMENT IN DETAIL

The subject modification application seeks to modify the development consent in the following manner:

- Minor internal alterations to approved layout;
- Additional bedroom to the front of the dwelling with a new verandah to these front bedrooms;
- New internal laundry;
- Deletion of proposed living room at the rear of the dwelling;
- Minor changes to external windows and doors; and
- Changes to the pool area location and size, including decking and retaining walls.

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

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

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

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

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

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for N0331/12, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.15(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15(1A) - 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 proposed modification is of minimal environmental impact, and	<b>Yes</b> The modification, as proposed in this application,

Section 4.15(1A) - Other Modifications	Comments
	is considered to be of minimal environmental impact.
(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	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 N0331/12.
(c) it has notified the application in accordance with:  (i) the regulations, if the regulations so require, or  (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Pittwater Local Environment Plan 2011 and Pittwater 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 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	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)(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	<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

Section 4.15 'Matters for Consideration'	Comments
2000)	<p>via a condition in the original consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No Additional information was requested.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This 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 clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 143A</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 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 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</p>



Section 4.15 'Matters for Consideration'	Comments
	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	See discussion on “Public Exhibition” 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.

## 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
Landscape Officer	no objections to modification
NECC (Bushland and Biodiversity)	Council's Bushland and Biodiversity section raise no objection to the development proposal, subject to original conditions for Development Application N0331/12.

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 (Building Sustainability Index: BASIX) 2004**

A BASIX certificate has been submitted with the application (see Certificate No. A314942 and dated 30 April 2018).

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.

### **Pittwater Local Environmental Plan 2014**

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

#### Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	5.8m	6.3m	0%	Yes

#### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.10 Essential services	Yes

#### Detailed Assessment

#### 4.3 Height of buildings

The proposed modification of the approved roof form over the front eastern corner of the house has resulted in additional building height of 0.5m (RL 27.50). The additional building height will not result in any additional overshadowing or amenity impacts within the subject site or to adjoining property owners. The additional height is supported.

#### Pittwater 21 Development Control Plan - 2014

##### Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
Front building line	6.5m, or the established building line, whichever is the greater	8.3m (dwelling)	7.41m	Yes
		4.5m (carport)	Unaltered	Yes
Rear building line	6.5m	13.6m (dwelling)	Unaltered	Yes
		7m (pool)	4.6m	No
Side building line	1m (North East)	2.1m (pool)	1.8m	Yes
		1.4m (dwelling)	Unaltered	Yes
	2.5m (South West)	>1m (pool)	Unaltered	Yes
		1m (dwelling)	Unaltered	Yes
Building envelope	3.5m	Within envelope	Within unaltered	Yes
	3.5m	Within envelope	Within unaltered	Yes
Landscaped area	60%	50.53%	40.9%	No

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.1 Avalon Beach Locality	Yes	Yes
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes



Clause	Compliance with Requirements	Consistency Aims/Objectives
B1.4 Aboriginal Heritage Significance	Yes	Yes
B4.6 Wildlife Corridors	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
C1.13 Pollution Control	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.23 Eaves	Yes	Yes
D1.1 Character as viewed from a public place	Yes	Yes
D1.4 Scenic protection - General	Yes	Yes
D1.5 Building colours and materials	Yes	Yes
D1.8 Front building line	Yes	Yes
D1.9 Side and rear building line	No	Yes
D1.11 Building envelope	Yes	Yes
D1.14 Landscaped Area - Environmentally Sensitive Land	No	Yes
D1.17 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes

#### Detailed Assessment

#### **A1.7 Considerations before consent is granted**

A site inspection to the subject site confirmed that some works, which form a part of this application, including Bedroom 2 located the front of the dwelling have already been constructed.

Modification applications can be granted retrospective approval under NSW case law as established in the case of *Windy Dropdown Pty Ltd v Warringah Council* [2000] NSWLEC 240. Commissioner J. Talbot considered the following:

*the broad construction of s 96 leads to a practical result that enables a consent authority to deal with unexpected contingencies as they arise during the course of construction of development or even subsequently, provided of course that the development to which the consent as modified relates is substantially the same development.*

Therefore, although some of the works which form the basis of this section 4.55 application may have already been undertaken, modification approval can still be granted. The works, which include Bedroom 2 are not unreasonable, in terms of not adversely impacting on adjoining properties or impacting the

existing streetscape noting the works are located within proximity of Dolphin Crescent.

### **D1.9 Side and rear building line**

The proposed modifications will not alter the approved side setbacks.

The changes to the approved swimming pool will result in an encroachment into the rear building line with a 4.6m setback to the pool edge (a 2.4m reduction to the approved rear setback). Notwithstanding this, the setback will remain generous allowing for substantial enough vegetation to help screen the non-compliance. Furthermore, clause D1.9 allows for a rear setback variation in the case of swimming pools, subject to the following being satisfied:

*Sufficient landscaping within the setback from the pool or spa coping to the rear boundary.*

A supporting landscape plan shows extensive landscaping along the north-west rear boundary to minimise any impact on the neighbour located to the rear.

*Council is satisfied that the adjoining properties will not be adversely affected.*

As the pool is to be located entirely in-ground along with sufficient landscaping, it is not considered that adjoining properties will be adversely affected.

*The pool or spa is not located more than 1 metre above ground level (existing).*

The swimming pool is in-ground.

*That the outcomes of this clause are achieved without strict adherence to the standards.*

It is considered that the outcomes of the clause can be achieved, in particular being able to minimise the impact to adjoining properties and minimising the bulk and scale of the built form.

*Where site constraints make strict adherence to the setback impractical.*

Although the pool may be reduced in length or reorientated which would result in compliance, it is considered unnecessary, as the pool will not result in any impact to adjoining properties nor will it result in the removal of any significant vegetation. Substantial enough separation will continue to be provided to the rear boundary that is acceptable and supported on merit.

*Where strict compliance with these requirements will adversely impact on the views of adjoining residential properties.*

As previously discussed, the swimming pool is to be located in-ground, and therefore not resulting in any impact on any views from adjoining residential properties.

In light of the above, it is considered that the rear setback, although non-compliant, is acceptable on merit and is supported.

### **D1.14 Landscaped Area - Environmentally Sensitive Land**

The proposed modifications, which include an increased area to the approved swimming pool and coping, as well as the addition of an extra bedroom to the front of the dwelling result in a reduced landscaped area. Recalculation of the modified landscaped area finds the soft landscaping to be approximately 285.27m<sup>2</sup> or 40.9%, a reduction of 67.1m<sup>2</sup> or 9.63% from the approved landscaped area. Clause D1.14 allows for a variation to the landscaped area to include impervious areas less than 1m in width and areas used for outdoor recreational purposes provided that the outcomes of the control can be achieved. The additional impervious area consists of an additional bedroom to the front of the dwelling and a larger pool area and associated coping. These areas do not present an unreasonable

level of built form, in particular the pool, which is to be in-ground. Adjoining properties will not be affected by the non-compliance. The development is modest being single storey and consisting of three (3) bedrooms and a single living/dining area and a kitchen. The additional impervious area of the bedroom is unlikely to impact on stormwater runoff, particularly the swimming pool. Overall the additional areas of impervious surfaces will not result in the removal of vegetation allowing vegetation to be retained to visually reduce the additional built form. This assessment finds the outcomes of the clause to be achieved, therefore allowing for a variation to be included. Including this variation, the landscaped area is recalculated to be 345.97m<sup>2</sup> or 49.65%. Whilst remaining non-compliant, the development as a whole is not unreasonable in the context of the area. As mentioned, the development is modest and not unacceptable in terms of the overall bulk and scale on the site.

## **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. Mod2018/0096 for Modification of consent N0331/12 for the alterations and additions to the existing dwelling carport and swimming pool on land at Lot 55 DP 28663,64 Dolphin Crescent, AVALON BEACH, subject to the conditions printed below:

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

### a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Site Plan Rev. 04D	27/02/2018	Peter Card Design
Elevations Rev. 04D	27/02/2018	Peter Card Design
Pool Rev. 04D	27/02/2018	Peter Card Design
Plan Rev. 04D	27/02/2018	Peter Card Design

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate, No. A314942	30/04/2018	Peter Card Design

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.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans. (DACPLB01)

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

**Signed**




**Hugh Halliwell, Planner**

The application is determined under the delegated authority of:



**Anna Williams, Manager Development Assessments**

**ATTACHMENT A**





















Notification Plan	Title	Date
 2018/142295	Plan - Notification	27/02/2018

**ATTACHMENT B**

No notification map.



## ATTACHMENT C

Reference Number	Document	Date
 2018/142307	Plan - Internal	27/02/2018
 2018/142294	Plan - Survey	27/02/2018
 2018/142295	Plan - Notification	27/02/2018
 2018/142291	S96 Submission	27/02/2018
 MOD2018/0096	64 Dolphin Crescent AVALON BEACH NSW 2107 - Section 96 Modifications - Section 96 (1a) Minor Environmental Impact	28/02/2018
 2018/139944	DA Acknowledgement Letter - Peter Card Design	28/02/2018
 2018/142263	Development Application Form	01/03/2018
 2018/142286	Applicant Details	01/03/2018
 2018/142287	Fee Form	01/03/2018
 2018/142306	Plans - External	01/03/2018
 2018/142309	Plans - Master Set	01/03/2018
 2018/159828	DA Acknowledgement Letter (not integrated) - Peter Card Design	07/03/2018
 2018/159856	DELETE	07/03/2018
 2018/159867	Notification Letter - 8	07/03/2018
 2018/242079	Natural Environment Referral Response - Biodiversity	17/04/2018
 2018/246509	Landscape Referral Response	19/04/2018
 2018/252279	Site Photos	23/04/2018
 2018/264213	basix_certificate 64 Dolphin Cres.pdf	30/04/2018
 2018/264214	Schult House v4 Basix 2018 Package.pdf	30/04/2018
 2018/293535	Stamped Plans - 64 Dolphin Crescent, Avalon Beach	15/05/2018