

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2018/0633
Responsible Officer:	Georgia Quinn
Land to be developed (Address):	Lot 121 DP 12749, 57 Robertson Road SCOTLAND ISLAND NSW 2105
Proposed Development:	Modification of Development Consent DA2018/1043 granted for Alterations and additions to an existing boat shed
Zoning:	E3 Environmental Management
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Department of Industry Crown Lands Ricardo Russo
Applicant:	Ricardo Russo
Application lodged:	23/11/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	29/11/2018 to 17/12/2018
Advertised:	Not Advertised
Submissions Received:	1
Recommendation:	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 - C1.5 Visual Privacy

Pittwater 21 Development Control Plan - D15.12 Development seaward of mean high water mark

Pittwater 21 Development Control Plan - D15.14 Minimum frontage for waterfront development

SITE DESCRIPTION

Property Description:	Lot 121 DP 12749 , 57 Robertson Road SCOTLAND ISLAND NSW 2105
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the northern side of Robertson Road, Scotland Island.</p> <p>The site is regular in shape with a frontage of 10.06m along Robertson Road and depths between 64.62m and 69.495m. The site has a surveyed area of 790.4m².</p> <p>The site is located within the E3 Environmental Management zone and accommodates a one and two storey split level dwelling house located toward the road frontage. A boatshed, jetty and associated waterfront facilities are located adjacent to the site in the Pittwater Waterway.</p> <p>The site has a cross fall from south to north of approximately 20m, equating to a gradient of approximately 29.8%.</p> <p>The site contains significant canopy trees that are predominantly located within the rear setback to the dwelling from the waterway.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by low density residential dwelling houses located in landscaped settings.</p>

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 DA2019/0085

This application for the construction of a chicken coop was lodged with Council on 05 February 2019 and is currently under assessment.

Modification Application Mod2018/0633

This application for modification of development consent DA2018/1043 for alterations and additions to an existing boatshed was lodged 23 November 2018 and is the subject of this application.

Development Application DA2018/1602

This application for the construction of a side boundary fence was lodged with Council on 28 September 2018 and is currently under assessment.

Development Application DA2018/1043

This application for alterations and additions to an existing boat shed was determined on 18 October 2018.

Development Application DA2018/0893

This application for alterations and additions to an existing dwelling house was lodged with Council on 29 May 2018 and is currently under assessment.

Building Certificate BC2018/0070

This building certificate for a front timber sapling and timber framed fence was determined on 3 August 2018.

Application history

Upon a site visit, it was revealed that where the new window is depicted on the provided drawing (drawing number 2088 - S96 01, dated November 2018) a door has been constructed. This matter has been referred to Council's Compliance team for investigation.

PROPOSED DEVELOPMENT IN DETAIL

This application seeks modifications to development consent DA2018/1043.

In particular, this modification application includes:

- the construction of an new door and a new window; and
- the walling up of a tilt door.

It is acknowledged that this modification application seeks retrospective approval for as built modification works, which is legally satisfactory based on the Land and Environment Court decision "*Windy drop down v Warringah Council*."

A site visit was undertaken as part of this assessment and as such it is noted that the boat shed tilt door has been walled up; a new door has been constructed on the eastern elevation; and a new door has been constructed on the western elevation also.

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 DA2018/1043, 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
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	Yes The modification, as proposed in this application,

Section 4.55(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 DA2018/1043.
(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 2014 and Pittwater 21 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)(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)	<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

Section 4.15 'Matters for Consideration'	Comments
	<p>addressed via a condition in the original consent.</p> <p><u>Clause 50(1A)</u> of the EP&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&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&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
<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>	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact</p>

Section 4.15 'Matters for Consideration'	Comments
	The proposed development will 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	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

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

A Bush Fire Report was submitted with the original application that included a certificate (prepared by Planning for Bushfire Protection , dated 01/04/2018) stating that '*No specific construction requirements for building in bushfire prone areas have been recommended.*'

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 process council is in receipt of 1 submission/s from:

Name:	Address:
Steven Speter	PO Box 250 CHURCH POINT NSW 2105

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

- **New door construction**
- **Potential additions of unauthorised works leading to privacy concerns**

The matters raised within the submissions are addressed as follows:

New door construction

Concern is raised that a new door has been constructed instead of the window that is depicted on the provided architectural plan (drawing number 2088 - S96 01, dated November 2018).

Comment:

This modification application seeks consent for a window only on the western elevation of the boatshed. Approval is issued for only what is proposed on the provided plans.

Upon a site visit, it was revealed that this concern is justified as a door has been constructed instead of the proposed window. This matter has been referred to Council's Compliance team.

This matter, does not warrant the refusal of the application.

Potential additions of unauthorised works leading to privacy concerns

Concern is raised that the owner of the subject site intends to add unauthorised decking along the western elevation of the boatshed due to the unauthorised placement of a door on this side of the boatshed. Further, concern is raised that should a deck be built in this position, significant privacy issues would arise as a result.

Comment:

Should this application be approved, development consent is granted to only what modifications are proposed on the provided drawing (drawing number 2088 - S96 01, dated November 2018). Therefore, as no door is proposed on the western elevation of the boatshed, no approval is granted for such. A window only is approved on this elevation as part of this application. A condition of consent will be imposed stating that this window is to be fixed and non openable. No deck is proposed as part of this application, therefore no consent has been granted for such development.

It should be noted this matter has been referred to Council's Compliance team for further investigation.

MEDIATION

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

REFERRALS

Internal Referral Body	Comments
NECC (Coast and Catchments)	<p>Estuarine Risk Management</p> <p>The estuarine risk management comments and conditions of development consent for DA2018/1043 remain valid for the subject Modification Application. The proposed modifications are able to satisfy the relevant requirements of the Estuarine Risk Management Policy for Development in Pittwater and B3.7 Estuarine Hazard Controls subject to conditions.</p> <p>State Environmental Planning Policy (Coastal Management) 2018</p> <p>12 Development on land within the coastal vulnerability area</p> <p><i>Development consent must not be granted to development on land that is within the area identified as "coastal vulnerability area" on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:</i></p>

Internal Referral Body	Comments
	<p>(a) <i>if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and</i></p> <p>(b) <i>the proposed development:</i></p> <p>(i) <i>is not likely to alter coastal processes to the detriment of the natural environment or other land, and</i></p> <p>(ii) <i>is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and</i></p> <p>(iii) <i>incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and</i></p> <p>(c) <i>measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazards.</i></p> <p><u>Comment:</u> The subject land has not been included on the Coastal Vulnerability Area Map under <i>State Environmental Planning Policy (Coastal Management) 2018</i> (CM SEPP) and in regard to clause 15 of the CM SEPP the proposed development is unlikely to cause increased risk of coastal hazards on the subject land or other land. As such, it is considered that the application complies with the requirements of <i>State Environmental Planning Policy (Coastal Management) 2018</i> as they relate to development on land identified as a coastal vulnerability area or land that may be affected by coastal hazards.</p>

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.
NSW Department of Planning (SEPP 71 - Coastal)	No response has been received from the Department of Planning and Environment within 28 days of the application being notified. Therefore an assessment of the relevant assessment criteria found within SEPP (Coastal Management) 2018 (formerly SEPP 71) has been carried out within the relevant section further within this report.

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 (Coastal Management) 2018

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

13 Development on land within the coastal environment area

- (1) *Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:*
- (a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
 - (b) *coastal environmental values and natural coastal processes,*
 - (c) *the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
 - (d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
 - (e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - (f) *Aboriginal cultural heritage, practices and places,*
 - (g) *the use of the surf zone.*

Comment:

The application includes the addition of a door and a window and the walling up of a tilt door, with no additional impact to the surrounding waterway or natural environment.

- (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:

Impact will be minimised as no additional works to the bed of the estuary or land itself will be required to be carried out within the context of the subject application.

14 Development on land within the coastal use area

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

Comment:

The modifications to the existing approved boat shed are consistent with similar development within the surrounding area. The addition of a door and a window will not contribute to a degradation of the surrounding coastal and built environment.

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

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	4m	4.46m	Unchanged	N/A	No

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	No

Clause	Compliance with Requirements
5.7 Development below mean high water mark	Yes
7.1 Acid sulfate soils	Yes
7.6 Biodiversity protection	Yes
7.8 Limited development on foreshore area	Yes

Detailed Assessment

4.3 Height of buildings

No change to the approved building height is proposed as part of this modification application.

Pittwater 21 Development Control Plan

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.8 Lower Western Foreshores and Scotland Island Locality	Yes	Yes
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes
B3.2 Bushfire Hazard	Yes	Yes
B4.15 Saltmarsh Endangered Ecological Community	Yes	Yes
B4.16 Seagrass Conservation	Yes	Yes
B4.19 Estuarine Habitat	Yes	Yes
B4.20 Protection of Estuarine Water Quality	Yes	Yes
B5.11 Stormwater Discharge into Waterways and Coastal Areas	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
D8.1 Character as viewed from a public place	Yes	Yes
D8.3 Building colours and materials	Yes	Yes
D15.12 Development seaward of mean high water mark	Yes	Yes
D15.13 Lateral limits to development seaward of mean high water mark	Yes	Yes
D15.14 Minimum frontage for waterfront development	No	Yes
D15.15 Waterfront development	Yes	Yes

Detailed Assessment

C1.5 Visual Privacy

The proposed development contains a floor to ceiling window on the western elevation. A condition of

consent has been imposed stating that such window is to be fixed and non openable. This will ensure no unreasonable privacy impacts arise as a result of this development.

D15.12 Development seaward of mean high water mark

This development does not propose any further encroachment into the waterway.

D15.14 Minimum frontage for waterfront development

The subject site has a water frontage of approximately 13.77m which is below the minimum 15m requirement for multiple water front facilities below Mean High Water Mark. The existing site contains multiple facilities including a boatshed, skid ramp and jetty. As no additional facilities are proposed, this arrangement is considered acceptable.

Merit Assessment

To minimise the individual and cumulative visual impact on waterfront development.

This modification application does not propose any additional facilities, therefore the existing arrangement is deemed acceptable as it is an existing situation.

It is concluded that the proposed modification achieves the underlying objective of this Clause, and is supported in this particular circumstance.

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.

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
- Inconsistent 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. Mod2018/0633 for Modification of Development Consent DA2018/1043 granted for Alterations and additions to an existing boat shed on land at Lot 121 DP 12749,57 Robertson Road, SCOTLAND ISLAND, subject to the conditions printed below:

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

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

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
2088 - S96 01 - Site Plan, Section & Elevations	November 2018	Stephen Crosby & Assoc. Pty. Ltd.

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

B. Add Condition No.16 - Floor to ceiling window on western elevation to read as follows:

The floor to ceiling window on the western elevation of the boat shed is to be fixed and non openable.

Reason: to ensure the function of a window is maintained, and to ensure privacy amenity is reasonable for the subject site and adjoining properties.

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

Signed

G Quinn

Georgia Quinn, Planner

The application is determined on 01/04/2019, under the delegated authority of:



Rodney Piggott, Manager Development Assessments