

SUBJECT: N0022/16/S96/1 – Section 96(1A) Modification to Consent N0022/16 relating to 1156 Barrenjoey Road, Palm Beach (Lot 15, DP 6746) which approved the demolition and construction of a new dwelling house and alterations to existing garage and landscaping

Determination Level: Development Assessment Manager

Date: 2 March 2017

**SUMMARY OF RECOMMENDATION
APPROVAL TO MODIFY CONSENT**

REPORT PREPARED BY:	Tyson Ek-Moller
APPLICATION SUBMITTED ON:	25 November 2016
APPLICATION SUBMITTED BY:	ANDREW BENN BENN & PENNA ARCHITECTS LEVEL 1, 123 HARRIS STREET PYRMONT NSW 2009
OWNER:	MR RICHARD ALAN BENN

1.0 PROPOSAL

Pursuant to Section 96(1A) of the *Environmental Planning and Assessment Act 1979*, the subject Section 96 Modification Application has been lodged to modify Development Consent N0022/16, which approved the demolition of an existing dwelling and the construction of a new dwelling house and alterations to existing garage and landscaping.

Consent is sought to modify the approved alterations and additions. The changes which are proposed are listed as follows:

- A small expansion of the approved dwelling's upper two levels. This change would extend the size of these levels approximately 850mm towards the southern boundary;
- Changes to both the location, size and orientation of a number of windows on the eastern elevation of the approved dwelling; and
- Removal of two fig trees on the eastern side of the approved dwelling.

No other changes are proposed by the subject modification application¹.

2.0 SITE AND SURROUNDINGS

The subject site is identified as 1156 Barrenjoey Road, Palm Beach (Lot 15, DP 6746). The subject site is an irregularly shaped allotment, the front boundary of which is oriented towards the west and adjoins the Barrenjoey Road road reserve. The area of the site is 701m² (based on Council records) and is steeply sloped, with an east-to-west (i.e. side-to-side) fall of approximately 10m.

The subject site currently contains a detached single storey dwelling house. This structure is located above an in-ground garage; this element and the associated vehicle manoeuvring area, driveway, fences, retaining walls, terraces and outdoor stairways were constructed following the approval of Development Application No. N0326/08 (later modified by Section 96 Modification

¹ The construction of an inclinor was proposed at the front of the building, however this was removed from the proposal following issues identified with the placement of this structure.

Application No. N0326/08/S96/1). In addition to these structures, there are also a number of other terraces and stairways within the northern and eastern parts of the site.



Figure 1: Aerial photograph of the subject site, outlined by the yellow border. The large driveway to the southeast of the site was approved by Development Application No. N0326/08 (later modified by Section 96 Modification Application No. N0326/08/S96/1).

The subject site is within both an E4 Environmental Living zone and an SP2 (Classified Road) Infrastructure zone. The northern and western boundaries adjoin an SP2 (Classified Road; Barrenjoey Road) Infrastructure zone and both the eastern and southern boundaries adjoin E4 an Environmental Living zone. There are also a number of surrounding zone boundaries that are as follows:

- A W1 Natural Waterways zone is located approximately 50m west of the subject site;
- RE1 Public Recreation zones are located approximately 55m northeast, 125m south and 200m north of the subject site at their nearest respective points;
- E2 Environmental Conservation zones are located approximately 85m northwest and 225m southeast of the subject site at their nearest respective points; and
- A B2 Local Centre zone located approximately 270m south of the subject site.

The subject site is affected by a number of hazards and considerations which are as follows:

- Geotechnical (H1) hazard;
- Biodiversity mapping (land containing Littoral Rainforest);
- Class 5 Acid Sulphate Soils; and
- Land Reservation Area (Classified Road).

The site does not contain a heritage item nor is it within a heritage conservation area; the nearest local heritage items are at least 95m from the subject site at their nearest points.

Aside from SP2, E2 and RE1-zoned areas development patterns within the surrounding area consist predominately of low-density residential development (i.e. detached dwelling houses with associated structures). The subdivision pattern of the immediate surrounding area mostly follows the local road network, though a number of sites to the east/southeast of the subject site are accessed from the local road network via private roads and/or "battleaxe" subdivision arrangements.

A site inspection was undertaken by the assessing officer on Monday 12 December 2016; the layout of the site was consistent with the plans, and no significant issues were identified.

3.0 BACKGROUND

Site background:

Date	Comments
14/07/2008	Development Application No. N0326/08 approved for the construction of an access driveway, turning bay and detached garage with landscaped terrace
14/10/2010	Section 96 Modification Application No. N0326/08/S96/1 approved for the construction of an access driveway, turning bay and detached garage with landscaped terrace. The approved modifications related to the deletion of a turning bay.
12/08/2016	Development Application No. N0022/16 approved for the demolition and construction of a new dwelling house and alterations to existing garage and landscaping.
25/11/2016	Subject Section 96 Modification Application lodged.

Application background:

Date	Details
29/09/2016	Subject Section 96 Modification Application lodged.
30/11/2016	Amended information received (unsolicited and relates to issues identified at an early stage by the applicant).
12/12/2016	Site inspection undertaken.
15/12/2016	Submission received.
02/02/2017	Request for additional information sent to the applicant.
14/02/2017	Amended information received.
01/03/2017	Final internal referral comments received.

4.0 NOTIFICATION AND INTERNAL COMMENTS

Public notification:

In accordance with Pittwater 21 Development Control Plan, the subject application was notified for a 14 day period from 2 December 2016 until 16 December 2016. The site inspection confirmed that the notification sign was erected in accordance with Council requirements. One (1) submission was received in response to the notification period.

Address of objector:

- 1158 Barrenjoey Road, Palm Beach (this site adjoins the subject site's eastern boundary).

Issues raised:

- The proposed plans are ambiguous, in that the "terrace wall" (within the east-side setback) is indicated on some plans but deleted from others. If this structure were to be included, then it should be indicated as part of the landscape design;
- The proposed terrace wall (if retained) would be located within the drip area and root zone of an adjacent casuarina tree. The structure therefore may adversely affect the health of the tree;
- The location of the structure would be counter to controls within Part B4.2 of Pittwater 21 DCP, in that development would not affect canopy cover and/or the loss of native canopy trees;

- The location of the terrace would adversely affect views, acoustic/visual privacy and amenity; and
- The details of the terrace wall are limited, therefore the appearance of the structure is unclear.

Response to objection

The deletion of the terrace area (as denoted on the plans) is subject to the provisions of Condition A8 within Development Consent No. N0022/16. The submitted plans propose to delete the terrace area however the originally submitted ground floor plans (Drawing No. 1501-P-04) contained an error, in that the wall (and annotations denoting an “*outline of terrace wall above*”) were retained. No other plans indicate this wall, and subsequent correspondence with the applicant confirmed the error. As a result, references to the terrace wall were deleted from the plans. This would address the concerns raised within the submission.

Internal Referrals:

Internal referrals are as follows:

Officer	Recommendation and comments
Development Engineer	<p>Recommendation: Supported (no additional conditions)</p> <p>Comments: <i>“Applicant has now deleted proposed inclinators with its landing platform in the road reserve from the application. Therefore there are no further engineering objections to the proposed modification.”</i></p> <p>Note: Original officer comments are not included as these related to issues associated with the originally submitted plans.</p>
Natural Environment Officer	<p>Recommendation: Supported (no additional conditions)</p> <p>Comments: <i>“I have reviewed the proposed Section 96 modification which is to raise the veranda roof. There will be no additional impacts on existing vegetation to be retained.”</i></p> <p>Note: Original officer comments are not included as these related to issues associated with the originally submitted plans.</p>

External Referrals:

None required, though Roads and Maritime Services (RMS) were notified of the development originally proposed by Development Application No. N0022/16.

5.0 SECTION 96 MATTERS OF CONSIDERATION

Planning instruments and policies:

Relevant instruments and policies that have been considered in the assessment of the application are as follows:

- Environmental Planning and Assessment Act, 1979;
- Environmental Planning and Assessment Regulation 2000;
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- Pittwater Local Environment Plan (PLEP) 2014
- Pittwater 21 Development Control Plan (P21 DCP)

5.1 Environmental Planning and Assessment Act, 1979

Section 95 - Lapsing of Consent

Development Consent No. N0022/16 was approved on 12 August 2016; the lapse date of the consent would therefore be 12 August 2021.

With regard to the above and Pursuant to Section 95 of the Act, the consent has not lapsed.

Section 96(1A) Modification - Modification involving minimal environmental impact

The proposal has been considered in accordance with Section 96(1A) of the Environmental Planning & Assessment Act 1979.

(1A) Section 96(1A) of the Environmental Planning & Assessment Act 1979 states the following;

"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) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (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 that requires the notification or advertising of applications for modification of a development consent, and*
- (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.*

Subsections (1), (2) and (5) do not apply to such a modification.

- (3) In determining an application for modification of a consent under this section, 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.*
- (4) The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.*

In respect of the proposed modification, Council is satisfied that the modification application meets the requirements of Section 96(1A) of the Act in that:

- (1A)** The development to which the proposal relates is substantially the same development as the development for which the consent was originally granted.
 - a.** The overall form of the development has not substantially changed. A detailed assessment of the submitted plans indicates that the modified proposal would be unlikely to have notable/adverse impacts on surrounding sites and/or the natural environment. The proposed modifications are therefore considered to be of minimal environmental impact;
 - b.** The most substantial changes would relate to the proposed changes to the approved dwelling's southern elevation. Despite such modifications, the overall form of the development (as modified) would remain mostly unchanged; the modified building would therefore be substantially the same development as was originally approved.
 - c.** The subject application has been notified in accordance with Pittwater 21 Development Control Plan (refer to Part 4 of this report);
 - d.** One (1) submission was received during the assessment process of the subject application (refer to Part 4 of this report). The matters raised were considered and discussed within Part 4 of this report.

3. The assessment of the subject modification application has taken into consideration matters referred to within Section 79C (1) of the Act where they are relevant.
4. The modification of Development Consent No. N0022/16 is not seen to be the granting of a new development consent; the use of the land and/or previously approved structure would not be changed, and the development (as modified) would be substantially the same as what was previously approved.

Section 147 Disclosure of political donations and gifts

T - Can the proposal satisfy the technical requirements of the control? Y – Yes
 O - Can the proposal achieve the control outcomes? N – No
 N - Is the control free from objection? N/A or - – Not applicable

Clause	Assessment and Comment	T	O	N
147 Disclosure of political donations and gifts		Y	Y	Y

5.2 State Environmental Planning Policies (SEPPs)

Relevant SEPPs have been assessed as follows:

State Environmental Planning Policies (SEPPs)				
SEPP	Assessment and Comment	T	O	N
SEPP (Sustainable Building Index: BASIX) 2005	Inconsistent window areas on multiple elevations.	Y	Y	Y

5.3 Pittwater Local Environment Plan 2014

Permissibility:

As indicated with Part 2 of this report, the subject site is zoned as both an E4 Environmental Living zone and an SP2 (Classified Road) Infrastructure zone under Pittwater Local Environment Plan 2014. The works (as modified) would continue to be most appropriately defined “residential accommodation”, and more specifically a “dwelling house”, as defined by the LEP dictionary. Such works are permissible with consent within the E4 zone, however they prohibited within the SP2 zone.

The assessment of permissibility for Development Application No. N0022/16 concluded that under existing use rights, the originally proposed development would be allowable within the SP2-zoned parts of the site. Regardless, the subject modification application does not propose modifications or additions that would change the use of the structure from that which was previously approved (i.e. a “dwelling house”).

Compliance with LEP controls:

Note: Only standards/requirements that are changed and which are applicable to the subject modification application have been assessed.

Clause	Numerical Standard	Numerical Proposal	T	O	N
Pittwater Local Environmental Plan 2014					
5.1A Development on land intended to be acquired for public purpose		Refer to comments above regarding permissibility.	-	-	-
5.3 Height of buildings		Maximum ridge RL of 42.44 unchanged from previously approved plans.	-	-	-
7.7 Geotechnical Hazards			Y	Y	Y

5.4 Pittwater 21 Development Control Plan:

Note: Only controls that are applicable to the subject modification application have been assessed; elements that are not applicable to the subject application (i.e. are not subject to the proposed changes) have been disregarded.

Clause	Numerical Standard	Numerical Proposal	T	O	N
Preliminary					
3.1 Submission of a Development Application and payment of appropriate fee			Y	Y	Y
3.2 Submission of a Statement of Environmental Effects		Submitted information lacks information addressing relevant development controls, though the submitted plans have been prepared in accordance with applicable requirements. An assessment of applicable controls has been undertaken regardless of information lacking within the submitted SEE.	N	Y	Y
3.3 Submission of supporting documentation - Site Plan / Survey Plan / Development Drawings			Y	Y	Y
3.4 Notification		Refer to Part 4 of this report	Y	Y	Y
3.6 State Environmental Planning Policies		Refer to Part 5.2 of this report.	Y	Y	Y
Section A Shaping Development in Pittwater					
A1 Introduction					
A1.7 Considerations before consent is granted			Y	Y	Y
A4 Localities					
A4.12 Palm Beach Locality			Y	Y	Y
Section B General Controls					
B3.1 Landslip Hazard			Y	Y	Y
B4.17 Littoral Rainforest – Endangered Ecological Community			Y	Y	N
Section C Development Type Controls					
C1.1 Landscaping		Note: Concerns regarding landscaping and tree retention within the submission related to the possible retention of the outdoor terrace and seating, which have been removed.	Y	Y	N
C1.3 View sharing			Y	Y	N
C1.4 Solar Access		Shadow plans have not been submitted, however the proposed modifications have been assessed against information provided as part of DA N0022/16; due to: <ul style="list-style-type: none"> The site layout of the adjoining site to the south (60 Palm Beach Road); Surrounding road reserves; An unchanged building height; and The nature of the changes that are proposed on the dwelling's southern elevation, It is unlikely that the proposed amendments would result in any adverse and/or noncomplying overshadowing impacts on surrounding sites.	N	Y	Y
C1.5 Visual Privacy		Note: Privacy concerns within the submission related to the possible retention of the outdoor terrace and seating, which have been removed. No specific issue(s) were raised regarding the design of the dwelling.	Y	Y	N

Clause	Numerical Standard	Numerical Proposal	T	O	N
C1.14 Separately Accessible Structures			-	-	-
C1.19 Incline Passenger Lifts and Stairways			-	-	-
C1.24 Public Road Reserve – Landscaping and Infrastructure			-	-	-
Section D Locality Specific Development – D12 Palm Beach Locality					
D12.1 Character as viewed from a public place		701	Y	Y	Y
D12.5 Front building line		Unchanged	-	-	-
D12.6 Side and rear building line		Unchanged (while the proposed southern elevation would be altered, the area associated with the minimum southern setback would remain unaltered.	-	-	-
D12.8 Building Envelope			Y	Y	Y
D12.10 Landscaped Area – Environmentally Sensitive Land		Unchanged: Reductions to landscaped area on the southern side of the site (associated with a reduction to the proposed southern setback) would be offset by increased east-side setback that is proposed by the subject modification application. Concerns within the submission referring to landscaped areas related to the possible retention of the outdoor terrace and seating, which have been removed. No specific issue(s) were raised regarding the design of the dwelling.	-	-	N

6.0 CONCLUSION

This proposed modifications application has been assessed under Section 96(1A) of the Environmental Planning and Assessment Act 1979. Assuming that previously imposed consent conditions are adhered with, then the proposed modifications would be unlikely to result in adverse impacts upon adjoining properties and/or the local environment. Further, the proposed modifications are considered to be of minimal environmental impact in accordance with the Act; the proposal would therefore be consistent with the original approval and would continue to be in the public interest.

The proposed modifications demonstrate that the development would both satisfy and comply with the recommended consent conditions associated with the original approval.

Accordingly, the subject modification application is recommended for approval.

7.0 RECOMMENDATION

That Council as the consent authority pursuant to Section 96(1A) of the Environmental Planning & Assessment Act 1979 modify Development Consent N0022/16 which approved demolition and construction of a new dwelling house and alterations to existing garage and landscaping at 1156 Barrenjoey Road, Palm Beach (Lot 15, DP 6746).

For reference, the changes recommended for the draft determination are as follows (any changes to plans and documents are highlighted in **bold**):

Plans:

- **Site Plan, prepared by Benn and Penna Architecture, Drawing No. 1501-P-02, Revision D, dated 25 November 2016**

- Garage Floor Plan, prepared by Benn and Penna Architecture, Drawing No. 1501-P-01, Revision B, dated 22 December 2015
- **Basement Floor Plan, prepared by Benn and Penna Architecture, Drawing No. 1501-P-02, Revision F, dated 14 February 2017**
- **Ground Floor Plan, prepared by Benn and Penna Architecture, Drawing No. 1501-P-03, Revision F, dated 14 February 2017**
- **First Floor Plan, prepared by Benn and Penna Architecture, Drawing No. 1501-P-04, Revision F, dated 14 February 2017**
- **Roof Plan, prepared by Benn and Penna Architecture, Drawing No. 1501-P-05, Revision F, dated 14 February 2017**
- **Western Elevation, prepared by Benn and Penna Architecture, Drawing No. 1501-P-06, Revision F, dated 14 February 2017**
- **Northern Elevation, prepared by Benn and Penna Architecture, Drawing No. 1501-P-07, Revision F, dated 14 February 2017**
- **Eastern Elevation, prepared by Benn and Penna Architecture, Drawing No. 1501-P-08, Revision F, dated 14 February 2017**
- **Southern Elevation, prepared by Benn and Penna Architecture, Drawing No. 1501-P-09, Revision F, dated 14 February 2017**
- **Section , prepared by Benn and Penna Architecture, Drawing No. 1501-P-10, Revision F, dated 14 February 2017**
- Stormwater and OSD Management Plan, prepared by Benn and Penna Architecture, Drawing No. 1501-P-11, Revision B, dated 21 December 2015
- Erosion and Sediment Control Plan, prepared by Benn and Penna Architecture, Drawing No. 1501-P-12, Revision B, dated 21 December 2015
- Landscape Plan, prepared by Selena Hannan Landscape Design, Drawing No. PL02 A, Issue A, dated 11 December 2015
- Plan showing boundaries, relative heights and physical features, prepared by Bee & Lethbridge Pty Ltd, Drawing No. 16288-02, Ref. No. 16288, Sheet 1 of 2, Rev. 02, dated 2 September 2014
- Plan showing boundaries, relative heights and physical features, prepared by Bee & Lethbridge Pty Ltd, Drawing No. 16288-02, Ref. No. 16288, Sheet 2 of 2, Rev. 02, dated 2 September 2014

Documents:

- **BASIX Certificate No. 693874S_04, prepared by Benn and Penna Architects, dated 14 February 2017**
- Geotechnical Assessment, prepared by JK Geotechnics, Ref. No. 28960ZRrpt, dated 7 December 2015
- Arboricultural Assessment and Development Impact Report, prepared by Raintree Consulting, dated 15 December 2015

Consent condition A9 is to be added as follows:

No consent is given for the construction of an inclinometer. The construction of any such structure would be subject to a separate consent(s).

All other conditions are to remain unchanged, unless altered by further modifications to the consent.

Tyson Ek-Moller
ACTING E/PLANNER
PLANNING AND ASSESSMENT