

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2020/0445
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Responsible Officer:	Jordan Davies
Land to be developed (Address):	Lot 449 DP 16902, 52 Palmgrove Road AVALON BEACH NSW 2107
Proposed Development:	Modification of Development Consent N0092/14 granted for demolition of the existing dwelling and the construction of an attached dual occupancy
Zoning:	R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Robert William Harper David Andrew Harper
Applicant:	Future World Design Pty Ltd

Application Lodged:	01/10/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	Not Notified
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

This Section 4.55(1A) seeks to modify condition E6 of Development consent NO092/14 which granted consent for the construction of an attached dual occupancy on 30 October 2014.

The condition E6 requires a 2.5m wide easement to be created over an existing stormwater pipe running through the centre of the site and between the two approved dwellings. However, the configuration of the development as approved and constructed does not allow sufficient room for a 2.5m wide easement between the buildings and the applicant submits that the condition is contrary to the approved plans. The applicant has therefore proposed an amended easement plan and seeks amendment to the condition to reflect an easement configuration that is consistent with the approved building footprints.

Council's development engineers and stormwater asset engineers have reviewed the amended easement plan and support the modification of the condition to allow a reduced width easement between the buildings and a 2.5m wide easement outside the building footprint.

The development has been substantially commenced and therefore this modification to the 2014 consent can be dealt with.

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

There are no assessment issues.

SITE DESCRIPTION

Property Description:	Lot 449 DP 16902 , 52 Palmgrove Road AVALON BEACH NSW 2107
Detailed Site Description:	The subject site consists of one (1) allotment located on the northern-eastern side of Palmgrove Road. The site is irregular in shape with a curved frontage of 50m along Palmgrove Road and a depth of 44m. The site has a surveyed area of 1126m². The site is located within the R2 Low Density Residential zone and accommodates a dual occupancy which has recently been constructed. The site has a moderate fall from the front to the rear of approximately 10m. The site has a number of medium and tall canopy trees

throughout located outside the building footprint

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by detached one and two storey dwelling houses.

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:

- N0092/14 Demolition of existing dwelling and construction of an attached dual occupancy was approved on 30 October 2014 by Pittwater Council.
- N0092/14/S96/1 Modification of development consent was approved on 29 October 2015 by Pittwater Council.

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 N0092/14, 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, is considered to be of minimal environmental impact for the following reasons: • The modification is to amend the width of an easement over an existing pipe and will have no physical change or impact to the built or natural environment.
(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 N0092/14 for the following reasons: • The location of the buildings, height, setbacks and pipe location is unchanged. It is only the easement width between the two buildings.
(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 21 Development Control Plan.
(d) it has considered any submissions made concerning the proposed modification	The application was not required to be notified as per Council's Community Consultation Plan which does

Section 4.55(1A) - Other Modifications	Comments
within any period prescribed by the regulations or provided by the development control plan, as the case may be.	not require Section 4.55(1A) modifications to be notified when they have minor environmental impact. In this case there is no additional impact and therefore notification was not required.

Section 4.15 Assessment

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

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(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 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 addressed via a condition in the original consent. <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. <u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case. <u>Clause 92</u> of the EP&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.

Section 4.15 'Matters for Consideration'	Comments
	<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. <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 matter has been addressed via a condition in the original consent. <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. <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.
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	(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. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not 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	The application was not required to be notified as per Council's Community Consultation Plan which does not require Section 4.55(1A) modifications to be notified when they have minor environmental impact. In this case there is no additional impact and therefore notification was not required.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application was not notified.

REFERRALS

Internal Referral Body	Comments
NECC (Development Engineering)	The applicant seeks to reduce the drainage easement width which is in accordance with Pittwater DCP. Please refer to Council's Assets Engineers to comment/approved this request. DATED 5/11/2020 No Development Engineering objection to the modification of consent subject to condition E6 being amended to the following:- An easement to drain water over the title of the land in favour of Council, under Section 88B or transfer of Granting of Easement of the Conveyance Act. The drainage easement shall be 2.5 metres wide (outside of the building envelope) and 1.8 metres wide adjacent to the building generally in accordance with plans drawn by Future World Design Site Plan Sheet A100 CC Rev F easement adj dated 22.10.2020. The proposed drainage easement shall be centrally located over the existing Council's stormwater pipe. Evidence of the lodgement of the easement and proof of registration with the Land Registry Services is to be provided to the principal Certifying authority prior to issue of the Occupation Certificate.

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 (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

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
7.2 Earthworks	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Pittwater 21 Development Control Plan

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
B5.10 Stormwater Discharge into Public Drainage System	Yes	Yes
B5.14 Stormwater Drainage Easements (Public Stormwater Drainage System)	Yes	Yes

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

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

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

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

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

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

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2020/0445 for Modification of Development Consent N0092/14 granted for demolition of the existing dwelling and the construction of an attached dual occupancy on land at Lot 449 DP 16902,52 Palmgrove Road, AVALON BEACH, 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
A100 CC Rev F	22/10/2020	Future World Design

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

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

B. Modify Condition E6 to read as follows:

An easement to drain water over the title of the land in favour of Council, under Section 88B or transfer of Granting of Easement of the Conveyance Act. The drainage easement shall be 2.5 metres wide (outside of the building envelope) and 1.8 metres wide adjacent to the building generally in accordance with plans drawn by Future World Design Site Plan Sheet A100 CC Rev F easement adj dated 22.10.2020. The proposed drainage easement shall be centrally located over the existing Council's stormwater pipe. Evidence of the lodgement of the easement and proof of registration with the Land Registry Services is to be provided to the principal Certifying authority prior to issue of the Occupation Certificate.

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

Signed



Jordan Davies, Planner

The application is determined on 09/11/2020, under the delegated authority of:



Lashta Haidari, Manager Development Assessments