

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2019/0519
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Responsible Officer:	Rebecca Englund
Land to be developed (Address):	Lot 3 DP 732085, 999 Barrenjoey Road PALM BEACH NSW 2108
Proposed Development:	Modification of Development Consent DA2018/1644 granted for construction of a dwelling house including swimming pool
Zoning:	E4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Stephen Merle Leibowitz Pamela Merle Leibowitz
Applicant:	Stephen Merle Leibowitz

Application Lodged:	25/10/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	07/11/2019 to 21/11/2019
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

The modification application seeks to utilise non-habitable subfloor space on the northern side of the dwelling as an additional bedroom and ensuite.

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 21 Development Control Plan - A4.12 Palm Beach Locality

SITE DESCRIPTION

Property Description:	Lot 3 DP 732085 , 999 Barrenjoey Road PALM BEACH NSW 2108
Detailed Site Description:	The site is irregular in shape, with a 28.39m wide frontage to Barrenjoey Road, a 21.081m wide frontage to the Pittwater waterway and a total area of 1150m ² . The site previously contained a two storey dwelling situated generally centrally on the site, with a driveway connection to Barrenjoey Road. The dwelling has since been demolished and construction has commenced pursuant to DA2018/1644. A significant Norfolk Island Pine is located in the north-western corner of the site, within the foreshore area. The site is comparably steep, with a fall of 16.3m from the Barrenjoey Road frontage down to the waterway, with a slope of approximately 46%. The site is surrounded by low-density residential development of varied architectural style, character and age.

Map:



SITE HISTORY

On 28 May 2019, Development Application DA2018/1644 was approved by Council.

On 9 September 2019, Modification Application Mod2019/0352 was approved by Council.

On 25 October 2019, the subject modification application was lodged with Council.

On 11 December 2019, a site inspection was undertaken by the assessing officer.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.55 (2) 'Other Modifications' Assessment

The relevant matters for consideration under Section 4.55 (2) of the EP&A Act are:

Section 4.55 (2) - 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 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 DA2018/1644. Whilst the deletion of the previously proposed habitable floor space on Level 1 was critical to the approval of the original application, the modified

Section 4.55 (2) - Other Modifications	Comments
	proposal has scaled down the extent of floor space proposed, such that the development is largely limited to the appearance of three storeys in any one place, stepping up the slope of the hill. Furthermore, the bedroom addition, which is entirely contained within the footprint of the approved dwelling, will be largely screened from view by the existing Norfolk Island pine, as seen from the beachfront and nearby residences.
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application DA2018/1644 did not require concurrence from the relevant Minister, public authority or approval body.
(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 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.	No submissions were received in relation to this application.

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 96 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 EP&A Act are:

Section 4.15 'Matters for Consideration'	Comments
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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 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 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. <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.
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	No submissions were received in relation to this application.

Section 4.15 'Matters for Consideration'	Comments
Regs	
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 identified as being prone to bushfire. The proposed modifications do not alter the existing requirements of the NSW RFS, which have been endorsed within the existing development consent.

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.

REFERRALS

Internal Referral Body	Comments
NECC (Development Engineering)	No objection to approval, no modification is required.

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

The modification application was supported by a revised BASIX Certificate, which will be referenced in any modified consent issued.

SEPP (Coastal Management) 2018

The consent authority can be satisfied that the modified proposal remains consistent with the provisions of SEPP (Coastal Management), specifically clauses 13, 14 and 15 of that policy.

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
4.3 Height of buildings	Yes
7.2 Earthworks	Yes
7.7 Geotechnical hazards	Yes

Pittwater 21 Development Control Plan

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach Locality	No	Yes
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
D12.1 Character as viewed from a public place	Yes	Yes
D12.13 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D12.14 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

A4.12 Palm Beach Locality

Whilst technically comprising 5 levels, the approved development presents as a three storey dwelling house, situated half way up the site, with a clear band of vegetation separating the dwelling from an access tunnel to the foreshore. The three storey presentation to the waterway was approved despite inconsistency with the two storey height limit prescribed by the desired future character statement, as the proposal was well-articulated and had been designed to follow the slope of the land. Furthermore, the scale of the proposal was compatible/consistent with the scale of surrounding built form.

However, it is noted that when the original development application was lodged, the proposal included an addition level of habitable floor space which joined the upper three storeys to the access tunnel, resulting in the appearance of a five storey dwelling as seen from the waterway. Noting that the five storey appearance also aligned with a portion of the development that breached the height limit, this portion of the development was not supported by Council and was ultimately removed from the proposal.

The modified proposal seeks to reintroduce some of this previously proposed floor space. However, the modified design has been scaled back from the original proposal, and is limited to the northern side of the building, where the approved development is limited to two storeys. The proposed additional floor space is also setback from the access tunnel, maintaining the clear band of vegetation relied upon in the original consent. As such, despite the additional floor space now proposed, the development will maintain the appearance of a three storey dwelling, that steps up the slope of the site, consistent with that originally approved.

Despite the incorporation of habitable floor space on another level, the resultant development is considered to appropriately reflect the desired future character of the Palm Beach Locality.

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

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
- Inconsistent 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. Mod2019/0519 for Modification of Development Consent DA2018/1644 granted for construction of a dwelling house including swimming pool on land at Lot 3 DP 732085,999 Barrenjoey Road, PALM BEACH, subject to the conditions printed below:

A. Add Condition No.1A - Modification of Consent - 'Approved Modification 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 Approved Plans and Supporting Documentation referenced in Condition 1 of this consent, as amended by the following:

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Floor Plan: Level 01 DA2003, issue 05	17 October 2019	Cottee Parker Architects Pty Ltd
North Elevation DA3002, issue 05	17 October 2019	Cottee Parker Architects Pty Ltd
West Elevation DA3003, issue 05	17 October 2019	Cottee Parker Architects Pty Ltd
Section 2 DA3102, issue 05	17 October 2019	Cottee Parker Architects Pty Ltd
Section 3 DA3103, issue 05	17 October 2019	Cottee Parker Architects Pty Ltd
Section 4 DA3104, issue 05	17 October 2019	Cottee Parker Architects Pty Ltd

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate 957993S_05	22 October 2019	Windtech Consultants

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

B. Modify Condition 20 'BASIX Requirements' to read as follows:

Details demonstrating consistency with the approved BASIX Certificate referenced in Condition 1A of

this consent are to be submitted to the certifying authority, prior to the issuance of the construction certificate.

Reason: Legislative requirement.

C. Modify Condition 28 'BASIX Requirements' to read as follows:

Prior to the issuance of the occupation certificate, a suitably qualified professional is to provide the certifying authority with confirmation that the as-built development is consistent with the requirements of the BASIX Certificate referenced in Condition 1A of this consent.

Reason: Legislative requirement.

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

Signed



Rebecca Englund, Principal Planner

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



Matthew Edmonds, Manager Development Assessments