

SUBJECT: N0539/07/S96/1 – Section 96 (2) Modification of Consent N0539/07 relating to 64 HERBERT AVENUE, NEWPORT (Lot 152 DP 13457) with respect to the relocation of the approved carport to the south

Determination Level:

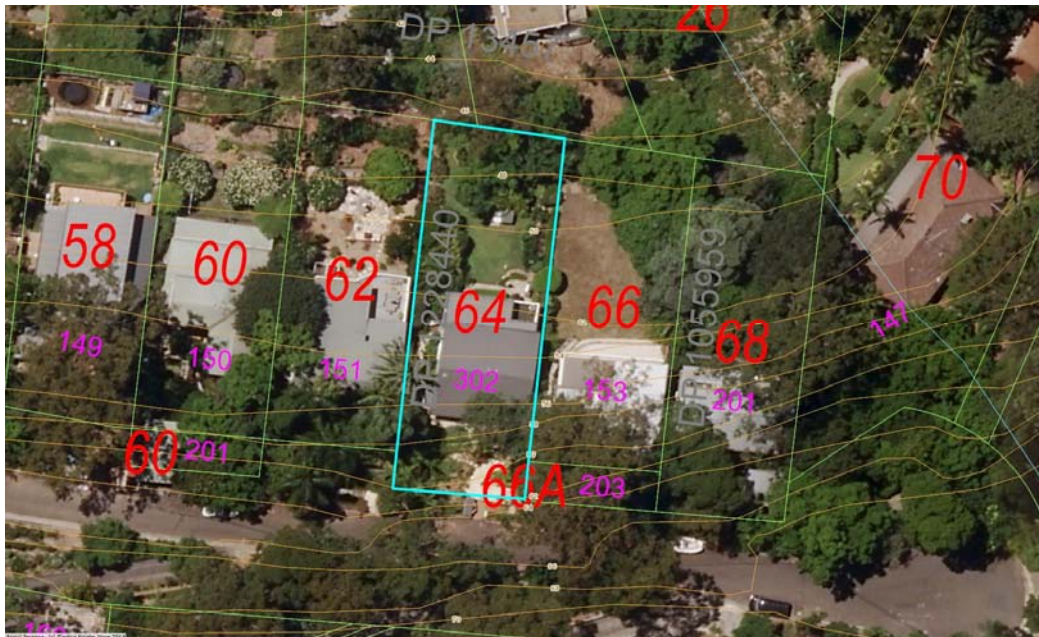
Development Determination Panel

Date: 17 January 2018

SUMMARY OF RECOMMENDATION

APPROVAL

REPORT PREPARED BY:	Hugh Halliwell
APPLICATION SUBMITTED ON:	12 October 2017
APPLICATION SUBMITTED BY:	MR & MRS DRYSDALE C/- VAUGHAN MILLIGAN DEVELOPMENT CONSULTING P/L PO BOX 49 NEWPORT BEACH NSW 2106
OWNER(S):	DRYSDALE, OWEN ANDREW (OwnResOcc) DRYSDALE, SYLVIA (OwnResOcc)



SITE DETAILS

The subject site is identified as lot 152 of Deposited Plan (DP) 13457 and is commonly known as 64 Herbert Avenue Newport. The site is regular in shape, has a total area of 584.0m² and the following boundary dimensions: north 24m, south 15.225m, east 37.845m and west 38.785m. The site slopes steeply and uniformly from front to rear (south to north) with the front (south) being approximately 9.0m higher than that of the rear (north). The lot is currently developed by a two storey brick dwelling with tiled roof with associated timber deck located on the northern facade of the building. Significant vegetation is apparent on site primarily at the front of the dwelling or lot and includes species such as Illawarra Flame Tree, Grey Iron Bark, Jacaranda, Norfolk Island Hibiscus, and Canary Island Date Palm. Development on adjoining properties consists of two storey single occupancy residential dwellings. The existing lot has no off-street car-parking provision and is accessed via a stepped walkway from Herbert Avenue.

STATUTORY AND POLICY CONSIDERATIONS

- Environmental Planning and Assessment Act 1979 (as amended);
- Environmental Planning and Assessment Regulation 2000 (as amended);
- Pittwater Local Environmental Plan 2014 (PLEP 2014)
- Pittwater 21 Development Control Plan
 - o Geotechnical Hazard H1
 - o Bushfire prone property
 - o Scenic Protection Category 1
 - o Land within Area 1 of the Landscaped Area Map
 - o Flora and Fauna Category 1 & 2 Area

BACKGROUND

14 September 2007

An application was lodged with Council for additions to the existing dwelling, which included:

- The construction of an elevated car stand platform;
- Additions to extend the rear deck of the existing first floor level, together with internal alterations; and
- An internal connection to the ground floor level and the addition of a bedroom and associated deck area.

16 May 2008

The application was determined by delegated authority - Development Unit.

31 October 2008

A construction certificate was submitted with respect to the approved works as part of consent N0539/07.

6 November 2008

A commencement certificate was received.

2 February 2016

A subdivision certificate was issued by Council for a boundary adjustment of lots to include a portion of the Council road reserve.

12 October 2017

A Section 96 Modification Application was lodged with Council, in respect to modifying the approved

PROPOSAL IN DETAIL

The applicant seeks consent to modify consent N0135/16 pursuant to S96(2) in the following way:

- Relocating the approved carport to the south;
- Raising of the carport slab 286mm;
- Raising of the ridge height of the carport by 150mm; and
- Widening of the carport.

NOTIFICATION

The S96 Modification Application was notified in accordance with Council's notification policy from 24 November to 8 December 2017.

ISSUES

- 4.3 Height of buildings
- D10.7 Front building line (excluding Newport Commercial Centre)
- D10.11 Building envelope (excluding Newport Commercial Centre)

COMPLIANCE TABLE

T - Can the proposal satisfy the technical requirements of the control?

O - Can the proposal achieve the control outcomes?

N - Is the control free from objection?

Control	Standard	Proposal	T	O	N
Pittwater Local Environmental Plan 2014					
Zone E4 Environmental Living			Y	Y	Y
4.3 Height of buildings		See discussion below.	N	Y	Y
7.1 Acid sulfate soils			Y	Y	Y
7.6 Biodiversity protection			Y	Y	Y
7.10 Essential services			Y	Y	Y
Pittwater 21 Development Control Plan 2014					
A1.7 Considerations before consent is granted			Y	Y	Y
A4.10 Newport Locality			Y	Y	Y

Control	Standard	Proposal	T	O	N
B1.4 Aboriginal Heritage Significance			Y	Y	Y
B3.2 Bushfire Hazard			Y	Y	Y
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community			Y	Y	Y
C1.1 Landscaping			Y	Y	Y
C1.2 Safety and Security			Y	Y	Y
C1.3 View Sharing			Y	Y	Y
C1.4 Solar Access			Y	Y	Y
C1.5 Visual Privacy			Y	Y	Y
C1.23 Eaves			Y	Y	Y
D10.1 Character as viewed from a public place			Y	Y	Y
D10.4 Building colours and materials			Y	Y	Y
D10.7 Front building line (excluding Newport Commercial Centre)		See discussion below.	N	Y	Y
D10.8 Side and rear building line (excluding Newport Commercial Centre)			Y	Y	Y
D10.11 Building envelope (excluding Newport Commercial Centre)		See discussion below.	N	Y	Y
D10.13 Landscaped Area - Environmentally Sensitive Land			Y	Y	Y
D10.16 Construction, Retaining walls, terracing and undercroft areas			Y	Y	Y
D10.18 Scenic Protection Category One Areas			Y	Y	Y
State Environmental Planning Policies and other					
EPA Act 1979 No 203 section 147 Disclosure of political donations and gifts			Y	Y	Y

DISCUSSION OF ISSUES

4.3 Height of buildings

The proposal is non-compliant with the above mentioned clause as it exceeds the 8.5m height restriction (proposed height – 8.8m). Notwithstanding this, the modified building height has been reduced due the carport moving south and up slope towards Herbert Avenue. It is noted that the original approval required the carport structure to be lowered in height 500mm, thus achieving a maximum height of 10m. The modified height, now 8.8m, is a notable reduction (1.2m), therefore a more favourable outcome.

The modified carport satisfies the objectives stipulated by clause 4.3 of PLEP 2014, particularly with regards to reducing the visual impact of the development, as well as responding sensitively to the natural topography. By moving the carport closer to Herbert Avenue, the height is significantly reduced, thereby reducing the impact of the approved undercroft, which is now noticeably lower. As mentioned above, the carport will remain consistent with the height and scale of similar carports within the front setback along Herbert Avenue. Views and solar access will remain unaffected by the modified location. Overall, the carport remains largely the same in appearance as viewed from Herbert Avenue, with the main point of difference being the reduced height.

D10.7 Front building line

The modified proposal is non-compliant with the front building line control of the Pittwater 21 DCP as it does not maintain a 6.5m setback. Although non-compliant, due to the steep topography on the site and surrounding properties along the northern side of Herbert Avenue, many similar car parking structures display reduced or nil setbacks to the street frontage. Furthermore, clause D10.6 may permit a variation to the front setback requirement where car parking is to be provided on steeply sloping sites, reduced or nil setbacks for car parking structures and spaces may be considered.

In this case, the proposal satisfies the outcomes stipulated under clause D10.7. The modified carport will maintain equitable preservation of views north from Herbert Avenue. It should be noted that the development (N0539/07) was also approved with a nil setback. The streetscape will remain unaffected, particularly compared to what was approved. No native vegetation will be adversely impacted by the modified location. Overall, the bulk and scale will present similarly to what was approved under consent N0539/07, with the main change being the reduced building height and undercroft area.

The modified proposal continues to seek consent for a nil setback due to the closure of a portion of the road reserve and subsequent purchasing of the area of land by the property owners. While the modified carport remains similar to what was approved with the exception of a marginal increase in slab height and ridge height and widening of the structure, the overall building height is reduced due to the structure moving further south and up the slope of the land. The carport will not dominate the streetscape and remain an open style structure the will complement the existing character of Herbert Avenue and other similar structures along the street. In all, the proposal is satisfactory and achieves the outcomes of the clause, therefore can be supported on merit.

D10.11 Building envelope

Due to the slope of the site, particularly the slope on which the building footprint is located, there is a breach to the prescribed building envelope. Notwithstanding the non-compliance, a variation is supported on merit. However, clause D10.11 does state the following:

Where the building footprint has a slope is situated on a slope over 16.7 degrees (i.e.; 30%), variation to this control will be considered on a merits basis.

The building footprint has been calculated to have a slope of 55%, thereby meeting the minimum 30%. The carport is consistent with the approved structure under N0539/07 with minor difference in dimensions (slightly wider). The carport will not have any impact upon the amenity of neighbours or the existing streetscape. A variation is supported on the basis that the outcomes stipulated by clause D10.11 have been met.

INTERNAL REFERRAL COMMENTS

Council's Senior Development Engineer has provided the following comments and/or recommendations:

The proposed relocation of the carport has been assessed and is satisfactory. No objection to approval, subject to amendment to the list of approved plans amended with the application and no additional or modified conditions of consent recommended.

Joseph Di Cristo – 4 December 2017

Council's Natural Environment Officer has provided the following comments and/or recommendations:

Council's Natural Environment - Biodiversity section raises no objection to the proposal, subject to conditions.

Nicole McVicar – 6 December 2017

ASSESSMENT – CONSIDERATION OF SECTION 96 OF THE EP&A ACT 1979

The modification application has been lodged and considered in accordance with Section 96(2) of the *Environmental Planning & Assessment Act 1979*.

Section 96(2) of the *Environmental Planning & Assessment Act 1979* is considered as follows;

Are the proposed modifications considered to result in substantially the same development as that which was originally approved?

The development has been assessed as being substantially the same development under Section 96(2). The proposed modification is consistent with the original approval for additions to an existing dwelling. The modifications will not dramatically alter the external appearance of the approved development, but rather reduce the overall height and undercroft area, and therefore bulk and scale of the carport. Generally though, the approved built form will remain the same as approved with the levels being amended.

Overall, the proposed modification will not have any bearing or impact on adjoining properties or public property and will remain materially and essentially the same development, therefore the resultant development is considered to be substantially the same development as originally approved.

Has the proposed modification application been notified in accordance with the regulations and P21 DCP?

Adjoining property owners were notified from 23 October to 6 November 2017 in accordance with Council's Notification policy. It is considered that the modified application has been adequately notified.

Have all submissions made within the notification period been considered as part of the assessment?

Over the course of the notification period, zero (0) submissions were received in response to the proposed development.

The proposal is considered to fall under the provisions of Section 96(2) of the EP&A Act 1979.

CONCLUSION

The Development Application has been assessed in accordance with the provisions of Section 79C of the Environmental Planning and Assessment Act 1979, Pittwater Local Environmental Plan, Pittwater 21 Development Control Plan and other relevant policies as listed at item 3.0.

The resultant modification is consistent with the outcomes of Council's policy. Furthermore, the resultant development will be consistent with the objectives of the relevant requirements and the desired future character of the Newport Locality. The modification is not dissimilar to the approved development, which approved the nil setback for the carport, nor is it inconsistent with the relevant controls of PLEP 2014 and P21 DCP. Accordingly, the application is recommended for approval.

RECOMMENDATION OF PLANNER

That pursuant to section 96(2) of the Environmental Planning and Assessment Act 1979, Council modify development consent N0539/07 for additions to an existing dwelling, including modifications for the relocation of an approved double carport at 64 Herbert Avenue, Newport in the following manner:

Documentation:

- **Architectural plans, A101 through to A106, prepared by Blue Sky Building Designs, all dated 21/08/2017;**
- **Bushfire Risk Assessment, Ref: 1180, prepared by Planning For Bushfire Protection, dated 31/08/2017;**
- **Arborist Report, 64 Herbert Avenue, prepared by Landscape Matrix, dated 27/09/2017.**

Additional conditions:

B22. At the commencement of building works and in perpetuity the entire property shall be managed in accordance with requirements of the Bushfire Assessment Report, prepared by Planning for Bushfire Protection, dated 31/08/2017.

B23. If any Aboriginal Engravings or Relics are unearthed all work is to cease immediately and the Aboriginal Heritage Office (AHO) and Office of Environment and Heritage (OEH) are to be notified.

B24. No environmental weeds are to be planted on the site. Refer to Council website www.pittwater.nsw.gov.au/environment/noxious_weeds for environmental weed lists.

C11. Details in the Construction Certificate are to reflect the recommendations/requirements of the Bushfire Risk Assessment Report prepared by Planning for Bushfire Protection, dated 31/08/2017.

D20. All recommendations as outlined in the supplied arborist report by Landscape Matrix Pty Ltd, dated 17 July 2017 are required to be complied with before and throughout the development period.

E9. Prior to the issue of an Occupation Certificate, an Accredited Certifier is to provide certification that the development has complied with the recommendations identified in the Bushfire Risk Assessment Report, prepared by Planning for Bushfire Protection, dated 31/08/2017.

Report prepared by

Hugh Halliwell
PLANNER