

SUBJECT: N0250/16/S96/2 – Section 96(1A) Modification
31A QUEENS AVENUE, AVALON BEACH (Lot 31 DP 789083)
Modification of Development Consent N0250/16 which approved
SECONDARY DWELLING

Determination Level:

PRINCIPAL OFFICER

Date: 04/01/2017

SUMMARY OF RECOMMENDATION

MODIFY CONSENT

REPORT PREPARED BY:	CHRISTOPHER NGUYEN
APPLICATION SUBMITTED ON:	24/11/2016
APPLICATION SUBMITTED BY:	JYE SALIBA IAN CUBITTS CLASSIC HOME IMPROVEMENTS 152 RUSSELL STREET EMU PLAINS NSW 2750
OWNERS:	BORIS PANOV

1.0 Development Controls

The site is zoned E4 Environmental Living under Pittwater Local Environmental Plan 2014. Pursuant to the land use table in Part 2 of this instrument, secondary dwellings are permissible with consent.

The following relevant state, regional and local policies and instruments apply:

- Environmental Planning and Assessment Act, 1979 (the Act)
- Environmental Planning and Assessment Regulation 2000 (the Regulation)
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (SEPP BASIX)
- Pittwater Local Environmental Plan 2014 (PLEP 2014)
 - Acid Sulphate Soils Map - Class 5
 - Biodiversity Map
 - Geotechnical Hazard Map
 - Height of Buildings Map - I ~ 8.5m
 - Lot Size Map - Q ~ 700sqm
- Pittwater 21 Development Control Plan (P21 DCP)
 - Avalon Beach Locality
 - Bush fire prone property
 - Geotechnical Risk Management Policy for Pittwater
 - OSD Required
 - Landscaped Area Map: Area 1
 - Land Containing or Adjoining Pittwater Spotted Gum Forest

2.0 Site Details

The site is known as 31A Queens Avenue, Avalon Beach and legally referred to as Lot 31 DP 789083. The site is rectangular in shape with a long driveway. The site contains a two storey dwelling that is located centrally on the site. Adjoining the site are low density residential dwellings.

3.0 Proposal in Detail

A Section 96(1A) modification application has been lodged in relation to development consent N0250/16 which approved a secondary dwelling

The modification application has been submitted to alter the previously approved application in the following ways:

- To remove the following condition:

B14 – The obsolete driveway in the northern corner of the lot is to be landscaped according to the landscape plan

4.0 Background

N0250/16 – Development Application for a secondary dwelling was granted consent

N0250/16/S96/1 – S96 Modification was granted consent

5.0 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					
1.9A Suspension of covenants, agreements and instruments			Y	Y	Y
Zone E4 Environmental Living			Y	Y	Y
4.3 Height of buildings			Y	Y	Y
5.4 Controls relating to miscellaneous permissible uses			Y	Y	Y
5.10 Heritage conservation			Y	Y	Y
7.1 Acid sulfate soils		Acid Sulphate Region 5.	Y	Y	Y
7.6 Biodiversity protection			Y	Y	Y
7.7 Geotechnical hazards			Y	Y	Y
7.10 Essential services			Y	Y	Y
Pittwater 21 Development Control Plan 2014					
3.1 Submission of a Development Application and payment of appropriate fee			Y	Y	Y
3.2 Submission of a Statement of Environmental Effects			Y	Y	Y
3.3 Submission of supporting documentation - Site Plan / Survey Plan / Development			Y	Y	Y

Control	Standard	Proposal	T	O	N
Drawings					
3.4 Notification			Y	Y	Y
3.5 Building Code of Australia			Y	Y	Y
A1.7 Considerations before consent is granted			Y	Y	Y
A4.1 Avalon Beach Locality			Y	Y	Y
B1.3 Heritage Conservation - General			Y	Y	Y
B1.4 Aboriginal Heritage Significance		No apparent issues.	Y	Y	Y
B3.1 Landslip Hazard			Y	Y	Y
B3.2 Bushfire Hazard		The application is supported by a Bushfire Risk Assessment Report, prepared by Bushfire Consulting Services Pty Ltd, dated 06 May 2015 and the applicant has submitted a Bushfire Risk Assessment Certificate. The report and certificate both identify that the subject site has a BAL rating of BAL-12.5. Referral to the NSW RFS is not required. Conditions requiring compliance with the recommendations from the Bushfire Assessment Report will be imposed.	Y	Y	Y
B3.6 Contaminated Land and Potentially Contaminated Land			Y	Y	Y
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community		The property contains a modified landscape typical of a suburban garden with some native canopy trees. The proposed works are the construction of a secondary dwelling in the rear yard. An arborist report has been submitted (McArdle Arboricultural Consultancy, 3 June 2016) which assesses fifteen (15) trees potentially impacted by the proposed works. All the trees can be safely retained with only minor pruning recommended for Tree 12. The report includes specific recommendations for tree protection of those trees within close proximity to the proposed	Y	Y	Y

Control	Standard	Proposal	T	O	N
		works (Trees 10, 11 and 12). This report is acceptable. No change to landscaping has been proposed. There are no further natural environment issues.			
B5.4 Stormwater Harvesting			Y	Y	Y
B5.7 Stormwater Management - On-Site Stormwater Detention			Y	Y	Y
B5.10 Stormwater Discharge into Public Drainage System			Y	Y	Y
B6.3 Off-Street Vehicle Parking Requirements			Y	Y	Y
B8.2 Construction and Demolition - Erosion and Sediment Management			Y	Y	Y
B8.5 Construction and Demolition - Works in the Public Domain			Y	Y	Y
C1.1 Landscaping		For comment see B4.7	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		See 8.0 Discussion of Issues	Y	Y	Y
C1.6 Acoustic Privacy			Y	Y	Y
C1.7 Private Open Space		The property does not contain 80m ² of private open space with minimum dimensions of 3.0m. The slope of the space between the secondary dwelling and the rear boundary is more than 5%. Although the minimum space is not provided, the proposal still provides adequate private open space directly accessible from living areas of both dwellings. This private space receives sufficient solar access and privacy for the occupants. Although the site at the rear slopes more than 5%, it is still accessible for private use.	N	Y	Y
C1.9 Adaptable Housing and Accessibility			Y	Y	Y
C1.11 Secondary Dwellings and Rural Worker's Dwellings		The floor space of the secondary dwelling was measured to be approximately	Y	Y	Y

Control	Standard	Proposal	T	O	N
		59m ² . It contains two bedrooms and one bathroom.			
C1.12 Waste and Recycling Facilities			Y	Y	Y
C1.13 Pollution Control			Y	Y	Y
C1.14 Separately Accessible Structures			Y	Y	Y
C1.19 Incline Passenger Lifts and Stairways			Y	Y	Y
C1.23 Eaves			Y	Y	Y
C1.24 Public Road Reserve - Landscaping and Infrastructure		No works proposed on road reserve	Y	Y	Y
C1.25 Plant, Equipment Boxes and Lift Over-Run			Y	Y	Y
D1.1 Character as viewed from a public place		The secondary dwelling cannot be viewed from a public area as it is situated in the rear yard of the lot. The secondary dwelling will be visible from the adjoining rear neighbour. In order to soften the visual bulk of the development, a condition will be imposed for landscape screening along the rear boundary at a height of 4.0m. This will adequately obstruct the view of the secondary dwelling from the adjoining rear neighbour's pool area.	Y	Y	Y
D1.4 Scenic protection - General			Y	Y	Y
D1.5 Building colours and materials		The schedule of finishes proposes the colour "heather" for the wall cladding. This colour is considered dark enough to meet the requirements of this control. Windows and doors are white however they are minor features of the secondary dwelling and a variation is supported.	Y	Y	Y
D1.8 Front building line	6.5m		Y	Y	Y
D1.9 Side and rear building line		See 8.0 Discussion of Issues	N	Y	Y

Control	Standard	Proposal	T	O	N
D1.11 Building envelope		The secondary dwelling has a minor breach in building envelope. The breach is from the eaves of the roof and this is considered minor.	N	Y	Y
D1.14 Landscaped Area - Environmentally Sensitive Land		See 8.0 Discussion of Issues See 6.0 Discussion of Issues regarding S96 modifications.	N	Y	Y
D1.16 Fences - Flora and Fauna Conservation Areas		The plans and Statement of Environmental Effects do not indicate new fences or modifications to existing fences.	Y	Y	Y
D1.17 Construction, Retaining walls, terracing and undercroft areas			Y	Y	Y
State Environmental Planning Policies and other					
SEPP (Building Sustainability Index: BASIX) 2004		A valid BASIX Certificate was provided	Y	Y	Y
EPA Act 1979 No 203 section 147 Disclosure of political donations and gifts			Y	Y	Y

Changes to the above compliance table are in bold. The proposed modifications contained within the application are consistent with the original assessment as seen in the compliance table above. It is considered there would be no further impact towards the controls in respect of the current plans.

6.0 Discussion of Issues

The S96 application proposes to remove the following condition:

B14 – The obsolete driveway in the northern corner of the lot is to be landscaped as according to the landscape plan

This condition was originally imposed due to the landscape plan showing the driveway as landscaped area. It was concluded this condition was not input in error by Council. The application proposes to remove this condition which is acceptable. There is adequate vegetation on site and the driveway to be retained is minor.

As the driveway exists and is not proposed to be modified in any way, an assessment from Council's Development Engineer was not sought.

7.0 Internal Referral Comments

Council's Natural Resources Officer provided the following comments:

The proposed Section 96 modification is to delete a condition which relates to the removal of an existing driveway. The plan is to retain the driveway as is to provide parking. No physical works are proposed. There are no natural environment issues.

Therefore, Council's Natural Resources Officer support this modification.

8.0 Assessment – Consideration of Section 96 of The EP&A Act 1979

The modification application has been lodged and considered in accordance with Section 96(1A) of the *Environmental Planning & Assessment Act 1979*.

Section 96(1A) of the *Environmental Planning & Assessment Act 1979* is considered as follows:

Is the proposed modification of minimal environmental impact?

The proposed modifications involve deleting a condition to remove a driveway. As the proposal does not result in any additional environmental impacts other than the ones that have been addressed in the original application, the proposed modifications are considered to be of minimal environmental impact.

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(1A). The proposed alterations and additions are considered to be consistent with the original approval for alterations and additions to the existing dwelling. 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 01/12/2016 to 15/12/2016 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(1A) of the EP&A Act 1979.

9.0 Conclusion

The modification application has been assessed in accordance with the provisions of Section 96(1A) of the Environmental Planning and Assessment Act 1979, Pittwater Local Environmental Plan 2014 and Pittwater 21 DCP and other relevant Council policies.

The proposed amendments to the existing dwelling are considered to be of minimal environmental impact and will not result in any unreasonable impacts upon adjoining properties. Accordingly, the application is recommended for approval.

10.0 Recommendation

That Council as the consent authority pursuant to Section 96 of the Environmental Planning and Assessment Act 1979 modify development consent N0250/16 in the following way:

- **Architectural drawings, sheet 01, prepared by Ian Cubitt's Classic Home Improvements, dated 17/04/2015**

The following condition is to be deleted:

B14 – The obsolete driveway in the northern corner of the lot is to be landscaped according to the landscape plan

Report prepared by

Christopher Nguyen
PLANNER