

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2018/0437
Responsible Officer:	Nick Armstrong
Land to be developed (Address):	Lot 137 DP 14961, 20 Bynya Road PALM BEACH NSW 2108
Proposed Development:	Modification of Development Consent N0341/05 granted for demolition of existing upper floor, construction of dwelling house alterations and additions, driveway alterations and carport
Zoning:	E4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Frank Linden Pidcock Judith Mary Pidcock
Applicant:	Jeremy Pidcock
Application lodged:	16/08/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	19/09/2018 to 03/10/2018
Advertised:	Not Advertised
Submissions Received:	0
Recommendation:	Approval

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 Local Environmental Plan 2014 - 7.7 Geotechnical hazards

SITE DESCRIPTION

Property Description:	Lot 137 DP 14961 , 20 Bynya Road PALM BEACH NSW 2108
Detailed Site Description:	The subject site consists of one (1) allotment located on the eastern side of Bynya Road. The site is regular in shape with a frontage of 15.49m along Bynya Road and a depth of 43.56m. The site has a surveyed area of 676.6m². The site is located within the E4 Environmental Living zone and accommodates two and three storey dwelling located centrally. The site falls 18m from the road frontage to the rear boundary with an average slope of approximately 41.9%. The site contains several canopy trees, with the rear of the site mainly consisting of thick vegetation. Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by low density residential dwellings in a landscaped setting.

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:

19 September 2005

Development Application N0341/05 for the partial demolition of the existing dwelling and construction of a new dwelling was granted consent.

19 March 2007

Section 96 Modification Application N0341/05 for the partial demolition of the existing dwelling and construction of a new dwelling was granted modified consent.

18 November 2009

Section 96 Modification Application N0341/05/S96/2 for the partial demolition of the existing dwelling and construction of a new dwelling was granted modified consent.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks to modify the consent for the demolition of the upper floor of an existing dwelling and construction of a new dwelling. In particular, the modifications seek the following changes:

- Deletion of Condition E2 requiring a positive covenant to be created in accordance with the submitted Geotechnical Report to ensure ongoing maintenance/inspections.

In consideration of the application a review of (but not limited) documents as provided by the applicant in support of the application was taken into account detail provided within Attachment C.

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 N0341/05 and subsequent assessment N0341/05/S96/2, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55 (2) of the Environmental Planning and Assessment Act, 1979, 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 N0341/05.
(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 N0341/05 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 the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Pittwater Local Environmental Plan 2014 and Pittwater 21 Development Control Plan.

Section 4.55 (2) - Other Modifications	Comments
(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 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	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)(iiia) – 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, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No Additional information was requested. <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>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

Section 4.15 'Matters for Consideration'	Comments
	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 Warringah 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	No Submissions were received.
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 indicated as being prone to bushfires, however as the proposed modifications only relate to the deletion of Condition E2 in relation to Geotechnical requirements the application does not impact the previous bushfire assessment conditions of the original and modified consents.

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.

MEDIATION

No requests for mediation have been made in relation to this application.

REFERRALS

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	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.

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)

Nil

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

Principal Development Standards

N/A - no built form changes.

Compliance Assessment

Clause	Compliance with Requirements

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
7.7 Geotechnical hazards	Yes

Detailed Assessment

7.7 Geotechnical hazards

The proposed modification application intends to delete Condition E2 of the original and subsequently modified consents. Condition E2 reads as follows:

A positive covenant/restriction on the use of land is to be created prior to the issue of the Occupation Certificate where the recommendations of the approved Geotechnical Report prepared by Douglas Partners, dated May 2005 requires on-going maintenance/inspections to ensure that the development achieves the acceptable level of risk criteria over the life of the development, the terms of which require the landowner to comply with the recommendations contained within the report.

This condition was correctly included at the time of the original consent and subsequent modified consents being issued as the landslip risk associated development being conducted on a site identified as being a Geotechnical Hazard was assessed the relevant Geotechnical Policy at the time. The former Pittwater Council amended the Geotechnical Risk Policy in 2009 (see Appendix 5 P21 DCP) which no longer required the creation of a positive covenant/restriction on the title.

A covering letter has been prepared by Douglas Partners, Ref. 43099.01, dated 06/07/2018 confirming that the now completed development is structurally sound and is under the impression that no on-going maintenance plan is needed, which is consistent with the updated Geotechnical Risk Management Policy for Pittwater 2009.

The condition is therefore no longer required and is able to be removed.

Pittwater 21 Development Control Plan

Built Form Controls

N/A - No built form changes.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
B3.1 Landslip Hazard	Yes	Yes

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

Pittwater Section 94 Development Contributions Plan

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. Mod2018/0437 for Modification of Development Consent N0341/05 granted for demolition of existing upper floor, construction of dwelling house alterations and additions, driveway alterations and carport on land at Lot 137 DP 14961,20 Bynya Road, PALM 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:

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Risk Report, Ref. 43099.01	06/07/2018	Douglas Partners

a) 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. (DACPLB01)

B. Delete Condition E2 to read as follows:

Deleted

Reason: Condition no longer required under updated Geotechnical Risk Policy 2009.

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

Signed



Nick Armstrong, Planner

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



Matthew Edmonds, Manager Development Assessments

ATTACHMENT A

No notification plan recorded.

ATTACHMENT B

Notification Document	Title	Date
 2018/600078	Notification Map	17/09/2018

ATTACHMENT C

Reference Number	Document	Date
 MOD2018/0437	20 Bynya Road PALM BEACH NSW 2108 - Section 96 Modifications - Section 96 (2) Environmental Impact	16/08/2018
 2018/524113	DA Acknowledgement Letter - Jeremy Pidcock	16/08/2018
 2018/533886	Modification Application Form	22/08/2018
 2018/533889	Applicant Details	22/08/2018
 2018/533892	Report - Geotech	22/08/2018
 2018/595738	Report - Statement of Modification	14/09/2018
 2018/600037	DA Acknowledgement Letter (not integrated) - Jeremy Pidcock	17/09/2018
 2018/600078	Notification Map	17/09/2018
 2018/600094	Notification Letter - 18 letters	17/09/2018