

SUBJECT: N0478/17 - 43 Attunga Road, NEWPORT NSW 2106 Alterations and additions to a dwelling and construction of a new secondary dwelling

Determination Level: **Manager - Development Assessment**

SUMMARY OF RECOMMENDATION: **CONSENT WITH CONDITIONS**

REPORT PREPARED BY: Hugh Halliwell

APPLICATION SUBMITTED ON: 27 October 2017

APPLICATION SUBMITTED BY: ALL ABOUT PLANNING PTY LTD
PO BOX 2196
PORT MACQUARIE NSW 2444

OWNER(S): Mrs Dianne Joan Allen
Mr Gary Allen

1.0 SITE DETAILS

The site is known as 43 Attunga Road, Newport and legally referred to as Lot 106 in Deposited Plan 752046. The site is irregular in shape and has a total site area of 709.9m². Vehicular and pedestrian access is gained via the 15.202m wide, north facing frontage. The site also has a secondary street frontage to Attunga Road to the south where only pedestrian access is provided for. The site experiences a fall of 11m from the northern frontage of the site towards the secondary street frontage to the south, with a slope of 23.9%. The site is currently occupied by a single dwelling to the front portion of the site with an in-ground swimming pool at the street frontage and an attached garage located to the rear of the dwelling. The site is surrounded by residential properties to the north, east and west. A site inspection was carried out on 22 November 2017.

2.0 PROPOSAL IN DETAIL

The application seeks consent for alterations and additions to an existing dwelling, and the construction of a secondary dwelling. In particular, the application seeks consent for the following works:

- Construction of a new double garage;
- A terrace and pergola above the new double garage;
- Extension to level 2 dining and living rooms; and
- Construction of a two bedroom secondary dwelling, as well as associated decking and retaining walls.

The cost of works is estimated to be \$473,965.

3.0 STATUTORY AND POLICY CONSIDERATIONS

The site is zoned E4 Environmental Living and SP2 Special Infrastructure under Pittwater Local Environmental Plan 2014. Pursuant to the land use table in Part 2 of this instrument, alterations and additions, and 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)
- Planning Proposal PP002/15
- Pittwater Local Environmental Plan 2014 (PLEP 2014)
 - Acid Sulphate Soils Map - Area 5
 - Geotechnical Hazard Map - H1
 - Height of Buildings Map - I ~ 8.5m
 - Land Reserve Acquisition Map - Classified Road
- Pittwater 21 Development Control Plan (P21 DCP)
 - Newport Locality
 - Geotechnical Risk Management Policy for Pittwater
 - Bushfire Prone
 - Land within Area 1 of the Landscaped Area Map
 - Scenic Protection Category 1

Variation to development standards:

The application does not seek to vary a development standard.

4.0 BACKGROUND

Development Application N0478/17 was lodged at Council 27 October 2017 and referred to Council's Senior Development Engineer, and externally to Roads and Maritime Services (RMS) for comments and/or recommendations.

15 January 2018

Council wrote to the Applicant requesting amended plans be submitted addressing concerns relating to development within the SP2 zone, reduced landscaped area, off-street vehicle parking and SEPP (Building Sustainability Index BASIX) 2004.

2 March 2018

After ongoing discussions with RMS and Council, the Applicant responded with amended plans providing an increased landscaped area, an additional parking spot and relocation of the deck initially proposed within the SP2 zone. These plans will form the basis of the following assessment.

5.0 NOTIFICATION

Development Application N0478/17 was notified from 2 November to 16 November 2017 to adjoining property owners in accordance with Council's notification policy. A site inspection on the 22 November 2017 confirmed the placement of the notification sign. During the notification period, zero (0) submissions were received.

Due to the submission of amended plans which relocate a deck to the western boundary overlooking No. 41 Attunga Road, the application was re-notified from 20 March 2018 to 5 April 2018, in accordance with Council's notification policy. During the re-notification period, zero (0) submissions were received.

6.0 ISSUES

- 5.1A Development on land intended to be acquired for public purpose
- B6.3 Off-Street Vehicle Parking Requirements
- C1.5 Visual Privacy
- D10.7 Front building line (excluding Newport Commercial Centre)
- D10.8 Side and rear building line (excluding Newport Commercial Centre)
- D10.11 Building envelope (excluding Newport Commercial Centre)
- D10.13 Landscaped Area - Environmentally Sensitive Land

7.0 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	8.5m, however, current planning proposal to amend the maximum height of a secondary dwelling in the E4 Environmental Living zone to 5.5m.	4.5m	Y	Y	Y
5.1 Relevant acquisition authority		See Clause 5.1A for discussion.	Y	Y	Y
5.1A Development on land intended to be acquired for public purpose		See discussion below.	Y	Y	Y

Control	Standard	Proposal	T	O	N
5.4 Controls relating to miscellaneous permissible uses	The total floor area of the secondary dwelling must not exceed whichever of the following is the greater: <ul style="list-style-type: none"> • 60 square metres, • 25% of the total floor area of the principal dwelling 	55.7m ²	Y	Y	Y
7.1 Acid sulfate soils		Class 5	Y	Y	Y
7.2 Earthworks			Y	Y	Y
7.7 Geotechnical hazards			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
B1.4 Aboriginal Heritage Significance			Y	Y	Y
B3.1 Landslip Hazard			Y	Y	Y
B3.2 Bushfire Hazard		<p>The application is supported by a Bushfire Risk Assessment Report, prepared by Building Code & Bushfire Hazard Solutions Pty Limited, dated 30 June 2017 and the applicant has submitted a Bushfire Risk Assessment Certificate.</p> <p>The report and certificate both identify that the subject site has a BAL rating of BAL-12.5 & 29. Referral to the NSW RFS is not required.</p> <p>Conditions requiring compliance with the recommendations from the Bushfire Assessment Report will be imposed.</p>	Y	Y	Y
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land			Y	Y	Y
B5.4 Stormwater Harvesting			Y	Y	Y
B5.7 Stormwater Management - On-Site Stormwater Detention			Y	Y	Y

Control	Standard	Proposal	T	O	N
B5.10 Stormwater Discharge into Public Drainage System			Y	Y	Y
B6.3 Off-Street Vehicle Parking Requirements	2 spaces for the principal dwelling, and 1 space for the secondary dwelling.	See discussion below.	N	Y	Y
B8.1 Construction and Demolition - Excavation and Landfill			Y	Y	Y
B8.2 Construction and Demolition - Erosion and Sediment Management			Y	Y	Y
B8.3 Construction and Demolition - Waste Minimisation			Y	Y	Y
B8.4 Construction and Demolition - Site Fencing and Security			Y	Y	Y
B8.5 Construction and Demolition - Works in the Public Domain			Y	Y	Y
B8.6 Construction and Demolition - Traffic Management Plan			Y	Y	Y
C1.1 Landscaping		Provision of one (1) canopy tree with a minimum mature height of 8.5m is recommended.	Y	Y	Y
C1.2 Safety and Security			Y	Y	Y
C1.3 View Sharing		Due to the elevated nature of adjoining properties, the proposed works, including secondary dwelling (notably lower than adjoining properties and dwellings) will not impact on existing views.	Y	Y	Y
C1.4 Solar Access			Y	Y	Y
C1.5 Visual Privacy		See discussion below.	N	Y	Y
C1.6 Acoustic Privacy			Y	Y	Y
C1.7 Private Open Space			Y	Y	Y
C1.11 Secondary Dwellings and Rural Worker's Dwellings			Y	Y	Y
C1.12 Waste and Recycling Facilities			Y	Y	Y
C1.13 Pollution Control			Y	Y	Y
C1.23 Eaves			Y	Y	Y

Control	Standard	Proposal	T	O	N
D10.1 Character as viewed from a public place		Proposed works, including undercroft of the secondary dwelling will be satisfactorily screened with landscaping, therefore not detrimentally affecting the character of the area or the existing streetscape.	Y	Y	Y
D10.4 Building colours and materials		No schedule of finishes provided. Condition recommended for one to be provided prior to CC.	N	Y	Y
D10.7 Front building line (excluding Newport Commercial Centre)	6.5m or the established building line, whichever is the greater.	Proposed works are located to the rear of the site (south) away from the primary street frontage. However, the site is subject to a secondary street frontage to the south. See discussion below for assessment.	N	Y	Y
D10.8 Side and rear building line (excluding Newport Commercial Centre)	Side setbacks: 2.5m to one side, and 1m to the other side Rear setback: 6.5m	Side setbacks: 0.5m to one side (west), and 1.64m to the other side (east) See D10.7 for comment regarding setback to secondary street frontage.	N	Y	Y
D10.11 Building envelope (excluding Newport Commercial Centre)	3.5m at 45 degrees.	Non-compliance. See discussion below.	N	Y	Y
D10.13 Landscaped Area - Environmentally Sensitive Land	60% or 426.18m ²	31.7% or 194.7m ² (landscaped area) 37.7% or 231.5m ² (landscaped area w/ variation) See discussion below.	N	Y	Y
D10.16 Construction, Retaining walls, terracing and undercroft areas		Retaining walls proposed for the new secondary dwelling.	Y	Y	Y
D10.18 Scenic Protection Category One Areas			Y	Y	Y
State Environmental Planning Policies and other					
SEPP (Building Sustainability Index: BASIX) 2004			Y	Y	Y
EPA Act 1979 No 203 section 147 Disclosure of political donations and gifts			Y	Y	Y

8.0 DISCUSSION OF ISSUES

- 5.1A Development on land intended to be acquired for public purpose

An initial response was received by Roads and Maritime Services on 18 December 2017. This correspondence raised the following concerns:

The subject property is partly within a County Road Reservation.

Where a property is affected by a road proposal that also affects an existing building, Roads and Maritime policy is that it would not object to normal maintenance and repairs, nor to minor alterations and additions to that existing building. Roads and Maritime does not support the construction of any new buildings or substantial structures on land affected by a road proposal.

However, Roads and Maritime would be prepared to further consider the subject application upon receipt of further details in relation to the proposed secondary dwelling (ie estimate cost of works, reason prohibiting setback behind the County Road Boundary).

Justification provided by the Applicant via email correspondence on 7 February 2018 was sent to RMS providing the following justification for the encroachment:

- *Relocation of the secondary dwelling's deck fully within the E4 zone would result in an unreasonable encroachment on the existing dwelling including a loss of available soft landscaping area, due to Council's exclusion of the SP2 zone from a calculation of landscaped area in Council's DCP*
- *The proposed secondary dwelling should reasonably be afforded a small deck to provide amenity and take advantage of the attractive views in this location*
- *There are substantial permanent existing structures in the SP2 zone on adjacent neighbouring sites;*
- *These structures are more permanent and substantial than my clients proposed cantilevered, modestly sized timber deck*
- *No vehicle access is proposed to the site off the lower frontage to Attunga Rd, unlike adjacent neighbours*
- *The existing immediately adjacent concrete pool, garden beds and concrete driveway are all positioned forward of the proposed cantilevered deck on my clients site, within the mapped SP2 zone*
- *A street view of the lower level of 43 Attunga Rd confirms the location of a permanent in-ground concrete swimming pool, substantial concrete edged garden beds and a large concrete driveway on the property immediately adjacent to the subject site at no.43 and which are all located within the SP2 zoned area under Council's LEP.*

Correspondence was received by RMS on 23 February 2018 in response to the above justification. The following response was provided by RMS:

Roads and Maritime has reviewed the submitted application and have since received amended plans on 7 February 2018 for review and comment. Roads and Maritime provides the following comments:

The subject property is partly within a County Road Reservation as shown by broken green boundary line on the attached Aerial — "X".

Where a property is affected by a road proposal that also affects an existing building, Roads and Maritime policy is that it would not object to normal maintenance and repairs, nor to minor alterations and additions to that existing building. Roads and Maritime does not support the construction of any new buildings or substantial structures on land affected by a road proposal.

In this regard, the amended plans show that the new proposed dwelling is within the County Road Reservation. Therefore, Roads and Maritime does not support the proposal.

In response to these comments, the Applicant provided amended plans relocating the proposed deck from the SP2 zone to the western side of the secondary dwelling. Confirmation from RMS was requested regarding the amendments; however, no response was received from RMS. The amendment is considered acceptable with no structures being proposed within the SP2 zone. No further comments from RMS are required.

- **B6.3 Off-Street Vehicle Parking Requirements**

The proposal seeks consent for the construction of a two-bedroom dwelling. Whilst proposing two spaces for the principal dwelling, the initial proposal lodged with Council failed to provide a car space for the secondary dwelling, which was raised with the Applicant. Amended plans were submitted on 2 March 2018 indicating an additional car space to the south of the garage for the secondary dwelling. This is not considered a preferred outcome, as it is likely any vehicle using this space will be required to reverse up the existing driveway due to the limited space to appropriately turn a vehicle, in order to allow a vehicle to exit the subject site in a forward direction. Furthermore, the proposed surface, being turf, is not considered reasonable. Nonetheless, clause B6.3 allows for a variation to the car parking requirements for secondary dwellings to be considered on merit. A site inspection confirmed there is opportunity for on-street parking at both street frontages, particularly to the southern frontage. Car parking at this end will provide safe and convenient parking for the occupants of the secondary dwelling.

Noting the availability of on-street parking, the proposed car space south of the garage is not supported and does not form a part of this consent, and the following condition is recommended:

This consent does not authorise the car parking space located adjacent to the southern end of the garage.

A variation is supported on merit.

- **C1.5 Visual Privacy**

There is potential for overlooking of adjoining areas of private open space from the deck above the proposed garage. While a privacy screen is proposed along the eastern elevation of the deck, this is considered to do little, particularly due to the height of the terrace (RL 53.7) and height of the adjoining terrace at No. 45 (RL 52.91). Also, the extent to which the deck extends from the southern elevation (5.26m) provides opportunity for overlooking at the southern most end (where no screen is proposed). It is considered not unreasonable to have the deck reduced in size, so not to exceed 3.039m from the southern external wall of Level 2, so to be in line with the proposed privacy screens. The following condition is recommended:

The deck indicated on the Level 2 Plan is to be reduced in size, so not to extend 3.039m when measured from the external wall of the southern elevation of the dwelling.

The relocated deck off the western side of the secondary dwelling may result in acoustic and visual privacy concerns for the property at No. 41. The following condition is recommended to ensure maintenance of amenity for this property:

A privacy screen with a minimum height of 1.7m, when measured from the finished floor level of the proposed secondary dwelling deck, is to be incorporated into the design and maintained for the life of the development. This privacy screen is to run the full length of the western elevation of the proposed deck and should consist of a solid translucent screen or perforated panels or trellises which have a maximum of 20% openings, and which are:

- permanent and fixed;
- made of durable materials, and
- designed and painted or coloured to blend with the secondary dwelling.

- **D10.7 Front building line (excluding Newport Commercial Centre)**

Clause D10.7 states that where the outcomes of this control are achieved, Council may accept a minimum building setback to a secondary street of half the front building line. In this case, the setback to the secondary street frontage is a minimum 6.397m and increasing to 7.567m due to the splayed boundary. The setback to the southern end of the property will not impact upon the amenity of adjoining properties, nor will it impact on the existing streetscape. Proposed landscaping will provide for an attractive street frontage improving general pedestrian amenity. Proposed vegetation will assist in visually reducing the built form when viewed from the southern end of Attunga Road. In consideration of the above, the secondary street frontage is supported on merit.

- **D10.8 Side and rear building line (excluding Newport Commercial Centre)**

The proposal will fail to provide a minimum 1m to one side, and 2.5m to the other side.

Initially, the proposal achieved the minimum setback requirements, but due to the relocation of the deck from the southern side of the secondary dwelling to the western side, in order to satisfy RMS concerns, the side setback to the west (0.5m) will not meet the minimum requirements under clause D10.8 of P21 DCP. Proposed landscaping (see Landscape Plan LDA-01, prepared by Stone Rose Landscapes, dated 2 March 2018) will help screen the built form from No. 41 and proposed privacy screens will ensure privacy is maintained between both properties. Overall, the bulk and scale of the built form, including the proposed setbacks, is not inconsistent with many other properties in the area, in particular No. 45 to the east. In addition, views/vistas will be preserved with no adverse impact upon existing water views. Although not technically compliant, a variation is supported on merit.

- **D10.11 Building envelope (excluding Newport Commercial Centre)**

A minor building envelope breach along the eastern elevation of the primary dwelling, in particular the upper floor balcony. The breach is minor and will not adversely impact on adjoining properties, maintaining amenity and not impact on existing views. The built form is not unreasonable and consistent with nearby properties. A variation is supported on merit.

- **D10.13 Landscaped Area - Environmentally Sensitive Land**

A request for further information was sent to the Applicant on 15 January 2018 raising concern with regards to the substantial reduction to the minimum landscaped area. It was requested that the minimum landscaped area be a minimum 50% or 306.85m². The Applicant responded on 2 March 2018 with an amended proposal seeking to remove areas of the existing driveway with a permeable grass paving and turf. An amended landscape plan has been provided indicating such changes.

In accordance with clause D10.13 of P21 DCP, where a property is affected by split zoning and part of the property is zoned SP2 Infrastructure, the calculation for total landscaped area will be based only on that area not zoned SP2 Infrastructure. It will not be based on the site area of the whole lot. In this case, the site area, excluding the SP2 zone, is 614.9m². Based on this site area and the proposed changes to the driveway noted above, the proposal results in a landscaping shortfall of 194.7m² or 22.3%. Although acknowledging that there remains a significant shortfall in soft landscaping, consideration is given to the context of the site, which include constraints, such as the split zoning, a large existing dwelling, a large driveway, and terraced area to the front (north) of the dwelling. It is also acknowledged that the garage is proposed of existing hard surface, and therefore not further reducing the landscaped area.

The Applicant responded to Council's concern with regards to the landscaped area reduction by proposing to convert an area of the existing driveway to permeable grass paving. The permeable grass paving is not considered '*landscaped area*', in so far as it is unable to visually reduce the additional built form proposed as part of the application. The landscaped area calculation has therefore been calculated without taking into consideration this area of permeable paving, resulting in a total landscaped area of 31.7% or 194.7m². Whilst the landscaped area is a sizable reduction, the proposal is supported by a detailed landscape plan, prepared by Stone Rose Landscapes, dated 15 March 2018. The landscape plan proposes extensive screen planting along the southern, eastern and western boundaries to visually reduce the additional built form. Considered within the context of surrounding properties, which are also significantly below the minimum landscaped area, the proposal results in a favourable and preferred outcome. The secondary dwelling, considered on its own and separate from the remaining part of the property, is not unreasonable and a typical residential development which will be well screened by proposed landscaping on all sides.

9.0 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.

Although acknowledging the technical non-compliance's with controls of P21 DCP, in particular the landscaping shortfall, the proposal has been found to be consistent with the outcomes of the relevant controls of P21 DCP. The resulting development, specifically the secondary dwelling is a reasonable proposal that is not inconsistent with the Newport Locality. The existing character of Newport and the desired future character of the Newport Locality is considered to be met. As a result of these considerations the proposal is recommended for approval.

RECOMMENDATION OF DEVELOPMENT OFFICER/PLANNER

That Council, as the consent authority, pursuant to section 4.16 of the Environmental Planning and Assessment Act, 1979, approve Development Application N0478/17 for the alterations and additions, including the construction of a secondary dwelling at 43 Attunga Road, Newport.

Report prepared by

Hugh Halliwell
PLANNER

Date: 11 April 2018

