

SUBJECT: N0513/16/S96/1 – Section 96 (1A) Modification of Consent N0513/16 relating to 9 Kananook Avenue, BAYVIEW NSW 2104 with respect to the relocation of the approved swimming pool at the rear of the property

Determination Level:

Manager – Development Assessment

SUMMARY OF RECOMMENDATION:

APPROVAL

REPORT PREPARED BY:

Hugh Halliwell

APPLICATION SUBMITTED ON:

2 November 2017

APPLICATION SUBMITTED BY:

BLUE HAVEN POOLS SOUTH
68 HUME HIGHWAY
LANSVALE NSW 2166

OWNER(S):

Mr Daniel Brian Finch
Mrs Vanessa Ann Finch

SITE DETAILS

The site is known as 9 Kananook Avenue, Bayview and legally referred to as Lot 31 in Deposited Plan 11423. The site is regular and rectangular in shape with a total site area of 603.1m². Vehicular and pedestrian access is gained via the 15.24m wide, north-west facing frontage. The site is located on the south-eastern side of Kananook Avenue and adjoins a right of carriageway at the rear which provides access to No. 2011 and 2013 Pittwater Road. The site experiences a moderate fall of 6.18m from the north-west frontage towards the south-east rear boundary, with a slope of 14.6%. The site is currently occupied by a single two dwelling to the front portion of the site. The site is surrounded by residential properties to all sides.

STATUTORY AND POLICY CONSIDERATIONS

The site is zoned E4 Environment Living under Pittwater Local Environmental Plan 2014. Pursuant to the land use table in Part 2 of this instrument, swimming pools 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)
- Pittwater Local Environmental Plan 2014 (PLEP 2014)
 - Acid Sulphate Soils Map - Area 5
 - Biodiversity Map
- Pittwater 21 Development Control Plan (P21 DCP)
 - Bayview Locality

BACKGROUND

9 November 2016

Development application N0513/16 was lodged at Council referred to Council's Senior Development Engineer and Natural Environment Officer.

27 December 2017

The application was determined by delegated authority – Principal Officer.

2 November 2017

A section 96 Modification Application was lodged with Council, in respect to modifying the approved development.

PROPOSAL IN DETAIL

The application seeks consent to modify consent N0135/16 pursuant to S96(1A) in the following way:

- Proposed pool has been repositioned;
- The paved pool surround has been increased;
- The swimout area of the pool has been increased;
- New paving is proposed to replace existing sandstone flagging adjacent to the dwelling;
- The level of the lawn between the proposed pool and paving is to be raised.

NOTIFICATION

The S96 Modification Application was notified in accordance with Council's notification policy from 16 November to 30 November 2017. Due to an error in the original notification, an additional notification period to the adjoining property at No 2013 Pittwater Road was carried out from 10 January to 29 January 2018.

While no formal submission was received, a telephone discussion was had with the owner of 2009 Pittwater Road to the rear. The neighbour raised concern about the potential for construction workers to use the private driveway at the rear of the site. See below for comment.

ISSUES

- D4.6 Side and rear building line
- D4.10 Landscaped Area - Environmentally Sensitive Land
- A1.7 Considerations before consent is granted

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,			-	-	-

Control	Standard	Proposal	T	O	N
agreements and instruments					
Zone E4 Environmental Living			Y	Y	Y
4.3 Height of buildings			Y	Y	Y
7.1 Acid sulfate soils			Y	Y	Y
7.2 Earthworks			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
A4.4 Church Point and Bayview Locality			Y	Y	Y
B1.4 Aboriginal Heritage Significance			Y	Y	Y
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community			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			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
C1.6 Acoustic Privacy			Y	Y	Y
C1.7 Private Open Space			Y	Y	Y
C1.13 Pollution Control			Y	Y	Y
C1.17 Swimming Pool Safety			Y	Y	Y
D4.1 Character as viewed from a public place			Y	Y	Y
D4.2 Scenic protection - General			Y	Y	Y
D4.3 Building colours and materials			Y	Y	Y
D4.5 Front building line			-	-	-
D4.6 Side and rear building line	<u>Rear setback</u> 6.5m <u>Side setbacks</u> 1m to one side; and 2.5m to the other side	<u>Proposed setbacks:</u> <u>Rear setback</u> 2.3m to retaining wall pool coping and 2.9m to edge of swimming pool <u>Side setbacks</u> 1.8m (north-east);and	N	Y	Y

Control	Standard	Proposal	T	O	N
		2.2m (south-west) See discussion below.			
D4.8 Building envelope			Y	Y	Y
D4.10 Landscaped Area - Environmentally Sensitive Land	60%	Proposed = 300m ² or 55% (w/o variation) See discussion below.	N	Y	Y
D4.13 Construction, Retaining walls, terracing and undercroft areas			Y	Y	Y
State Environmental Planning Policies and other					
EPA Act 1979 No 203 section 147 Disclosure of political donations and gifts			-	-	-

INTERNAL REFERRAL COMMENTS

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

The proposed modification to relocate the pool does not impact upon the previous assessment by Development Engineering. No objection to approval with no additional or modified conditions of consent recommended.

Joseph Di Cristo – 15 December 2017

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

Proposed pool, retaining wall and associated landscaping is approved should the Project Arborist find the required root severance in relation to the neighbors Lophostemon confertus (Brushbox) acceptable and that long term tree viability not be affected. If this is not the case, redesign of the pool and retaining walls will be required to ensure tree protection and retention.

All recommendations within the provided Arboricultural Impact Assessment by Axiom Arbor Tree Services - Louis Putnam Gray dated January 2018 are to be followed to ensure protection and retention of subject trees.

Landscaping is as per Landscape Concept Plan authored by Outside Living, Issue B, Job no. 17-31 dated 29 January 2018.

Chantelle Hughes – 31 January 2018

DISCUSSION OF ISSUES

A1.7 Considerations before consent is granted

Telephone discussion with the neighbour to the rear at 2009 Pittwater Road raised concern regarding potentially using the private driveway to the south-east to transport and carry materials over the fence rather than using the frontage off Kananook Avenue. While the driveway in question is privately owned and using the driveway would be in breach of the development consent, the following condition is recommended:

Construction access is to be only via the Kananook Avenue frontage to the north-west. The use of the driveway which services No.'s 2009, 2011 and 2013 Pittwater Road, including the carrying and movement of construction material is prohibited.

D4.6 Side and rear building line

The proposed retaining wall is proposed to be located approximately 2.3m to the rear south-east boundary, whilst the swimming pool edge is proposed to be 2.9m to the rear boundary.

Clause D4.6 of P21 DCP permits a variation to the rear setback requirement to a minimum of 1m, subject to the following being satisfied:

- Satisfactory landscaping within the setback from the pool or spa coping to the side or rear boundary, and
- Council is satisfied that the adjoining properties will not be adversely affected, and
- The pool or spa is not more than 1 metre above ground level (existing), and
- That the outcomes of this clause are achieved without strict adherence to the standards, and
- Where the site constraints make strict adherence to the setback impractical, and
- Where strict compliance with these requirements will adversely impact on the views of adjoining residential properties.

A site inspection confirms that sufficient landscaping on the adjoining property to the south-east will be present. However, there exists an opportunity to provide further screen planting along the length of the rear boundary of the subject site. Due to the elevation of the swimming pool, there is thought to be need for further screen planting to ensure maximum privacy. The following condition is recommended:

Screen planting with a minimum mature height of 3 metres is to be provided along the entire length of the south-east rear boundary. This screen planting is to be provided for the life of the development. Species selection is to incorporate locally indigenous species.

Subject to the above condition being enforced, a reasonable level of privacy, amenity and solar access will be maintained, and being located within the rear of the property and at ground level will have no adverse impact on the existing streetscape or the views experienced from adjoining properties. Substantial landscaping will either remain or is proposed to further reduce any impacts associated with the structure. The bulk and scale of the swimming pool, whilst slightly elevated to the rear, will largely not be visible from adjoining properties; therefore will have no adverse impact. The outcomes are considered to be satisfied without strict adherence to the standard. Overall, adequate separation will remain between the pool and rear boundary with mature vegetation along the rear boundary on the adjoining property. A variation is therefore supported.

D4.10 Landscaped Area - Environmentally Sensitive Land

The modified swimming pool location and associated coping/paving result in a reduced landscaped area of 300m² or 49.9%.

The reduced landscaped area, though non-compliant, is not unreasonable. The proposal is able to meet the outcomes of clause D4.10. The swimming pool will remain partly in-ground, therefore not resulting in any unreasonable built form and not impacting on the amenity of adjoining property owners. With substantial vegetation limited in the rear yard, the previously mentioned condition relating to screen planting and provision for a canopy tree will provide sufficient landscaping on-site. Overall, the proposal is not unreasonable and represents a typical residential development in a low-density residential neighborhood that poses no adverse impact to the site nor surrounding or adjoining properties. As it is found that the outcomes are able to be achieved, a variation is triggered to allow for areas of outdoor recreational use (swimming pool, coping and paving) to be included in the landscaped area calculation. These areas, as well as pathways less than 1 metre in width, have been included in the final calculation, increasing the landscaped area to approximately 58.4%. Whilst marginally non-compliance, a variation is still warranted on its merit due to the reasons noted above.

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.

As the proposal is for the modification of a previously approved Development Application, the provisions of Section 96(1A) of the EPA Act are applicable. Section 96(1A) of the EPA Act deals with modifications involving minimal environmental impact, and a consent authority may modify the consent if the development satisfies the following:

(a) it is satisfied that the proposed modification is of minimal environmental impact, and

The development is considered to be of minimal environmental impact. The modification remains largely the same as what was originally approved, which was also of minimal environmental impact. The swimming pool is a typical low-impact residential development and the size and location is not unreasonable.

(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and

The development has been assessed as being substantially the same development under Section 96(1A). The proposed modification is consistent with the original approval for the construction of a swimming pool. The modifications will not dramatically alter the appearance of the approved swimming pool. Generally, the approved built form will remain the same as approved.

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.

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

Adjoining property owners were notified from 16 November to 30 November 2017 in accordance with Council's Notification policy. It is considered that the modified application has been adequately notified.

(d) 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.

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 Church Point and Bayview Locality. Notwithstanding the change to side and rear setbacks, and landscaped area, the modification is not dissimilar to the approved development, 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(1A) of the Environmental Planning and Assessment Act 1979, Council modify development consent N0513/16 for a swimming pool, including modifications for the relocation of a swimming pool at 9 Kananook Avenue, Bayview in the following manner:

1. As further modified by architectural drawings:
 - Architectural Drawings Sheet 1 of 8, Sheet 7 of 8 and Sheet 8 of 8, prepared by Blue Haven Pools South, all dated 27/09/2017;
 - Landscape Concept Plan, Job No. 17-31 Issue B, prepared by Outside Living, dated 29/01/2017;
 - Arborist Report, 9 Kananook Avenue, Bayview, prepared by Axiom Arbor Tree Services, dated January 2018.

Additional conditions:

D14. Proposed pool, retaining wall and associated landscaping is approved should the Project Arborist find the required root severance in relation to the neighbors *Lophostemon confertus* (Brushbox) acceptable and that long term tree viability not be affected. If this is not the case, redesign of the pool and retaining walls will be required to ensure tree protection and retention.

D15. All recommendations within the provided Arboricultural Impact Assessment by Axiom Arbor Tree Services - Louis Putnam Gray dated January 2018 are to be followed to ensure protection and retention of subject trees.

D16. Construction access is to be only via the Kananook Avenue frontage to the north-west. The use of the driveway which services No.'s 2009, 2011 and 2013 Pittwater Road,

including the carrying and movement of construction material is prohibited.

B15. Landscaping is as per Landscape Concept Plan authored by Outside Living, Issue B, Job no. 17-31 dated 29 January 2018.

B16. Screen planting with a minimum mature height of 3 metres is to be provided along the entire length of the south-east rear boundary. This screen planting is to be provided for the life of the development. Species selection is to incorporate locally indigenous species.

Report prepared by

Hugh Halliwell

Date: 31 January 2018