

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

| | |
|----------------------------|--------------|
| Application Number: | Mod2019/0390 |
|----------------------------|--------------|

| | |
|---|---|
| Responsible Officer: | Kye Miles |
| Land to be developed (Address): | Lot 1 DP 200907, 21 Crescent Road MONA VALE NSW 2103 |
| Proposed Development: | Modification of Development Consent N0206/12 granted for alterations and additions to the existing separately accessible structure and construction of a swimming pool and associated landscaping |
| Zoning: | E4 Environmental Living |
| Development Permissible: | Yes |
| Existing Use Rights: | No |
| Consent Authority: | Northern Beaches Council |
| Land and Environment Court Action: | No |
| Owner: | Richard Scott Wright Naomi Gai Wright Rowan Milburn Kenneth Hamman Caroline Elizabeth Waite |
| Applicant: | Bradstreet Building Services Pty Ltd |

| | |
|----------------------------------|---|
| Application Lodged: | 14/08/2019 |
| Integrated Development: | No |
| Designated Development: | No |
| State Reporting Category: | Residential - Alterations and additions |
| Notified: | 27/08/2019 to 10/09/2019 |
| Advertised: | Not Advertised |
| Submissions Received: | 0 |
| Clause 4.6 Variation: | Nil |
| Recommendation: | Approval |

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent to modify N0206/12, which was for alterations and additions to the existing studio and construction of a swimming pool. The notable changes include;

- Changing the use of the existing studio to a secondary dwelling and constructing a new landing,
- Constructing a single hardstand within the Crescent Road frontage,
- Constructing a new hot tub, which is adjacent to the new pool area.

23 August 2019

Council notified the applicant that the modification would not be supported, as the works did not substantially relate to the original approval (N0206/12), due to the proposed change of use. As such, the applicant provided amended plans removing reference to the secondary dwelling and proposed hardstand space. It is advised that those works are lodged via a separate change of use application.

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 21 Development Control Plan - D9.6 Front building line

SITE DESCRIPTION

| | |
|-----------------------------------|--|
| Property Description: | Lot 1 DP 200907 , 21 Crescent Road MONA VALE NSW 2103 |
| Detailed Site Description: | The site is known as 21 Crescent Road, Mona Vale and has a formal description of Lot 1 in Deposited Plan 200907. The site is irregular in shape and has a primary street frontage to Crescent Road and a secondary street frontage to Phillip Road. The site has a total area of 1087m ² and is currently occupied by two storey dwelling and separately accessible studio. The site is bound by a single storey residence to the southwest, driveway access and dwelling to the southeast. There is no evidence of any threatened species within the site. |

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:

N0206/12

This application involved alterations and additions to the existing separately accessible structure and the construction of a swimming pool, associated landscaping and pool fencing. This proposal was approved under delegation on 2 October 2012.

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 N0206/12, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979, are:

| Section 4.55(1A) - 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 proposed modification is of minimal environmental impact, and | Yes The modification, as proposed in this application, is considered to be of minimal environmental impact. |
| (b) 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 | Following Council's request, the applicant provided amended plans on 23 August 2019. The works involved within the amended proposal are considered to be substantially the same as those already approved under N0206/12. |
| (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 Environment Plan 2014 and Pittwater 21 Development Control Plan. |
| (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 4.55 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)(iia) – Provisions of any | None applicable. |

| Section 4.15 'Matters for Consideration' | Comments |
|--|--|
| planning agreement | |
| Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000) | <p><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.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to amended plans and an Arborist report.</p> <p><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.</p> <p><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.</p> |
| 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 | <p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(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.</p> |
| 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 | See discussion on “Notification & Submissions Received” in this report. |
| 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 not classified as bush fire prone land.

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.

REFERRALS

| Internal Referral Body | Comments |
|--|--|
| Building Assessment - Fire and Disability upgrades | <p>The application to convert this outbuilding into a secondary building has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.</p> <p>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</p> |
| Landscape Officer | <p>The amended plans and Arborist's Report provided by the applicant are noted.</p> <p>No objections are raised to the modification. In view of the Arborist's Report provided, it is recommended that the following condition be included, as loaded in Assess:</p> <p>Tree protection</p> <p>(a) Existing trees which must be retained</p> <ul style="list-style-type: none"> i) All trees not indicated for removal on the approved plans, unless exempt under relevant planning instruments or legislation ii) Trees located on adjoining land <p>(b) Tree protection</p> <ul style="list-style-type: none"> i) No tree roots greater than 25mm diameter are to be cut from protected trees unless authorised by a qualified Arborist on site. ii) All structures are to bridge tree roots greater than 25mm diameter unless directed otherwise by a qualified Arborist on site. iii) All tree protection to be in accordance with the <u>recommendations of the Arboricultural Assessment dated 23 September 2019 prepared by Margot Blues and AS4970-2009 Protection of trees on development sites, with particular reference to Section 4 Tree Protection Measures.</u> iv) All tree pruning within the subject site is to be in accordance with relevant local planning controls and AS 4373 Pruning of amenity trees v) All tree protection measures, including fencing, are to be in place |

| Internal Referral Body | Comments |
|----------------------------------|--|
| | <p>prior to commencement of works.</p> <p>Reason: To ensure compliance with the requirement to retain and protect significant planting on the site.</p> |
| NECC (Bushland and Biodiversity) | <p>Revised Comments</p> <p>The trees in question will be retained on site, and impacts from construction will be managed in accordance with Arborist report submitted (Margot Blues Consulting Arborist 23rd September, 2019).</p> <p>The proposed development:-</p> <ul style="list-style-type: none"> • has been designed, sited and will be managed to avoid any significant adverse environmental impact; and • will retain wildlife corridors ensuring/providing the connection of flora and fauna habitats. <p>and therefore addresses the requirements of clause 7.6 of the Pittwater LEP 2014 and Wildlife Corridor under the P21 DCP B4.6 Wildlife Corridors.</p> <p>Original Comments</p> <p>The site is mapped as Biodiversity under clause 7.6 of the Pittwater LEP 2014 and Wildlife Corridor under the P21 DCP B4.6 Wildlife Corridors. The development will remove one tree and may impact on several others.</p> <p>The applicant is to provide additional information as follows.</p> <ul style="list-style-type: none"> • Information to address the requirements of clause 7.6 of the PLEP 2014, and • A tree survey and Arborist Report indicating location, species, health and size of all trees within 5m of proposed development. Clearly indicating all trees that may be impacted on or removed. • Additional justification of trees to be removed for the proposed parking space |
| NECC (Development Engineering) | <p>No objections are raised to the proposed modifications. No additional condition is required.</p> |

| External Referral Body | Comments |
|------------------------|---|
| Ausgrid: (SEPP Infra.) | <p>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.</p> |

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)

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A311705 dated 30 July 2019).

A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Infrastructure) 2007

Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

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.

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

| Development Standard | Requirement | Approved | Proposed | Complies |
|----------------------|-------------|----------|----------|----------|
| Height of Buildings: | 8.5m | 4.9m | 4.9m | Yes |

Compliance Assessment

| Clause | Compliance with Requirements |
|--|------------------------------|
| 1.9A Suspension of covenants, agreements and instruments | Yes |
| 4.3 Height of buildings | Yes |
| 4.6 Exceptions to development standards | Yes |
| 7.1 Acid sulfate soils | Yes |
| 7.2 Earthworks | Yes |
| 7.6 Biodiversity protection | Yes |

Pittwater 21 Development Control Plan

Built Form Controls

| Built Form Control | Requirement | Approved | Proposed | Complies |
|-------------------------------|----------------------|----------------------|-----------------------|----------|
| Front building line | 6.5m (Crescent Road) | 5.2m (Swimming pool) | 14.11m (Hot Tub) | Yes |
| Secondary front building line | 3.25m (Philip Road) | 3.4m (Studio) | 1.18m (Studio stairs) | No |
| Side building line | 2.5m - SE | 1.7m (Studio) | 1.0m (Hot Tub) | Yes |
| | 1.0m - SW | 2.3m (Swimming pool) | Unaltered | Yes |
| Building envelope | 3.5m | Within | Unaltered | Yes |
| | 3.5m | Within | Unaltered | Yes |
| Landscaped area | 60% | 63.5%(690.3sqm) | 63.17% (686.7sqm) | Yes |

Compliance Assessment

| Clause | Compliance with Requirements | Consistency Aims/Objectives |
|---|------------------------------|-----------------------------|
| A1.7 Considerations before consent is granted | Yes | Yes |
| A4.9 Mona Vale Locality | Yes | Yes |
| B4.6 Wildlife Corridors | Yes | Yes |
| B5.4 Stormwater Harvesting | Yes | Yes |
| B5.10 Stormwater Discharge into Public Drainage System | Yes | Yes |
| B8.1 Construction and Demolition - Excavation and Landfill | Yes | Yes |
| B8.2 Construction and Demolition - Erosion and Sediment Management | Yes | Yes |
| B8.3 Construction and Demolition - Waste Minimisation | Yes | Yes |
| C1.1 Landscaping | Yes | Yes |
| C1.3 View Sharing | Yes | Yes |
| C1.4 Solar Access | Yes | Yes |
| C1.5 Visual Privacy | Yes | Yes |
| C1.6 Acoustic Privacy | Yes | Yes |
| C1.7 Private Open Space | Yes | Yes |
| C1.12 Waste and Recycling Facilities | Yes | Yes |
| C1.14 Separately Accessible Structures | Yes | Yes |
| C1.17 Swimming Pool Safety | Yes | Yes |
| C1.19 Incline Passenger Lifts and Stairways | Yes | Yes |
| C1.23 Eaves | Yes | Yes |
| D9.1 Character as viewed from a public place | Yes | Yes |
| D9.2 Scenic protection - General | Yes | Yes |
| D9.3 Building colours and materials | Yes | Yes |
| D9.6 Front building line | No | Yes |
| D9.7 Side and rear building line | Yes | Yes |
| D9.9 Building envelope | Yes | Yes |
| D9.11 Landscaped Area - Environmentally Sensitive Land | Yes | Yes |
| D9.12 Fences - General | Yes | Yes |
| D9.14 Construction, Retaining walls, terracing and undercroft areas | Yes | Yes |

Detailed Assessment

D9.6 Front building line

Description of non-compliance:

The proposed stairs and landing for the existing studio are set back 1.18m from the secondary front boundary (Phillip Road). The control permits a minimum building setback to a secondary street of half the 6.5m front building line (i.e. 3.25m), when the outcomes of the clause are achieved.

Merit Consideration:

Further consideration of the non-compliance will be given in accordance with the outcomes of the control, as below.

- *Achieve the desired future character of the Locality.*
- *Equitable preservation of views and vistas to and/or from public/private places.*
- *The amenity of residential development adjoining a main road is maintained.*
- *Vegetation is retained and enhanced to visually reduce the built form.*
- *Vehicle manoeuvring in a forward direction is facilitated.*
- *To enhance the existing streetscapes and promote a scale and density that is in keeping with the height of the natural environment.*
- *To encourage attractive street frontages and improve pedestrian amenity.*
- *To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing urban environment.*

Comment:

The proposed stairs and landing will be attached to the north-east elevation of the existing studio. Notwithstanding the non-compliance with the numerical requirements, the proposed stairs and landing are consistent with the desired outcomes of this control. The works will be set back 1.18m from a 1.0m high front boundary fence, which has several medium sized shrubs and trees stretched along it. The boundary fence along with the vegetation will adequately screen the development when viewed from Philip Road. Additionally, the works are relatively low-lying and will not result in the loss of views or unreasonable overshadowing.

Based on the above, the proposed development is consistent with the outcomes of the control and the non-compliance is supported on merit.

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

Northern Beaches Section 7.12 Contributions Plan 2019

Section 7.12 contributions were levied on the Development Application.

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. Mod2019/0390 for Modification of Development Consent N0206/12 granted for alterations and additions to the existing separately accessible structure and construction of a swimming pool and associated landscaping on land at Lot 1 DP 200907,21 Crescent Road, MONA VALE, 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:

a) Modification Approved Plans

| Architectural Plans - Endorsed with Council's stamp | | |
|---|----------------|------------------------------|
| Drawing No. | Dated | Prepared By |
| DA01 - Rev B: Site plan | 23 August 2019 | Bradstreet Building Services |
| DA02 - Rev B: Ground floor plan | 23 August 2019 | Bradstreet Building Services |
| DA03 - Rev A: Elevations | 08 August 2019 | Bradstreet Building Services |
| DA04 - Rev A: Elevations | 08 August 2019 | Bradstreet Building Services |
| DA05 - Rev B: Sections | 23 August 2019 | Bradstreet Building Services |

Reports / Documentation – All recommendations and requirements contained within:

| Report No. / Page No. / Section No. | Dated | Prepared By |
|-------------------------------------|-------------------|--------------|
| Arboricultural Assessment | 23 September 2019 | Margot Blues |

b) 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.

B. Add Condition - Approved Land Use - to read as follows:

Nothing in this consent shall authorise the use of the Detached Studio as a Secondary Dwelling. A **Detached Studio** is defined as; *a habitable building that is used for purposes ancillary to a dwelling house such as a home office, entertainment area, art studio or guest room and:*

- (a) *is established in conjunction with a dwelling house, and*
- (b) *is on the same lot of land as the dwelling house, and*
- (c) *is separate from the dwelling house, and*
- (d) *is not used as a separate dwelling house, and*
- (e) *does not contain any cooking facilities.*

Any variation to the approved land use beyond the scope of the above definition will require the submission to Council of a new development application.

C. Add Condition - Tree Protection - to read as follows:

a) Existing trees which must be retained

- i) All trees not indicated for removal on the approved plans, unless exempt under relevant planning instruments or legislation
- ii) Trees located on adjoining land

(b) Tree protection

- i) No tree roots greater than 25mm diameter are to be cut from protected trees unless authorised by a qualified Arborist on site.
- ii) All structures are to bridge tree roots greater than 25mm diameter unless directed otherwise by a qualified Arborist on site.
- iii) All tree protection to be in accordance with the recommendations of the Arboricultural Assessment dated 23 September 2019 prepared by Margot Blues and AS4970-2009 Protection of trees on development sites, with particular reference to Section 4 Tree Protection Measures.
- iv) All tree pruning within the subject site is to be in accordance with relevant local planning controls and AS 4373 Pruning of amenity trees
- v) All tree protection measures, including fencing, are to be in place prior to commencement of works.

Reason: To ensure compliance with the requirement to retain and protect significant planting on the site.

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

Signed



Kye Miles, Planner

The application is determined on 30/10/2019, under the delegated authority of:



Steven Findlay, Manager Development Assessments