

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2024/0242
Responsible Officer:	Olivia Ramage
Land to be developed (Address):	Lot 4 DP 38402, 167 Plateau Road BILGOLA PLATEAU NSW 2107
Proposed Development:	Use of studio as secondary dwelling
Zoning:	C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Vinay Vimay Vikash Prasad Felicia Maria Prasad
Applicant:	David Moody
Application Lodged:	14/03/2024
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Other
Notified:	19/03/2024 to 02/04/2024
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Deferred Commencement Approval
Estimated Cost of Works:	\$ 0.00

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for the use of the existing studio for the purpose of a secondary dwelling.

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 - 5.4 Controls relating to miscellaneous permissible uses

Pittwater 21 Development Control Plan - B6.3 Off-Street Vehicle Parking Requirements

Pittwater 21 Development Control Plan - D3.7 Side and rear building line

Pittwater 21 Development Control Plan - D3.11 Landscaped Area - Environmentally Sensitive Land

SITE DESCRIPTION

Property Description:	Lot 4 DP 38402 , 167 Plateau Road BILGOLA PLATEAU NSW 2107
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the southern side of Plateau Road.</p> <p>The site is irregular in shape with a frontage of 24.385m along Plateau Road and a depth of 37.85m. The site has a surveyed area of 802.6m².</p> <p>The site is located within the C4 Environmental Living Zone under the PLEP 2014. The site is currently occupied by a two storey dwelling and a detached studio.</p> <p>The site slopes down from the northern frontage towards the southern rear of the site.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by residential dwellings of varying sizes and styles.</p>

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:

- **DA2019/0580** - Development Application for Alterations and additions to a dwelling house. Approved 5 September 2019.
- **Mod2021/0664** - Modification of Development Consent DA2019/0580 granted for alterations and additions to a dwelling house. Approved 1 September 2021.
- **BC2023/0277** - Building Information Certificate for the following unauthorised building works. Currently under assessment.
 - a) Door installed on east elevation of existing studio.
 - b) Kitchen installed in existing studio.
 - c) Privacy screen constructed between the eastern elevation of the studio and the boundary.
 - d) Privacy screen installed in setback area of the property.
 - e) Concrete under deck located in front of the studio's west elevation.
 - f) Concrete path located in the setback area between the property's west boundary and the dwellings west elevation.
 - g) Timber gate and supporting posts located near the road reserve boundary.
 - h) Spa located on the rear lower deck
 - i) Timber support structure associated with the spa.
 - j) Fill installed in the rear yard between the deck, east boundary dividing fence, south boundary fence and the studio.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under 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	There are no current draft environmental planning instruments.
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 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of 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</p>

Section 4.15 Matters for Consideration	Comments
	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	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 application has been publicly exhibited from 19/03/2024 to 02/04/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition of the application Council received no submissions.

REFERRALS

No referrals were sent in relation to this application

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs 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 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 (Housing) 2021

Part 1 – Secondary Dwellings

Clause 52 – Development may be carried out with consent	
Standard	Compliance/Comment
<p>(2) Development consent must not be granted for development to which this Part applies unless—</p> <p>(a) No dwellings, other than the principal dwelling and the secondary dwelling, will be located on the land, and</p> <p>(b) The total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area permitted for a dwelling house on the land under another environmental planning instrument, and</p> <p>(c) The total floor area of the secondary dwelling is:</p> <ul style="list-style-type: none"> (i) no more than 60m², or (ii) if a greater floor area is permitted for a secondary dwelling on the land under another environmental planning instrument - the greater floor area. 	Complies

Clause 53 – Non-discretionary development standards—the Act, s 4.15	
Standard	Compliance/Comment
(a) For a detached secondary dwelling - a minimum site area of 450m ² .	Complies
(b) The number of parking spaces provided on the site is the same as the number of parking spaces provided on the site immediately before the development is carried out.	Complies

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 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 sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

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

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	5.5m	4.0m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
5.4 Controls relating to miscellaneous permissible uses	Yes
7.1 Acid sulfate soils	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

5.4 Controls relating to miscellaneous permissible uses

Clause 5.4 (9) requires the following for secondary dwellings:

If development for the purposes of a secondary dwelling is permitted under this Plan, the total floor area of the dwelling (excluding any area used for parking) must not exceed whichever of the following is the greater:

- (a) 60 square metres,
- (b) 25% of the total floor area of the principal dwelling.

Comment:

The proposed secondary dwelling has a total floor area of 28.1m² which complies with this clause.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
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Front building line	6.5m	28.2m	N/A	Yes
Rear building line	6.5m	0.9m-1.4m	78-86%	No Change
Side building line	SW - 2.5m	14.4m	N/A	Yes
	NE - 1m	1.1m-1.2m	N/A	Yes
Building envelope	SW - 3.5m	Within Envelope	N/A	Yes
	NE - 3.5m	Within Envelope	N/A	Yes
Landscaped area	60%	34.9% (279.8m ²)	41.8%	No Change

It is noted that the proposal is for the use of the existing studio as a secondary dwelling. No physical works are proposed under this application. The above details are based on the built form of the existing structure.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.3 Bilgola Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.6 Wildlife Corridors	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	No	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	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
C1.11 Secondary Dwellings and Rural Worker's Dwellings	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.23 Eaves	Yes	Yes
D3.1 Character as viewed from a public place	Yes	Yes
D3.2 Scenic protection - General	Yes	Yes
D3.3 Building colours and materials	Yes	Yes
D3.6 Front building line	Yes	Yes
D3.7 Side and rear building line	No	Yes
D3.9 Building envelope	Yes	Yes
D3.11 Landscaped Area - Environmentally Sensitive Land	No	Yes

Detailed Assessment

B6.3 Off-Street Vehicle Parking Requirements

This control requires a minimum of one (1) parking space is required in addition to existing requirements for the principal dwelling.

The subject site currently provides off-street parking for two (2) vehicles within the existing double garage for the principal dwelling.

The proposed development does not seek additional on-site parking spaces.

Chapter 3, Part 1, Clause 53(b) of the *State Environmental Planning Policy (Housing) 2021* (Housing SEPP) stipulates the following:

The number of parking spaces provided on the site is the same as the number of parking spaces provided on the site immediately before the development is carried out.

While the proposal is technically numerically non-compliant with the requirements of this control, the Housing SEPP prevails over the Pittwater 21 Development Control Plan. In this instance, consideration of this control for this assessment is not required.

D3.7 Side and rear building line

This control requires development to be setback 6.5m from the rear boundary. The existing studio proposed to be used as a secondary dwelling is setback 0.9m-1.4m from the rear boundary and does not comply.

This application proposes the use of an existing building and does not propose any physical works. As such, the proposal is considered acceptable given that no changes are proposed to the existing structure. Additionally, the setbacks of the existing structure are consistent with that approved under DA2019/0580.

D3.11 Landscaped Area - Environmentally Sensitive Land

This control requires at least 60% of the site area to be landscaped. The site provides 34.9% (279.8m²) landscaped area which does not comply. It is noted that this is an existing non-compliance and the proposal does not include any physical works or alter the quantum of landscaped area.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect 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 2022

As the estimated cost of works is less than \$100,001.00 the policy is not applicable to the assessment of this 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 2021;
- 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

DEFERRED COMMENCEMENT APPROVAL

A. THAT Council as the consent authority grant a Deferred Commencement Development Consent being subject to a two (2) year time frame for Deferred Commencement Consents detailed within Clause 76 of the Environmental Planning and Assessment Regulation 2021 to DA2024/0242 for Use of studio as secondary dwelling on land at Lot 4 DP 38402,167 Plateau Road, BILGOLA PLATEAU, subject to the conditions printed below:

B. THAT once the matters detailed within the Deferred Commencement Development Consent conditions are satisfactorily addressed then an operational development consent be issued subject to the time frames detailed within Part A of this recommendation.

Terms and Reasons for Conditions

Under section 88(1)(c) of the EP&A Regulation, the consent authority must provide the terms of all conditions and reasons for imposing the conditions other than the conditions prescribed under section 4.17(11) of the EP&A Act. The terms of the conditions and reasons are set out below.

DEFERRED COMMENCEMENT CONDITIONS

1. Building Information Certificate for Unauthorised Works

A Building Information Certificate for the unauthorised works to the existing studio/proposed secondary dwelling is to be obtained before this consent can become operational.

Reason: To regularise unauthorised development.

Evidence required to satisfy these conditions must be submitted to Council (through the NSW Planning Portal) within two (2) years of the date of this consent, or the consent will lapse in accordance with the Environmental Planning and Assessment Regulation.

Applicants must submit a request for operational consent to Council via the NSW Planning Portal and upload all relevant documentation. This can be completed through accessing the relevant portal application ID and navigating to 'Request for Operational Consent' in the Actions dropdown menu.

Upon satisfaction of the deferred commencement condition/s, the following conditions apply:

GENERAL CONDITIONS

2. Approved Plans and Supporting Documentation

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
DA 002	G	Site Analysis	Hot House Architects	11 March 2024
DA 100	G	Ground Plan	Hot House Architects	11 March 2024
DA 200	G	South East & North East Elevations	Hot House Architects	11 March 2024
DA 201	G	North West & South West Elevations	Hot House Architects	11 March 2024

In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency between the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation

that applies to the development.

3. Approved Land Use

Nothing in this consent shall authorise the use of the studio as detailed on the approved plans for any land use of the site beyond the definition of a secondary dwelling, in accordance with the Dictionary of the Pittwater Local Environmental Plan 2014, as follows:

secondary dwelling means a self-contained dwelling that—

- (a) is established in conjunction with another dwelling (the principal dwelling), and*
- (b) is on the same lot of land as the principal dwelling, and*
- (c) is located within, or is attached to, or is separate from, the principal dwelling.*

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

Reason: To ensure compliance with the terms of this consent.

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

4. No Approval for Physical Works

No approval is granted or implied under this Development Consent for any physical works.

Reason: To ensure development is carried out in accordance with this consent.

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

Signed



Olivia Ramage, Planner

The application is determined on 05/04/2024, under the delegated authority of:



Anne-Marie Young, Acting Development Assessment Manager