

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2020/0476
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Responsible Officer:	Gareth David
Land to be developed (Address):	Lot 3 DP 219898, 13 Capua Place AVALON BEACH NSW 2107
Proposed Development:	Modification of Development Consent DA2020/0305 granted for alterations and additions to a dwelling house
Zoning:	E4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Jennifer Junette Beashel Shane Michael Beashel
Applicant:	Jennifer Junette Beashel

Application Lodged:	29/09/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	03/12/2020 to 17/12/2020
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks to modify Development Application No DA2020/0305 by constructing eaves on the north-eastern corner of the garage/workshop. The proposed eaves would be built over a Right of Carriageway Easement.

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 - 1.9A Suspension of covenants, agreements and instruments
 Pittwater 21 Development Control Plan - B3.1 Landslip Hazard
 Pittwater 21 Development Control Plan - B6.3 Off-Street Vehicle Parking Requirements

SITE DESCRIPTION

Property Description:	Lot 3 DP 219898 , 13 Capua Place AVALON BEACH NSW 2107
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the southern side of Capua Place.</p> <p>The site is irregular in shape with a frontage of 34.65m along Capua Place and a depth of 29.915m (western boundary) and 36.1m (eastern boundary). The site has a surveyed area of 1084.8m².</p> <p>The site is located within the E4 Environmental Living zone and accommodates 1-2 storey split level dwelling house with a detached double carport. The site is affected by a Right of Carriageway and easement for services which is situated to the north of the dwelling.</p> <p>The site has a cross fall of approximately 16.9m from the north-western corner (front) to the south-eastern corner of the site (rear).</p> <p>The site is heavily vegetated, containing a number of canopy trees.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by similar low density residential development within landscaped settings.</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:

- **DA2020/0305** - Development Application for the alterations and additions to a dwelling house involving the construction of a garage and first floor workshop (subject of this Modification Application) - Approved 12 May 2020

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 DA2020/0305, 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 DA2020/0305.
(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 DA2020/0305 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.
(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 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
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)	<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 owners consent.</p> <p><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</p> <p><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 development). This clause is not relevant to this application.</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>

Section 4.15 'Matters for Consideration'	Comments
	(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	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 from 03/12/2020 to 17/12/2020 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
NECC (Development Engineering)	<p>The proposed modification to site the proposed garage within a portion of the easement can be supported subject to the inclusion of a condition to extinguish the portion of the right of carriageway for the extent of the proposed encroachment. It is noted that the applicant has submitted the names and signatures of the benefitted properties which will also be required for the extinguishment.</p> <p>No objection to approval, subject to the addition of the following condition.</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 was submitted with the original Development Application (see Certificate No. A366727 dated 25 March 2020). The proposed works would not alter the BASIX requirements of the building.

A condition has been included in the recommendation of the original Development Application 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	% Variation	Complies
Height of Buildings:	8.5m	6.2m	6.2m (no change)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.3 Flood planning	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

1.9A Suspension of covenants, agreements and instruments

The modification application proposes works over a small portion of a right of carriageway easement which the subject is burdened by. The site shares this easement with neighbouring sites at Nos.15; 17; 19; 21; 21A; 23; 25 and 27 Capua Place, in which access is permitted over the subject site to allow for right of carriageway for these properties. The proposed works would involve the construction of eaves on the north-eastern corner of the garage/workshop. It should be noted that the existing garage onsite is already partially built over the right of carriageway.

Owners consent has been received as part of this modification application from the owners of all properties who benefit from this right Right of Carriageway Easement. Furthermore, all these neighbours were notified as part of this application and no submissions were received. Given the location of the existing access driveway and existing garage, the proposed eaves would not impact upon existing access arrangements and would not restrict the functioning of this right of carriageway easement. In addition, Council's Development Engineer has reviewed the proposal and has raised no objection subject to recommended conditions.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies

Front building line	6.5m	10.4m	10.0m	Yes
Rear building line	6.5m	15.0m	unaltered	Yes
Side building line	2.5m (west)	15.2m	unaltered	Yes
	1m (east)	5.4m	unaltered	Yes
Building envelope	3.5m (west)	Within envelope	Within envelope	Yes
	3.5m (east)	Within envelope	Within envelope	Yes
Landscaped area	60% (650.88sqm)	62.7% (679.5sqm)	unaltered	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.1 Avalon Beach 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
B3.11 Flood Prone Land	Yes	Yes
B3.13 Flood Hazard - Flood Emergency Response planning	Yes	Yes
B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	No	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	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
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.14 Separately Accessible Structures	Yes	Yes
C1.23 Eaves	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D1.1 Character as viewed from a public place	Yes	Yes
D1.4 Scenic protection - General	Yes	Yes
D1.5 Building colours and materials	Yes	Yes
D1.8 Front building line	Yes	Yes
D1.9 Side and rear building line	Yes	Yes
D1.11 Building envelope	Yes	Yes
D1.14 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D1.17 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes

Detailed Assessment

B3.1 Landslip Hazard

The original Development Application was accompanied by a geotechnical risk assessment report and certified forms. The proposed modification seeks to construct eaves on the north-eastern corner of the garage/workshop which was removed as part of the original Application due to the encroachment on right of carriageway. Given the scope of works and the fact the original geotechnical risk assessment report was prepared based on the proposed works (inclusive of the corner eaves), it is considered the original report is valid and an updated report would not be required in this instance. Furthermore, Council's Development Engineers have reviewed the proposed modification and has raised no objection.

B6.3 Off-Street Vehicle Parking Requirements

No changes are proposed to the proposed parking arrangement. The proposal is consistent with the assessment of the original application.

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 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. Mod2020/0476 for Modification of Development Consent DA2020/0305 granted for alterations and additions to a dwelling house on land at Lot 3 DP 219898, 13 Capua Place, AVALON 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:

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA.01 (Site Plan)	November 2019	JJ Drafting
DA.03 (Ground Floor Plan)	November 2019	JJ Drafting
DA.04 (First Floor Plan)	November 2019	JJ Drafting

DA.05 (East Elevation)	November 2019	JJ Drafting
DA.06 (Elevations)	November 2019	JJ Drafting
DA.07 (Section)	November 2019	JJ Drafting
DA.08 (Roof and Stormwater Concept Plan)	November 2019	JJ Drafting

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. Delete Condition 3 - Right of Carriageway which read as follows:

No approval is granted under this Development Consent for any works to be conducted on or structures to be built on or over the Right of Carriageway.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

C. Add Condition 26 - Extinguishment of Right of Way to read as follows:

The existing right of way burdening the site, for the portion of the proposed garage only, is to be extinguished in accordance with the requirements of NSW Land Registry Services.

Details demonstrating compliance is to be submitted to the Certifying Authority prior to the release of the Construction Certificate.

Reason: To ensure proper management of the land.

D. Add Condition 27 - Maintenance of Easement Provisions to read as follows:

This consent does not override any legal agreement or provisions associated with the Right of Carriageway Easement associated with the subject site.

Reason: To ensure compliance with the imposed legal agreements

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

Signed



Gareth David, Planner

The application is determined on 12/01/2021, under the delegated authority of:



Lashta Haidari, Acting Development Assessment Manager