

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2021/0748
Responsible Officer:	Catriona Shirley
Land to be developed (Address):	Lot 29 DP 25164, 50 Earl Street BEACON HILL NSW 2100
Proposed Development:	Modification of Development Consent DA2020/1488 granted for alterations and additions to a dwelling house
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Shaun Bradley George Pearson Amanda Louise Pearson
Applicant:	Shaun Bradley George Pearson
Application Lodged:	07/10/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - New second occupancy
Notified:	18/10/2021 to 01/11/2021
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

PROPOSED DEVELOPMENT IN DETAIL

This application seeks the deletion of the approved secondary dwelling of original consent DA2020/1488.

The footprint area which was identified as a secondary dwelling will now be retained as part of the dwelling house, and utilised as a teenagers retreat with access from a new doorway via the new entry area as demonstrated on the Ground Floor plans.

All proposed references to the secondary dwelling have been removed, along with the removal of the proposed kitchen and laundry.

The works to be undertaken are a minor change to the front entry of the dwelling house in order to create a new internal access to the teenager's retreat. Internally a new internal door way will also be

included to provide internal entry. The "wetbar" approved in the First Floor lounge area is also to be removed.

There is no change to the building height, setbacks or building envelope of the dwelling.

The removal of the secondary dwelling also amends the definition of the of the development to "alterations and additions to a dwelling house", and the removal of Conditions numbers 2 and 12 that reference the 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

Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
Warringah Development Control Plan - D8 Privacy

SITE DESCRIPTION

Property Description:	Lot 29 DP 25164 , 50 Earl Street BEACON HILL NSW 2100
Detailed Site Description:	<p>The subject site consists of a regularly-shaped, 678.3m2 (survey)\allotment located on the northern side of Earl Street. The site is located within the R2 Low Density Residential zone under Warringah Local Environmental Plan 2011, with all surrounding allotments also being within the R2 zone.</p> <p>The site has a frontage of 18.29 metres along Earl Street and a depth of 37.084 metres; the site is moderately sloped, with a rear-to-front fall of approximately 2.5 metres.</p> <p>The site is affected by a landslip risk hazard (Areas A and B, denoting slopes of less than 5% and flanking slopes).</p>

No other significant considerations affect the subject site.

Development on the site include a single-storey detached dwelling house, a small swimming pool and detached garage.

Development on residential zoned areas both adjoining the site and within the broader locality primarily consists of low density residential development within a landscaped setting.

Map:



SITE HISTORY

A search of Council's records has revealed the following relevant Development Applications:

- Development Application **DA2020/1488** for the alterations and additions to a dwelling house including secondary dwelling was approved on the 08/02/2021.

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 DA2020/1488, 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	<p>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 DA2020/1488 for the following reasons:</p> <p>The modification removes the secondary dwelling from the application and proposes to utilise this space as a teenagers retreat. There is no change to the approved the building envelope, streetscape appearance, car parking, drainage or landscape outcomes. There are no significant change to the built form controls, and the spatial relationship of the proposed works to adjoining properties is maintained with a similar compatible streetscape presentation.</p>
(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 DA2020/1488 did not require concurrence from the relevant Minister, public authority or approval body.
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require, or</p> <p>(ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that</p>	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, and the Northern Beaches Community Participation Plan.

Section 4.55 (2) - Other Modifications	Comments
requires the notification or advertising of applications for modification of a development consent, and	
(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.	See discussion on "Notification & Submissions Received" in this report. OR 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 (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	Warringah 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)	<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. <u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation was submitted with the original application/This clause is not relevant to this application.

Section 4.15 'Matters for Consideration'	Comments
	<p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</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 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 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 Warringah 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 from 18/10/2021 to 01/11/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 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, 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. A358137_05 dated 18 August 2021). The BASIX Certificate is supported by an ABSA Assessor Certificate (see Certificate No.A358137_05 dated 18 August 2021).

The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
Water	40	Pass
Thermal Comfort	Pass	Pass
Energy	50	Pass

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

Warringah Local Environmental Plan 2011

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	8.34m (RL131.58) Floor Levels RL 124.24 Ground Floor RL 127.49 First Floor	No Change Floor Levels No change	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Warringah Development Control Plan

Built Form Controls

Standard	Requirement	Approved	Proposed	Complies
B1 Wall height	7.2m	6.9m	No Change	Yes
B3 Side Boundary Envelope	4m	No Encroachment	No Change	Yes
	4m	Encroachment of up to 1.32m	No Change	Yes
B5 Side Boundary Setbacks	0.9m East	Min. 900mm	No Change	Yes
	0.9m West	1.5m new works; 820mm ground floor setback is existing	No Change	Yes
B7 Front Boundary Setbacks	6.5m	6.5m (to balcony) 7.6m (to building line)	No Change	Yes
B9 Rear Boundary Setbacks	6m	11.1m (dwelling building)	No Change	Yes

		line; unchanged)		
D1 Landscaped Open Space and Bushland Setting	40%	34% (230.8m ²)	34% (230.8sqm)	No*

*Approved under parent application DA2020/1488.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D8 Privacy	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

D1 Landscaped Open Space and Bushland Setting

The modification does not change the amount of landscape open space provided on the site which under the original DA equated to 34% of the site area.

The modification proposal remains to be consistent with the objectives of the control in that it will provide for sufficient space to enable planting to maintain and enhance the streetscape which will also help mitigate the height, bulk and scale of the building and allow for privacy between dwellings.

D8 Privacy

There is no change to any window or door openings as a result of the modified design.

The change of use of the footprint of the Ground Floor level from a secondary dwelling to a teenage retreat and bedrooms lowers the intensity of the use of the space and effectively maintains a acoustic and visual privacy comparable to the current situation.

As a result, the change of use of the Ground Floor level will not contribute to any unreasonable amenity impact, and will provide a reasonable and appropriate impact upon the neighbouring sites.

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 2021

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;
- Warringah Local Environment Plan;
- Warringah 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. Mod2021/0748 for Modification of Development Consent DA2020/1488 granted for alterations and additions to a dwelling house on land at Lot 29 DP 25164,50 Earl Street, BEACON HILL, 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 with DA2020/1488 (dated 08/02/2021) and with the following:

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		

Drawing No.	Dated	Prepared By
Site Analysis 01	18/08/2021	Action Plans
Site/Roof 02	18/08/2021	Action Plans
Ground Floor 04	18/08/2021	Action Plans
First Floor 05	18/08/2021	Action Plans
North/East Elevation 06	18/08/2021	Action Plans
South/West Elevation 07	18/08/2021	Action Plans
Long/Cross Section 08	18/08/2021	Action Plans

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. Modify Condition No. 2 Approved Land Use to read as follows:

Nothing in this consent shall authorise the use of the entire site as detailed on the approved plans for any land use of the site beyond the definition of a dwelling house.

A dwelling house is defined as:

“dwelling house means a building containing only one dwelling.

Note—

Dwelling houses are a type of residential accommodation—see the definition of that term in this Dictionary.”

(development is defined by the Warringah Local Environment Plan 2011 (as amended) Dictionary)

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.

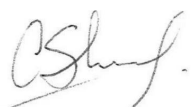
Reason: To ensure compliance with the terms of this consent.

C. Delete Condition 12 Change of Building Class/Building Upgrade to read as follows:

Delete

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

Signed



Catriona Shirley, Planner

The application is determined on 04/11/2021, under the delegated authority of:



Rodney Piggott, Manager Development Assessments