

Strategic Planning Referral Response

Application Number:	Mod2023/0258
Proposed Development:	Modification of Development Consent DA2020/1177 granted for Alterations and additions an existing dwelling
Date:	23/05/2023
To:	Jordan Howard
Land to be developed (Address):	Lot 25 DP 4449 , 46 Daintrey Street FAIRLIGHT NSW 2094

Officer comments

INTRODUCTION

On 17 May 2023, Strategic and Place Planning received a referral request for application (Mod2023/0258) seeking to modify Development Consent DA2020/1177 that was granted for alterations and additions an existing dwelling.

SUBJECT SITE

The subject site comprises of 46 Daintrey Street Fairlight NSW 2094 (Lot 25 DP 4449). The subject site is trapezoidal in shape and has a boundary on Daintrey Street and Arthur Lane. The subject site is zoned R1 General Residential under the Manly LEP2013.

Chronology:

On 8 December 2020, Council issued a consent on DA2020/1177 for the alterations and additions an existing dwelling at 46 Daintrey Street Fairlight NSW 2094. Condition 7 of the consent required a payment of monetary contribution of \$2,070.00 based on cost of works of \$207,000.00 prior to the issue of any Construction Certificate or Subdivision Certificate. At the time of determination, the Northern Beaches 7.12 Contributions Plan 2019 applied.

On 6 January 2021, the development contribution was paid to and receipted by Council, for the adjusted amount of \$2,070.00

On 14 January 2021, Form building Certifiers issued a Construction Certificate for consent DA2020/1177.

On 10 November 2021, Form building Certifiers issued an Occupation Certificate for consent DA2021/1177. The schedule of inspections of works completed as per consent is noted in the final Occupation Certificate.

THE MODIFICATION APPLICATION

This modification application proposes changes to the approved consent DA2020/1177:

1. Lower Ground Floor

- Extend the garage to the west to include a plant/services and bin storage area and bike racks. Include a pedestrian door for access from Arthur Lane and storage under the stairs.

2. Ground Floor

- Alter the front of the home office so that it is in line with the Arthur Lane frontage
- Move the bathroom to the western elevation
- Move the entrance door to the southern elevation
- Adjust locations of window and door on northern elevation

3. Roof

- Adjusted in line with ground and lower ground changes

The modification will result in an increase in cost of works by \$75,000.

ASSESSMENT OF MODIFICATION APPLICATION

Council is only able to amend the condition related to the development contributions amount payable to Council if it has not yet been paid, a Construction Certificate has not been issued and no physical works

commenced on site. The development consent has already been enacted and development contributions paid to council.

Under *Ku-ring-gai Council v Buyozo Pty Ltd* [2021] NSWCA177, Justice Basten and Payne JJA at [1] and Preston CJ of LEC at [17] found that the condition of consent cannot be modified if the payment of contribution is required retrospectively for a condition that has been satisfied. Therefore, the condition for contribution once satisfied, cannot be amended.

The current application involves changes to the approved/completed development that will result in costs of \$75,000. This estimated cost of works is below the threshold of \$100,000.01 upon which Council can then impose a levy under Section 7.12 of the EP&A Act. As such, this modification application does not generate the requirement for development contributions imposed on the cost associated with the modification application.

RECOMMENDATION

A. The development contributions imposed by consent DA2020/1177 have already been satisfied.

B. This modification application has a cost of works estimated at \$75,000. As the costs of works specific to the modification application is below the threshold, no development contributions are to be imposed on this modification.

C. This modification application is supported without conditions.

The proposal is therefore supported.

Note: Should you have any concerns with the referral comments above, please discuss these with the Responsible Officer.

Strategic Planning Conditions:

Nil.