

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	MOD2021/0876
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Responsible Officer:	Sarah McNeilly (Independent Consultant Planner)
Land to be developed (Address):	Lot 93 in DP 16029 - 16 Grandview Drive, Newport
Proposed Development:	Modification of Development Consent DA2020/1260 for the construction of a 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:	Malcolm Charles White
Applicant:	Christian Miles (C/- Nolan Planning Consultants)

Application Lodged	11/11/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential
Notified:	06/12/2021 to 14/01/2022
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Refusal

EXECUTIVE SUMMARY

The modification application seeks to amend development consent DA2020/1260 relating to the construction of a secondary dwelling approved by the Northern beaches Local Planning Panel (NBLPP) on 3 February 2021.

The modification application seeks to delete Condition 7(a) of the development consent which required the floorplan of the secondary dwelling to be amended so that only one bathroom is provided. The modification will therefore allow for ensuite bathrooms to each of the bedrooms to be retained.

Public notification of the application resulted in no submissions being received.

The proposed modification would not result in a change in the size or external form of the approved secondary dwelling, nor would it result in an impact to adjoining neighbours. The inclusion of two small ensuites would allow for slightly greater amenity for the occupants. However, there is a concern that this could encourage rental opportunities for multiple occupants or family groups and is inconsistent with the relevant DCP control. Accordingly, it is recommended that the application be refused and condition 7(a) be retained.

The application has been assessed by an independent external planning consultant as the applicant is related to a member of staff who is principally involved in the exercise of council's functions under the Environmental Planning and Assessment Act 1979. Therefore, the

application is referred to the NBLPP for determination.

PROPOSED DEVELOPMENT IN DETAIL

Development Consent was granted on 3 February 2021 under Development Application DA2020/1260 for the construction of a secondary dwelling.

This application has been made pursuant to Section 4.55(1A) of the Environmental Planning and Assessment Act 1979 seeking to make the following amendments to the approved development:

Deletion of Condition 7(a)

Condition 7(a) requires:

7. Amendments to the approved plans

The following amendments are to be made to the approved plans:

- a) *The floor plan of the secondary dwelling is to be amended so that only one bathroom is provided for use by the occupants of the secondary dwelling.*

The proposal will allow for ensuite bathrooms to each of the bedrooms to be retained with Condition 7(a) deleted.

In justifying the amendment, the applicant states in the submitted Statement of Modification:

"The proposed modification to amend Condition 7 to delete sub-clause (a) is considered to be justified for the following reasons:

- *The inclusion of the two bathrooms does not alter the approved footprint or building envelope.*
- *The two bathrooms will not have any detrimental impact on the adjoining properties. Bathrooms are not high use areas and will not impact on the amenity or privacy of the adjoining properties.*
- *The provision of two bathrooms does not increase the density, nor intensify the use.*
- *Whilst Clause C1.11 of the Pittwater DCP limits secondary dwellings to providing only one bathroom, there is no direct reasoning for this control. The outcomes of Clause C1.11 are still achieved with the proposed modifications in that there is no change to the approved bulk or scale, does not alter the approved footprint nor require removal of any vegetation. It does however increase the opportunity for rental accommodation to meet the stated outcomes of this clause.*
- *The proposed modifications do not result [in] any impacts on the adjoining properties, character of the locality or the environment.*

It is therefore considered appropriate that the request to amend Condition 7 as described be supported".

It is noted that Condition 7(a) was not an additional condition imposed by the NBLPP.

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 DCP - C1.11 Secondary Dwellings and Rural Workers Dwelling.

SITE DESCRIPTION

Property Description:	Lot 93 in DP 16029 - 16 Grandview Drive, Newport
Detailed Site Description:	<p>The site has an area of 557.2m² with a frontage of 12.19m to Grandview Drive. The rear of the site abuts Crown of Newport Reserve to the east. The site is located on the north-eastern side of Grandview Drive and has a depth of 45.725m. The frontage of the site includes access via a shared lower access road.</p> <p>The site is located within the C4 Conservation Living zone and is currently developed with a stepped multi-level dwelling with metal roof. A parking platform is located at the frontage of the site. The property has a significant fall from the street frontage (RL36.77) towards the rear boundary (RL18.9).</p> <p>The rear of the site includes the approved single storey secondary dwelling which is currently under construction.</p> <p>Description of Adjoining and Surrounding Development</p> <p>The site is surrounded by detached one and two storey dwellings within landscaped settings, and a large drainage reserve to the east.</p>

Site Arial



SITE HISTORY

The land has been used for residential purposes for an extended period of time. A search of Council's records has revealed one previous application.

Mod2021/0241 (amending DA2020/1260 subject of this modification) – Modification to amend Condition 4 – Approved by Council on 10 May 2021.

Mod2021/0165 (amending DA2020/1260 subject of this modification) – Modification to amend the determination date and Condition 21 – Approved by Council on 20 April 2021.

Development Application (DA2020/1260) (the original application being the subject of this modification) – Development Application for construction of a secondary dwelling – Approved by Northern Beaches Local Planning Panel on 3 February 2020.

Development Application (NO622/08) was lodged in 2008 for the alterations and additions to the existing dwelling (Submitted: 17/12/2008) approved by Council on 11 June 2009.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EP&A Act)

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 it 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 DA2020/1260, 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 for the following reasons: <ul style="list-style-type: none">• The modified development does not result in adverse streetscape, environmental or amenity impacts. In particular, there will be no discernable impacts for neighbours.
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the 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 DA2020/1260 for the following reasons: <ul style="list-style-type: none">• The modified development will not have a materially different impact when compared to the approved development.• The modified development will not alter the land use of the site.
(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 was not required to be publicly exhibited or notified in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, and the Northern Beaches Community Participation 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 a 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	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)	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15(1) (a)(iiia) – Provision 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. 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>Clause 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>

Section 4.15 – Matters for Consideration	Comments
	<p>Clause 98 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>
<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>	<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 may have a detrimental social impact in the locality, as the additional bathroom may allow the opportunity for more than one tenant or family group in the secondary dwelling.</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>
<p>Section 4.15 (1) (c) – the suitability of the site for the development</p>	<p>The site is considered suitable for the proposed development.</p>
<p>Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs</p>	<p>No submissions were received</p>
<p>Section 4.15 (1) (e) – the public interest</p>	<p>The proposal would introduce amenities which could be utilised to increase the occupancy of the secondary dwelling. This would compromise the intent of Clause C1.11 of the Pittwater 21 Development Control Plan and create an undesirable precedent which could result in increased residential density. Therefore, the application is not considered to be in the public interest.</p>

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 6 December 2021 to 14 January 2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, the relevant Development Control Plan and Council's adopted Community Participation Plan.

No submissions were received.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>Supported (No additional conditions)</p> <p><i>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no concerns with the application.</i></p> <p><i>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.</i></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.

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

The original BASIX certificate would remain valid, as plans are the same as those submitted with the original Development Application (see Certificate No. 1137791S dated 21 September 2020).

SEPP (Coastal Management) 2018

The proposed modification would not alter the built form (footprint) of the secondary dwelling and accordingly, the original assessment is still applicable.

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?	No

Principal Development Standards

Standard	Permitted	Approved	Proposed	% Variation	Complies
4.3(2FA) Height of Buildings	5.5m	5.497m	No change	-	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
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

C4 Environmental Living

The objectives of the C4 zone are considered to be fulfilled as is detailed below.

- ***To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.***
- ***To ensure that residential development does not have an adverse effect on those values.***
- ***To provide for residential development of a low density and scale integrated with the landform and landscape.***
- ***To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors***

The development does not respond appropriately to the objectives of the zone (particular Point 3) as it includes 2 bedrooms and ensuites which provide the opportunity for more than one tenant or family group to be housed within the secondary dwelling thereby potentially increasing the density to beyond that normally envisaged.

Clause 5.4 Controls relating to miscellaneous permissible uses

Sub-clause (9) provides:

(9) 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:

1. 60 square metres,
2. 25% of the total floor area of the principal dwelling.

The area of the approved proposed secondary dwelling is unchanged at 59.9m².

Pittwater Development Control Plan 2014

Built Form Controls

Control	Requirement	Approved	Proposed	Complies
Front Building Line	6.5m	N/A	Unaltered	Yes
Rear building Line	6.5m	1.478m	Unaltered	No (No change)
Side building line	2.5m (west boundary)	2.6m	Unaltered	Yes
	1m (east boundary)	0.95m	Unaltered	No (No change)
Building envelope	3.5m (east boundary)	Within envelope	Unaltered	Yes
	3.5m (west boundary)	Within envelope	Unaltered	Yes
Landscaped area	60%	45.8% 255.53m ²	Unaltered	No (No Change)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.10 Newport Locality	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	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	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
Security		
B8.6 Construction and Demolition – Traffic Management Plan	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
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.11 Secondary Dwellings and Rural Workers Dwelling	No	No
C1.12 Waste and Recycling	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.23 Eaves	Yes	Yes
D9.17 Scenic Protection Category One Areas	Yes	Yes
D10.1 Character as viewed from a public place	Yes	Yes
D10.4 Building colours and materials	Yes	Yes
D10.7 Front Building Line	Yes	Yes
D10.8 Side and Rear Building line	No	Yes
D10.11 Building Envelope	Yes	Yes
D10.13 Landscaped Area – Environmentally Sensitive Land	No	Yes
D10.14 Fences – General	Yes	Yes
D10.16 Construction, retaining walls, terracing and undercroft areas	Yes	Yes
D10.18 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

C1.11 Secondary Dwellings and Rural Workers Dwelling

Description of Non-compliance

The DCP requires a secondary dwelling to contain no more than one bathroom. The proposed development proposes two bathrooms within the secondary dwelling. A condition of consent requiring the removal of one bathroom was placed on the consent and the applicant now seeks to delete this.

Merit consideration

The proposal includes 2 bedrooms and the ensuites proposed are small with no change to footprint proposed, resulting in no alteration to the dwelling visually. The living space to be retained is adequate and the change will allow for slightly greater amenity for the occupants. However, the inclusion of 2 bathrooms does allow opportunity for more than one tenant or family group to be

housed within the small space. The possibility of multiple tenants is at odds with the intent of the provision. Consideration against the objectives of the clause is provided below.

- ***Limitation of the visual bulk and scale of development.***

Comment:

The bulk and scale will remain unchanged from that approved.

- ***Provision of design flexibility for second storey development.***

Comment:

The building bulk is unchanged.

- ***Restriction of the footprint of development site.***

Comment:

The bulk and scale will remain unchanged from that approved.

- ***Retention of natural vegetation and facilitation planting of additional landscaping.***

Comment:

The inclusion of the second bathroom will have no impact on vegetation and landscaping with the building footprint unchanged.

- ***Provision of rental accommodation.***

Comment:

The ability to provide rental accommodation will be retained. However, it should be limited to one tenant or family group through the retention of the requirement for one bathroom.

It is concluded that the proposed development is inconsistent with the relevant objectives of the PDCP and the objectives specified in Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D10.8 Side and Rear Building line

The proposal does not seek to alter the side and rear building line approved within DA2020/1260. No change to approved built form is proposed.

D10.13 Landscaped Area – Environmentally Sensitive Land

The proposal does not seek to alter the landscaped area approved within DA2020/1260. No change to approved built form is proposed.

7.12 CONTRIBUTIONS

The modification does not change the cost of works or impact contributions.

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 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:

- Inconsistent with the objectives of the DCP.
- Inconsistent with the zone objectives of the LEP.
- Consistent with the aims of the LEP.
- Consistent with the objectives of the relevant EPIs.
- Inconsistent with the objects of the Environmental Planning and Assessment Act 1979.

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of the Northern Beaches Council as the consent authority, **refuses** Modification Application No. Mod2021/0876 for the modification of Development Consent DA2020/1260 granted for the construction of a secondary dwelling on land at Lot 93 in DP 16029, No. 16 Grandview Drive, Newport, for the following reasons:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the zoning objectives of the Pittwater Local Environmental Plan 2014. In particular, the development which provide the opportunity for more than one tenant or family group to be housed within the secondary dwelling thereby potentially increasing the density to beyond that normally envisaged.
2. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C1.11 Secondary Dwellings and Rural Worker's Dwellings of the Pittwater 21 Development Control Plan. In particular, the secondary dwelling includes two bathrooms which will enable the use of the dwelling as share accommodation.
3. Pursuant to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of the Environmental Planning and Assessment Act 1979. In particular, the proposed development is to the detriment of social objectives, providing the opportunity for more than one tenant or family group to be housed within the secondary dwelling.
4. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest. In particular, the proposal could be utilised to increase the occupancy of the secondary dwelling which would compromise the intent of Clause C1.11 of the Pittwater 21 Development Control Plan and create an undesirable precedent for increased residential density.