

**SUBJECT: N0350/17 - 1 MONTEREY ROAD, BILGOLA PLATEAU NSW
2107 Alterations and additions to a dwelling**

Determination Level: Manager – Development Assessment

Date: 6 February 2017

SUMMARY OF RECOMMENDATION:

APPROVAL

REPORT PREPARED BY:

Hugh Halliwell

APPLICATION SUBMITTED ON:

8 August 2017

APPLICATION SUBMITTED BY:

JJ DRAFTING
174 GARDEN STREET
NORTH NARRABEEN NSW 2101

OWNERS:

MR ANTHONY LEE
MS MARIE SHARON MCADAMS



Site Details

The site is known as 1 Monterey Road, Bilgola Plateau and has a legal description of Lot 90 in Deposited Plan 28862. The site is irregular in shape and the total area of the site is 698.9m², with a primary frontage of 41.07m in width to Monterey Road. The site also presents a secondary frontage facing east to Kanimbla Crescent. The site experiences a fall of 5.42m from the rear (west) of the property down towards Kanimbla Crescent, with a slope of approximately 15.13%. The site contains an existing detached two storey weatherboard dwelling that is located towards the east of the site, with a detached single carport and garage along the western boundary of the site. Adjoining the site are similar low density residential dwellings. A site inspection to the subject property was conducted on 24 January 2018.

Proposal in Detail

The application seeks consent for the alterations and additions to the existing dwelling. In particular the application seeks the following:

- New first floor addition consisting of two (2) bedrooms, one (1) bathroom and a walk in robe;
- Replace existing roof with a new skillion roof, re-pitched to the opposite direction;
- Internal alterations to the existing ground floor to remove existing master bedroom, relocate laundry, extend living room and kitchen, and accommodate new internal staircase;
- New sliding doors to the living room at the western elevation.

The application subsequently submitted amendments to the original proposal. The estimated cost of works is \$191,638.

Statutory and Policy Considerations

The site is zoned E4 Environmental Living under Pittwater Local Environmental Plan 2014. Pursuant to the land use table in Part 2 of this instrument, alterations and additions to the existing dwelling are permissible with consent.

The following relevant state, regional and local policies and instruments apply:

- Environmental Planning and Assessment Act, 1979 (the Act)
- Environmental Planning and Assessment Regulation 2000 (the Regulation)
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (SEPP BASIX)
- 10/50 Vegetation Clearing Code of Practice
- Pittwater Local Environmental Plan 2014 (PLEP 2014)
 - Acid Sulphate Soils Map - Area 5
 - Biodiversity Map
 - Height of Buildings Map - I ~ 8.5m
- Pittwater 21 Development Control Plan (P21 DCP)
 - Bilgola Locality
 - Bushfire Prone Land
 - Landscaped Area Map - Area 1
 - Land mapped as Wildlife Corridor

Variations to development standards:

The application of Clause 4.6 is not required.

Background

Development application N0350/17 was lodged at Council on 8 August 2017 and internally referred to Council's Development Engineer and Natural Environment Officer for comments and/or recommendations.

Property History

12 August 2010

Development Application N0300/10 for alterations and addition to the existing dwelling was granted consent under Council delegation. This application was subsequently modified on 29 August 2011 and 16 October 2012.

12 May 2017

Development Application N0133/17 for construction of a new swimming pool and timber deck was granted consent under Council delegation.

Application History

13 September 2017

A formal request to withdraw the application was issued by Council. The issues summarised in this request are as follows:

- Non-compliance with clause 4.3 Building Height of PLEP 2014 without a formal clause 4.6 justification request;
- Inadequate assessment of clause C1.3 View Sharing of P21 DCP.

19 September 2017

Additional Information was submitted by applicant including amended plans indicating compliance with Clause 4.3, amended BASIX, and amended statement including assessment of Control C1.3 View Sharing.

4 October 2017

Council request for six (6) height poles to be erected on site.

24 October 2017

Site inspections were undertaken at six (6) neighbouring dwellings who all submitted formal objections to the development. These properties included:

- 12 Kanimbla Crescent,
- 3 Monterey Road,
- 6 Monterey Road,
- 8 Monterey Road,
- 10 Monterey Road,
- 12 Monterey Road.

8 November 2017

A formal request to withdraw the application was issued by Council. The issues summarised in this request are as follows:

- Non-compliance with clauses A4.3 Bilgola Locality, D3.1 Character as viewed from a public place, D3.2 Scenic protection – General due to the bulk and scale of the proposed first floor addition and the appearance of a third storey dwelling;
- Non-compliance with clause D3.9 Building envelope with respect to the proposed first floor addition at the southern elevation being sited outside the prescribed building envelope plane, and is not considered to be of minimal bulk and scale;
- Non-compliance with clause C1.3 View Sharing with respect to the proposed additions substantially impacting views obtained by properties to the west and north.

30 November 2017

Additional information was submitted by the applicant amending the original proposal to include:

- New first floor addition consisting of one (1) bedroom, one (1) bathroom and a walk in robe;
- Internal alterations to the existing ground floor to remove existing master bedroom, relocate laundry, extend living room and kitchen, and accommodate new internal staircase;
- New sliding doors to the living room at the western elevation.

The additional information was also supported by an updated Statement of Environmental Effects and BASIX Certificate.

Notification

Development application N0350/17 was notified from 17 August to 31 August 2017 to adjoining property owners in accordance with Council's notification policy. During the initial notification period, a total of six (6) submissions were received. After this period, further correspondence was received from two nearby property owners. The submissions received were from the following properties:

- 12 Kanimbla Crescent,
- 3 Monterey Road,
- 6 Monterey Road,
- 8 Monterey Road,
- 10 Monterey Road,
- 12 Monterey Road.

The submissions raised concern with regard to the following:

- Character – the majority of the submissions raised concerns with the proposed “*third storey element*” of the additions being inconsistent with the existing character of the street, and desired future character of the Bilgola Locality;
- View Sharing – five (5) of the submissions whose properties are located towards the north and west of the site raised concern with the potential loss of views as caused by the proposed development;
- Building envelope – concerns were raised in regards to the bulk of the addition and its non-compliance with the building envelope control and objectives at its southern elevation;
- Overshadowing – the southern adjoining neighbour raised concern with the potential increase in shadowing to their property;
- Visual privacy – the southern adjoining neighbour also raised concern with the decrease in privacy to their front garden, and master bedroom in regards to the proposed additions and glazing to the southern elevation of the development.

The amended application was re-notified from 4 December 2017 to 15 January 2018 to adjoining properties. During the re-notification period, eight (8) submissions were received from the following property owners:

- Submission received from unknown address
- 12 Kanimbla Crescent,
- 2 Monterey Road
- 3 Monterey Road,
- 5 Monterey Road,
- 8 Monterey Road,
- 10 Monterey Road,
- 12 Monterey Road.

On 17 January 2018 the application was reallocated to a different assessing officer. As a result, inspections of the following properties were conducted:

- 12 Kanimbla Crescent,
- 1 Monterey Road,
- 2 Monterey Road
- 3 Monterey Road,
- 6 Monterey Road,
- 8 Monterey Road,
- 10 Monterey Road,
- 12 Monterey Road.

The submissions raised concern with regard to the following:

Issues

- Zone E4 Environmental Living
- A4.3 Bilgola Locality
- C1.3 View Sharing
- C1.4 Solar Access
- C1.5 Visual Privacy
- D3.1 Character as viewed from a public place
- D3.2 Scenic protection – General

Compliance Table

- T - Can the proposal satisfy the technical requirements of the control?
- O - Can the proposal achieve the control outcomes?
- N - Is the control free from objection?

Control	Standard	Proposal	T	O	N
Pittwater Local Environmental Plan 2014					
1.9A Suspension of covenants, agreements and instruments			Y	Y	Y
Zone E4 Environmental Living		See discussion below.	Y	Y	N

4.3 Height of Buildings	Maximum building height = 8.5m.	The architectural drawings indicate a maximum height of the structure to be 8.4m.	Y	Y	Y
5.10 Heritage conservation			Y	Y	Y
7.1 Acid Sulphate soils		Acid Sulfate Region 5	Y	Y	Y
7.2 Earthworks			Y	Y	Y
7.6 Biodiversity protection			Y	Y	Y
7.10 Essential services			Y	Y	Y
Pittwater 21 Development Control Pan					
A1.7 Considerations before consent is granted			Y	Y	Y
A4.3 Bilgola Locality		See discussion below.	Y	Y	N
B1.3 Heritage Conservation – General			Y	Y	Y
B1.4 Aboriginal Heritage Significance		No apparent issues.	Y	Y	Y
B3.2 Bushfire Hazard		The application is supported by a Bushfire Risk Assessment Report and the applicant has submitted a Bushfire Risk Assessment Certificate. The report and certificate both identify that the subject site has a BAL rating of BAL-19. Referral to the NSW RFS is not required. Conditions requiring compliance with the recommendations from the Bushfire Assessment Report will be imposed.	Y	Y	Y
B3.6 Contaminated Land			Y	Y	Y
B4.6 Wildlife Corridors			Y	Y	Y
B5.10 Stormwater Discharge into Public Drainage System			Y	Y	Y
B6.3 Off-Street Vehicle Parking Requirements – Low Density Residential			Y	Y	Y
B8.2 Construction and Demolition – Erosion and Sediment Management			Y	Y	Y
B8.3 Construction and Demolition – Waste Minimisation			Y	Y	Y
C1.1 Landscaping			Y	Y	Y
C1.2 Safety and Security			Y	Y	Y
C1.3 View Sharing		See discussion below.	Y	Y	N
C1.4 Solar Access		See discussion below.	Y	Y	N
C1.5 Visual Privacy		See discussion below.	Y	Y	N
C1.6 Acoustic Privacy			Y	Y	Y
C1.7 Private Open Space			Y	Y	Y

C1.12 Waste and recycling facilities			Y	Y	Y
C1.13 Pollution Control			Y	Y	Y
C1.23 Eaves			Y	Y	Y
C1.24 Public Road Reserve – Landscaping and Infrastructure			Y	Y	Y
D3.1 Character as viewed from a public place		See discussion below.	Y	Y	N
D3.2 Scenic protection – General		See discussion below.	Y	Y	N
D3.3 Building colours and materials		The schedule of finishes submitted with the application indicates the external materials to consist of some colours not considered to meet Council's dark and earthy requirements. The external cladding of the new addition is proposed to match that of the existing dwelling. The light grey colour of the existing cladding does not meet the technical requirements of this control. However, considering the colour of the proposed roof to be a darker grey " <i>Basalt</i> " than what is presently on site, the proposed external finishes of the dwelling is considered to be improved to Council's requirements.	N	Y	Y
D3.6 Front building line	Minimum required front setback = 6.5m. Minimum setback to secondary street frontage = 3.25m.	Considering the corner allotment of the site and the orientation of the existing dwelling to face east the setback to Kanimbla Crescent can be regarded as the sites front boundary. As such, the proposed addition is setback approximately 15.0m from this boundary and technically compliant. The proposed first floor addition is sited 3.25m from the site's secondary frontage to Monterey Road and also technically compliant.	Y	Y	Y
D3.7 Side and rear building line	Minimum required side setback = 2.5m to one side; and 1.0m to the other. Minimum required rear setback = 6.5m.	The proposed addition is sited 3.25m from the northern side boundary and 6.6m from the southern side boundary. The proposed additions are sited 13.4m to the western rear boundary.	Y	Y	Y
D3.9 Building envelope		While there was concern raised in submissions with respect to a building envelope non-compliance, the amended plans provided, dated November 2017, show compliance with the prescribed building envelope control.	Y	Y	N

D3.11 Landscaped Area – Environmentally Sensitive Land	The minimum required landscaped area for the site is 419.34m ² or 60%.	The proposed landscaped area for the site is 386.93m ² or 55.4%. Whilst the site fails to meet the minimum 60% requirement, the works are all contained over existing hard surface and do not alter the landscaped area calculation.	N	Y	Y
D3.12 Fences – General		No changes to existing boundary fences proposed.	Y	Y	Y
D3.14 Construction, Retaining walls, terracing and undercroft areas			Y	Y	Y
State Environmental Planning Policies and other					
SEPP (Building Sustainability Index: BASIX) 2004			Y	Y	Y
EPA Act 1979 No 203 section 147 Disclosure of political donations and gifts			Y	Y	Y

Discussion of Issues

Zone E4 Environmental Living, A4.3 Bilgola Locality, D3.1 Character as viewed from a public place, D3.2 Scenic protection – General

Submissions have been received from a number of concerned neighbours which raise issue that the proposal is not in keeping with the wider Bilgola locality nor is it within character of the area. The submissions also raise issue that the development does not meet the zone objectives, specifically in relation to special aesthetic values of the area. The Bilgola Locality is predominantly a low-density residential area characterised by detached one (1) and two (2) storey dwellings on individual allotments of various architectural age and style. The subject site is located on the corner of Monterey Road and Kanimbla Crescent in an exposed position orientated east to overlook expansive views of the Pacific Ocean. The existing dwelling onsite is a detached two (2) storey weatherboard dwelling that is located further east towards Kanimbla Crescent than the adjoining properties to the south. Two (2) storey dwellings are the dominant housing style throughout both Monterey Road and Kanimbla Crescent, with properties along the low (east) side of Kanimbla Crescent presenting only one (1) storey to the street. Few native canopy trees remain within this block with most vegetation being low-lying introduced species. Properties along both sides of Kanimbla Crescent are orientated to face east to capture expansive views of the Pacific Ocean, with parts of the northern side of Monterey Road orientated south/ southeast to capture these views.

The site is zoned E4 Environmental Living which intends to provide low-impact residential development that does not adversely affect the special ecological, scientific or aesthetic values of the area. This area of Bilgola Plateau can be considered to be of high aesthetic values particularly to those dwellings orientated to capture the views to the east.

The proposed development includes a new first floor addition to the north-west corner of the existing two (2) storey dwelling. Clause A4.3 of P21 DCP requires dwelling houses to be:

“...a maximum of two storeys in any one place...”

Whilst it is acknowledged that the objections are correct in stating that the proposal will result in a dwelling that will consist of three levels, the proposal will not result in a dwelling that exceeds two storeys in any one place (with the exception of a minor area of the stairwell). The proposal will

remain consistent with the desired future character of the Bilgola locality. In addition, the dwelling will be no higher than adjoining and nearby dwellings, including that immediately to the west. The proposed development consists of a first floor addition to an existing ground floor, therefore remaining no more than two (2) storeys in any one place. As such, it is considered that the proposal remains in character with the existing development along Monterey Road and surrounds, including the wider locality. The addition has undergone amendments to ensure that it is compliant with all relevant built form controls, including decreasing the floor size, therefore reducing the overall impact. The proposal is not unacceptable and represents a typical residential development in a low-density residential area. It would not be considered unreasonable for a degree of impact to arise from such a development.

Appreciating that there remains ongoing concerns after amendments being made, overall, it is determined that the desired future character of the Bilgola Locality which is to remain a primarily low-density residential area with dwelling houses being a maximum of two storeys in any one place has been achieved. The proposal will be read as a stepped two (2) storey dwelling corresponding to the slope of the site. Furthermore, the E4 zone objectives have been met by ensuring the proposal achieves those special values of the area. The development is also able to achieve the outcomes of clauses D3.1 Character as viewed from a public place and D3.2 Scenic protection – General.

C1.3 View Sharing

Throughout the assessment of the application, several submissions were received from surrounding property owners raising concerns with regards to view sharing. Submissions were received in response to the initial design, which had the proposed addition located to the east above the existing dining and kitchen areas; this resulted in a three storey development in a single place. As a result of concerns with regard to view sharing due to technical non-compliance with relevant built form controls, such as envelope, height, and the desired character statement for the Bilgola locality, amended plans were received. The amended plans locate the addition to the north-west now being predominately located above an existing covered paved area.

Additional submissions were received in response to the amended plans which raise further concern in relation to view sharing. Due to the ongoing concerns in relation to view sharing, clause C1.3 of P21 DCP requires a proposal to demonstrate compliance through the application of the Land and Environment Court's planning principle for view sharing, *Tenacity v Warringah*.

Step one: views to be affected

Tenacity v Warringah outlines a four-step criterion to assist in determining the reasonableness of any view sharing impact. The first step is to determine the significance of views which are to be affected by the proposal. In this case, the views to be affected differ between properties, but all include expansive water views with some also enjoying distant views of land-water interfaces to the south. In one case, the property at 10 Monterey Road enjoys a view of 'Newport Reef'. Step one emphasises the importance water views as opposed to land views. Furthermore, iconic views are valued more highly than views without icons, while whole views are valued more highly than partial views, such as those that are obstructed.

It is acknowledged that the views enjoyed from all concerned properties are significant, in so far as they enjoy expansive water views of the Pacific Ocean with some also enjoying coastal views to the south, as well as views of Newport Reef.

Step two: from what part of the property are the views obtained from?

The second step must determine where the views are obtained from (i.e. across side boundaries, from a seated or standing position). The planning principle concludes that views across side boundaries are generally more vulnerable and difficult to protect, as opposed to views across front boundaries. Moreover, views from a seated position are generally harder to protect compared to

standing positions. Site inspections to all affected properties confirmed that views are obtained across both front and side boundaries (see photos). Notable views, including those from 10 Monterey Road are enjoyed across side boundaries which are particularly vulnerable and considered difficult to retain.

Step three: assessment of the extent of impact

The third step must assess the extent of impact from the whole property, not just for the view that is affected. In this instance, thought is given to the areas of the home which the views are going to be affected from. The planning principle defines living areas as having more significance than bedrooms and service areas; although kitchens are highly valued in some cases due to the extent of time people spend in them. Site inspections to all affected properties confirmed that all views are obtained from indoor and outdoor living/dining areas, as well as kitchens (see photos attached to this report). While there are impacts on views from these principal living areas of the home, these are not the only views enjoyed from these properties. There remain unaffected expansive water views, as seen in the photos accompanying this report.

Step four: reasonableness of the proposal that is causing the impact

The last step requires an assessment of the proposal against relevant planning controls, in order to determine the reasonableness of the proposal. Where an impact on views comes as a result of non-compliance with one or more planning controls, a moderate impact may be considered unreasonable. Even a complying development may be considered unreasonable where a more skilful design could be achieved which provides the same level of amenity whilst achieving a greater level of view sharing. In this instance, following amendments to the design, the subject application complies with all relevant built form controls. It is not considered that a further redesign would achieve an improved outcome for neighbours whilst maintaining amenity for occupants. `

It is appreciated that the water views, in particular the view of Newport Reef are of significance to local residents. Notwithstanding this, the views are not considered iconic, in so far as they are not in the same class as such examples, including North Head, The Sydney Opera House or the Sydney Harbour Bridge, or even Barrenjoey Headland or Lighthouse. While views will be obstructed by the proposed addition, including the view of Newport Reef from 10 Monterey Road, this impact is considered acceptable, in light of the magnificent, extensive water views which will be retained from all concerned properties. The water views, including those obtained from No. 10 which also includes Newport Reef are considered highly vulnerable due to the orientation across side boundaries (see photos). This assessment determines that the view impact created by the addition is acceptable on merit.



Figure 1. Photo taken from 3 Monterey Road standing from an internal living area.



Figure 2. Photo taken from 3 Monterey Road standing from a rear first floor balcony.



Figure 3. Photo taken from 10 Monterey Road standing from a front balcony looking across the side boundary. Photo shows the proposal would obstruct the existing view of Newport Reef.



Figure 4. Photo taken from 10 Monterey Road standing from a front balcony looking across the side boundary. Photo shows the proposal would obstruct the existing view of Newport Reef.



Figure 5. Photo taken from 8 Monterey Road standing from a first floor bedroom across the side boundary. Photo shows the proposal would obstruct the existing water view as well as Bungan Head.



Figure 6. Photo taken from 8 Monterey Road standing from a ground floor living across the side boundary. Photo shows the proposal would obstruct the existing water views.



Figure 7. Photo taken from 2 Monterey Road standing from a ground floor front deck. Photo shows the proposal would obstruct a bushland outlook.



Figure 8. Photo taken from 2 Monterey Road standing from a ground floor front deck showing uninterrupted water views including a distant coastal view to the south.



Figure 9. Photo taken from 6 Monterey Road standing from a ground floor deck showing the proposal with uninterrupted water views to the left.



Figure 10. Photo taken from 6 Monterey Road standing from a ground floor deck showing the proposal with uninterrupted water views, including Newport Reef.

C1.4 Solar Access

It is acknowledged that the site and adjoining site to the south are orientated east to west. As such, any further development on the subject site is likely to create additional overshadowing to the southern adjoining lot. The proposed addition (as modified) is compliant with the southern side setback and height control. Notwithstanding this, shadow diagrams have been submitted showing additional overshadowing to the southern adjoining property, particularly increasing the existing shadowing between 9am and 12pm.

A submission from the southern adjoining property, 12 Kanimbla Crescent, has raised concern over the additional shadowing to their dwelling and front and rear open space areas. Whilst additional shadowing is caused across the site, their combined private open space areas and main living space (at the south-east corner of the dwelling) still receive 3 hours of direct sunlight between 9am and 3pm on June 21st. This is considered acceptable.

C1.5 Visual Privacy

A submission from 12 Kanimbla Crescent has raised concern with regards to potential overlooking from the proposed new south facing window. Due to the positioning of the existing dwelling further east than that of the southern adjoining properties, the new proposed glazing to the ground floor living room may negatively affect the visual privacy of the adjoining property to the south at 12 Kanimbla Crescent. The neighbour's front garden, master bedroom (ground floor) and bedroom (first floor) are within a 9.0m radius as projected from the proposed southern facing glazing of the living room. Furthermore, an existing east facing first floor balcony also exists at 12 Kanimbla Crescent which may be affected by overlooking. As this area (originally a bedroom) is proposed to become a new living area, therefore an area of high use, there remains potential for overlooking from this window.

Concern was raised in a submission from the southern adjoining neighbour that the proposed southern facing windows to the proposed addition would create a decrease in visual privacy. On-site inspection at 12 Kanimbla Crescent, it was acknowledged that the master bedroom, bedroom (first floor), front garden and balcony would potentially be exposed to overlooking from the proposed living room glazing. Whilst the control states protection of direct overlooking to open space areas and living rooms, the exposure of the window to these sensitive areas can be considered. As such, it is recommended that windows to the ground floor southern elevation be screened or made of translucent glazing.

The following condition is recommended:

1. Permanent and fixed privacy louvres are to be provided to the south facing ground floor window, W02 (*as marked on Dwg. No. DA7A, JJ Drafting, July 2017*) either consists of translucent glazing or include solid translucent screens which have a maximum of 25% openings, and which are:
 - angled 45 degrees east;
 - made of durable materials; and
 - designed and painted or coloured to blend in with the dwelling.

Conclusion

The Development Application has been assessed in accordance with the provisions of Section 79C of the Environmental Planning and Assessment Act 1979, Pittwater Local Environmental Plan, Pittwater 21 Development Control Plan and other relevant policies as listed at item 3.0.

Whilst it is accepted that there will be a degree of impact on existing views from adjoining properties, the proposal is found to be consistent with the relevant statutory and policy controls and outcomes (refer to relevant assessments above). Amendments made by the applicant have satisfactorily addressed the concerns raised in submissions and by Council with regards to bulk

and scale and impact upon views, including character. The bulk and scale of the proposed additions have been reduced from the initial design further minimising the visual impact of the built form allowing it to align with the existing and desired future character of the Bilgola Locality. It is found that the impact of the proposed development is acceptable; therefore the application for alterations and additions to the existing dwelling is recommended for approval.

RECOMMENDATION OF PLANNER

That Council as the consent authority, pursuant to Section 80 of the Environmental Planning and Assessment Act, 1979, approve Development Application N0350/17 for the alterations and additions to the existing dwelling at 1 Monterey Road, Bilgola Plateau (Lot 90 DP 28862).

Report prepared by

Hugh Halliwell
PLANNER

Date: 6 February 2018