

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/1990
Responsible Officer:	Nick England
Land to be developed (Address):	Lot 25 DP 240799, 2 Kuyora Place NORTH NARRABEEN NSW 2101
Proposed Development:	Construction of a retaining walls, front fence, driveway and landscaping
Zoning:	C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Matthew Lewis Carosi Anita Robyn Breitbarth
Applicant:	Professional Planning Group Pty Ltd
Application Lodged:	26/10/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	12/11/2021 to 26/11/2021
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Refusal
Estimated Cost of Works:	\$ 180,000.00

PROPOSED DEVELOPMENT IN DETAIL

The application consists of the following:

- new front fence and retaining wall, 3.6m from front boundary;
- 1.8m high front fence on the east boundary;
- new paths and gate;
- retaining wall adjoining west boundary; and
- widened driveway to Kuyora Place.

Additional information was provided to Council on 6 December 2021, in response to correspondence

from Council dated 30 November 2021. Further correspondence was sent to the applicant on 8 December.

Council raised issues in both correspondence in regard to: excessive driveway width; height of side boundary fence; insufficient information on proposed retaining wall; and owners consent for works located on adjoining properties. At the time of writing, no satisfactory information had been provided to address Council's concern.

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 21 Development Control Plan - B6.1 Access driveways and Works on the Public Road Reserve

Pittwater 21 Development Control Plan - D11.1 Character as viewed from a public place

Pittwater 21 Development Control Plan - D11.12 Fences - General

Pittwater 21 Development Control Plan - D11.14 Construction, Retaining walls, terracing and undercroft areas

SITE DESCRIPTION

Property Description:	Lot 25 DP 240799 , 2 Kuyora Place NORTH NARRABEEN NSW 2101
Detailed Site Description:	The subject site consists of one (1) allotment located in an cul-de-sac, Kuyora Place, Narrabeen. The site is irregular in shape with a surveyed area of 557m². The site is located within the C4 Environmental Living zone accommodates a dwelling house and outbuildings. The site has north-westerly aspect with a steep slope

adjoining its western side boundary. On the eastern boundary, the site adjoins a driveway access handle for a neighbouring allotment.

The site possesses no significant vegetation.

Adjoining and surrounding development is characterised by dwelling houses.

Map:



SITE HISTORY

A search of Council's records has revealed that there are no recent or relevant applications for this site.

The land has been used for residential purposes for an extended period of time.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under 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 Matters for Consideration	Comments
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)	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters could be addressed via a condition of consent. <u>Clause 49</u> of the EP&A Regulation 2000 requires the owner of the subject land to consent to the lodgement of the application: Based on the information provided, the proposed works are located on/and over the property boundary with the following adjacent properties: • No.3 Kuyora Place; and • No.1 Kuyora Place. Insufficient information has been provided to prove the owners of the subject land have consented to the works proposed in the application. Hence, this forms part of the reasons for refusal of the application. <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 clause is not relevant to this application. <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: fence heights in the front boundary; insufficient information on site plan and elevations; driveway width on the road reserve; and owners consent. <u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application. <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. <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 could be addressed via a condition of consent. <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 could be addressed via a condition of consent.

Section 4.15 Matters for Consideration	Comments
	Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.
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	(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. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (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	This assessment has found the proposal to be contrary to the relevant requirement(s) of the P21 Development Control Plan, specifically: fences; character of existing streetscape; retaining walls; and width of driveways over the road reserve. As a result, the proposed development will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be 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 12/11/2021 to 26/11/2021 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

Internal Referral Body	Comments								
NECC (Development Engineering)	28/10/2021: Proposal is for retaining walls, driveway and associated landscaping. Excavation Site is located within Geotechnical Hazard Zone H1. Preliminary Geotechnical Assessment by Ascent Geotechnical Consulting , Ref No. AG 2 As per report proposed developments are considered to constitute an 'ACCEPTABLE' risk Access Proposal is to upgrade and widen existing driveway. In accordance with DCP section B6.1 (refer below), driveway width of 3.5 at kerb and 4m <i>Access Driveway Width</i> The maximum width of an Access Driveway for dual occupancies, dwellings houses, secondary dwellings, exhibition homes, rural work <table border="1"> <thead> <tr> <th>Distance Building Line to Boundary</th><th>Width at Boundary</th></tr> </thead> <tbody> <tr> <td>Nil to 3.5m</td><td>Width of car parking area or garage opening</td></tr> <tr> <td>Greater than 3.5m to 6.5m</td><td>4.0m</td></tr> <tr> <td>Greater than 6.5m</td><td>3.0m</td></tr> </tbody> </table> For Planner Drawings shows wider vehicular crossing than what DCP allows. Ideally amended plans at boundary should be requested else Planner to mark the plans with reference to recommendation No objection to proposal, subject to recommended conditions.	Distance Building Line to Boundary	Width at Boundary	Nil to 3.5m	Width of car parking area or garage opening	Greater than 3.5m to 6.5m	4.0m	Greater than 6.5m	3.0m
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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.

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

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	N/A	N/A	N/A
Rear building line	6.5m	N/A	N/A	N/A
Side building line	2.5m	N/A	N/A	N/A
	1m	N/A	N/A	N/A
Building envelope	3.5m	Within envelope	N/A	Yes
	3.5m	Within envelope	N/A	Yes
Landscaped area	50%	301.1m ² or 54%	N/A	Yes

***Note:** The percentage variation is calculated on the *overall* numerical variation (ie: for Landscaped area - Divide the proposed area by the numerical requirement then multiply the proposed area by 100 to equal X, then 100 minus X will equal the percentage variation. Example: 38/40 x 100 = 95 then 100 - 95 = 5% variation)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.11 North Narrabeen Locality	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	No	No
B6.2 Internal Driveways	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
C1.1 Landscaping	Yes	Yes
D11.1 Character as viewed from a public place	No	No
D11.2 Scenic protection - General	Yes	Yes
D11.3 Building colours and materials	Yes	Yes
D11.6 Front building line	Yes	Yes
D11.7 Side and rear building line	Yes	Yes
D11.11 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D11.12 Fences - General	No	No
D11.14 Construction, Retaining walls, terracing and undercroft areas	No	No

Detailed Assessment

B6.1 Access driveways and Works on the Public Road Reserve

The development proposes a driveway width of between 5.2 and 6m on the Council road reserve.

Section B6.1 specifies that driveways on the road reserve should not exceed 3.5m in width, based on the type of development proposed.

Based on the non-compliance with this standard and failure of the development to meet the Outcomes of the control, this forms a reason for the refusal of the application.

D11.1 Character as viewed from a public place

The driveway of the proposal will exceed the maximum width of 3.5m on the adjoining road reserve and the proposed fence on the eastern boundary will exceed 1m in height, forward of the front building line. Based on these numerical non-compliances, the proposal has not adequately demonstrated compliance with the Outcomes of Clause D11.1 and accordingly refusal of the application is recommended.

D11.12 Fences - General

The proposed eastern boundary fence will be of a height of 1.8m right up to the front boundary with Kuyora Avenue. Council's policies discourage fences on frontages which exceed 1m in height, within the front building line, which is set at 6.5m. A fence of this height, in this location, will not be consistent with the Outcomes of the control and cannot be supported. Accordingly, refusal of the application is recommended.

D11.14 Construction, Retaining walls, terracing and undercroft areas

Insufficient information has been provided to determine if the works on the retaining wall adjoining the western boundary will be consistent with the Outcomes of the Section D11.14. Hence, refusal of the application is recommended with this forming one of the reasons.

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

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2021.

A monetary contribution of \$ 900 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 0.5% of the total development cost of \$ 180,000.

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, in this regard the application is not considered to be acceptable and is recommended for refusal.

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
- Consistent 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 Council, as the consent authority REFUSE Development Consent to Development Application No DA2021/1990 for the Construction of a retaining walls, front fence, driveway and landscaping on land at Lot 25 DP 240799, 2 Kuyora Place, NORTH NARRABEEN, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest.
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 B6.1 Access driveways and Works on the Public Road Reserve of the Pittwater 21 Development Control Plan.
3. 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 D11.1 Character as viewed from a public place of the Pittwater 21 Development Control Plan.
4. 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 D11.12 Fences - General of the Pittwater 21 Development Control Plan.
5. 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 D11.14 Construction, Retaining walls, terracing and undercroft areas of the Pittwater 21 Development Control Plan.

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

Signed



Nick England, Planner

The application is determined on 23/12/2021, under the delegated authority of:



Rodney Piggott, Manager Development Assessments