

Ordinary Meeting

Meeting Date: Monday, 14 August, 2023

Location: Council Chambers, City Administrative Building, Bridge Road, Nowra

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13. Reports

CL23.264 Modification Application No. DS21/1353 - 76 West Cr Culburra Beach -
Lot 298 DP 11892

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**CL22.153 Modification Application No. DS21/1353 – 76
West Cr, Culburra Beach – Lot 298 DP 11892**

DA. No: DS21/1353/4

HPERM Ref: D22/67554

Department: Development Services
Approver: James Ruprai, Director - City Development

Attachments: 1. Draft Notice of Determination - Refusal
2. Section 4.15 Assessment Report (under separate cover)
3. Applicant's Covering Letter (under separate cover)

Description of Development: S4.55(1A) Modification Application seeking to delete Condition 19 from the development consent relating to the construction of kerb and gutter across the frontage of the site.

Owner: C Phillips & S Vidler
Applicant: C Phillips

Notification Dates: 20th October to 5th November 2021

No. of Submissions: One (1) by way of objection.

Purpose / Reason for consideration by Council

Modification Application No. DS21/1353 was called in for determination by the Ordinary Council at the Development and Environment Committee Meeting held on 5 October 2021 [MIN21.708].

Recommendation

That Modification Application No. DS21/1353 for a s4.55(1A) Modification seeking to delete Condition 19 from Development Consent No. DA20/1809 lodged over Lot 298 DP 11892 at 76 West Cr, Culburra Beach be determined by way of refusal.

Options

1. Refuse the Modification Application in accordance with the recommendation.

Implications: The modification would not be approved, and Condition 19 would remain within the development consent. The applicant can, however, apply for a section 8.2 review of Council's decision and/or could lodge an appeal with the NSW Land and Environment Court (LEC) against Council's decision.

2. Approve the Modification Application.

Implications: Council would need to provide grounds on which to support the proposal, that is, provide reasons to support the development, having regard to section 4.15 considerations – noting that the Council assessment did not find any planning grounds in support the removal of this condition.

3. Alternative recommendation.

Implications: Council will need to specify an alternative recommendation and delegate to the Chief Executive Officer to action.

Location Map



Figure 1: Aerial Photography – Subject Site

Background

Proposed Development

Development Application No. DA20/1809 was approved under delegation on 7 October 2020 for 'Relocation of Dwelling to create Detached Dual Occupancy' ('the consent'). It is also noted for completeness that Torrens Title subdivision of the approved dual occupancy is approved under Development Consent No. SF10849 (dated 19/02/2021).

An application to modify the consent was submitted by the applicant in accordance with the provisions of section 4.55(1A) of the Environmental Planning and Assessment (EP&A) Act 1979.

The application proposes to delete condition 19 of the consent. Condition 19 presently states as follows:

Road Design Standards

Concrete integral kerb and gutter with either a minimum 30mm thick 10mm asphaltic concrete on a primer seal or 2 coat bitumen seal with 14mm & 7mm aggregate surfaced shoulder (to match the existing seal) and associated drainage must be designed across the frontage of the proposed new lot(s).

- a) *The kerb and gutter must have a standard upright profile.*
- b) *The alignment must be 3.5m from the boundary on Wollumboola Lane and 7.0m from boundary on the West Cr frontage.*

- c) *The shoulder crossfall to the lip of the gutter must be no less than 2% and no greater than 5%. A minimum width of 1m is to be constructed adjacent to the lip of the gutter to facilitate compaction of the new pavement.*
- d) *The shoulder seal is to overlap the existing pavement by a minimum of 300mm with the existing seal to be saw cut and the exposed pavement is to have a tack coat or prime seal if finished with AC.*
- e) *The kerb and gutter must have a minimum grade of 0.5% and the longitudinal design must extend a minimum of 30 metres each end of the development and at least 60m if the grade is <0.5% or ≥ 0.3%. This is to ensure the proposed works will be compatible with the existing longitudinal pavement grade and allow future extension of the kerb without unnecessary modification of existing works.*
- f) *The road shoulder pavement must be designed in accordance with Council's Engineering Design Specifications section D2.04.*
- g) *The road table drain either side of the proposed development is to be reconstructed as required to match the K&G and to prevent ponding of water, including any adjustment or reconstruction of nearby driveways.*
- h) *Subsoil drainage is to be provided behind the kerb line where an outlet to existing underground drainage (or other alternative suitable to Council) is available. Subsoil drainage is to be placed on the high side of the road or both sides if the cross-fall is neutral.*

Where roadway widening (shoulder construction) is not required, the thickness of the pavement for the new kerb and gutter maybe designed using an adopted CBR of 3.0. If a higher CBR value is used, it must be determined by geotechnical testing in accordance with Council's Engineering Design Specification.

This condition was recommended for inclusion in the consent by Council's Development Engineer as a standard engineering condition as it is a requirement for both dual occupancy development and subdivision of land under Shoalhaven Development Control Plan (DCP) 2014 Chapters G11, G13 and G21. This requirement has been consistently applied in accordance with the DCP 2014.

Subject Land

The site is described as Lot 298 DP 11892 and is located at No. 76 West Crescent, Culburra Beach. (See Figure 1.)

Site & Context

The development site:

- Is located at the corner of West Crescent (to the south) and Wollumboola Lane (to the east).
- Contains an existing single storey dwelling located in the southern part of the site adjacent to West Crescent.
- Contains a new single storey dwelling which is placed on the northern part of the site following an approval for 'Relocation of Dwelling to create Detached Dual Occupancy' given as part of DA20/1809 and CC20/1797.
Note: An Occupation Certificate cannot be issued until all conditions of consent, including Condition 19 the subject of this application, have been satisfied.
- Is zoned R2 Low Density Residential in accordance with the Shoalhaven Local Environmental Plan (SLEP) 2014 (see Figure 2 - Zoning Map).
- Has a total area of 992.74m².
- Adjoins properties zoned R2 Low Density Residential and RE1 Public Recreation pursuant to the SLEP 2014.

- Is located within a predominantly residential area, with surrounding properties consisting largely of detached dwellings and dual occupancy developments.

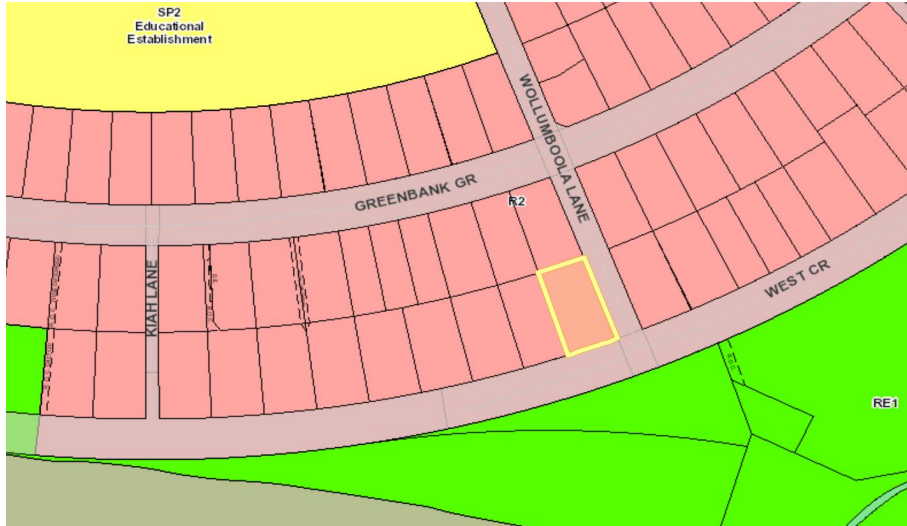


Figure 2: Shoalhaven LEP 2014 Zoning Map

History

The following provides a history of approvals issued in relation to the subject development and actions / events relating to the subject application:

Action / Event	Date
Development Approval No. DA20/1809 issued for the development (Relocation of Dwelling to create Detached Dual Occupancy) by Shoalhaven City Council.	7 October 2020
Construction Certificate Approval No. CC20/1797 issued by Shoalhaven City Council.	19 October 2020
Modification Application No. DS21/1353 lodged with Shoalhaven City Council seeking consent for deletion of Condition 19.	29 September 2021
Application called in for determination at the Ordinary Council Meeting at a Meeting of the Development and Environment Committee.	5 October 2021
Referral response provided by Development Engineer advising that they do not support the proposed deletion of Condition 19. Specifically, the following comments were provided: <i>Both dual occupancy development and subdivision of land require the construction of kerb and gutter under DCP Chapters G11, G13 and G21. This has been consistently applied since implementation of DCP 2014 and any exceptions are a rarity. Developers undertaking dual occupancy development and/or subdivision and their consultants are generally aware of this requirement and factor it into the cost of development.</i> <i>The subdivision at 98 Greenbank Grove is referenced as evidence of a precedent, however this was approved prior to the implementation of DCP2014 under previous provisions which exempted kerb and gutter on the frontage of the lot containing the existing dwelling. A more recent dual occupancy approved at 34 Greenbank Grove at the corner of Black Swan Way did require</i>	18 October 2021

<p><i>full frontage construction of kerb and gutter.</i></p> <p><i>The area has precedent of kerb and guttering nearby (kerb and gutter on Greenbank Grove including kerb returns into Wollumboola Lane) which is likely to continue with future redevelopment.</i></p> <p><i>There is also evidence of stormwater flow and containment issues (such as previous construction of an informal kerb outside the subject property, and recent photographic evidence of stormwater ponding in the road reserve outside the property) which would be improved through the provision of kerb and gutter. Concern has been flagged regarding the discharge of flow from the end of the constructed gutter on West Cres, however the approval requires table drains to be reshaped to accept the flow from the kerb and gutter and levels would prevent any runoff impacting on adjoining properties. It is also noted that a relatively short section of kerb and gutter would not excessively increase peak stormwater flows during a large storm event where the existing grassed table drains would be saturated.</i></p> <p><i>The requirement for kerb and gutter has been correctly applied in accordance with Council's policies. The deletion of the condition is not supported.</i></p> <p><i>It is also noted there are currently construction-ready approved engineering design plans for the kerb and gutter for this development, demonstrating its constructability and ability to comply with Council's standards and the implemented conditions of consent.</i></p>	
<p>Completion of notification undertaken in accordance with Community Consultation Policy.</p>	<p>5 November 2021</p>

Issues

1. Applicant Reasons for the proposed modification & Council response

The following provides a summary of the applicant's reasons for submission of the application and Council's responses to the items raised:

a) Environmental impact:

The proposed modification would have no negative environmental impact. The engineer's report prepared by civil engineers Allen, Price Scarratts calculates that the DA will not increase peak stormwater flows compared to the existing structure on the block prior to development. Indeed, removing the condition for concrete kerb and gutter would have a positive environmental impact. Kerb and gutter near the lake would concentrate polluted run-off from the road and channel it directly into the lake, rather than allowing it to disperse and filter through the sandy soil at the side of the road as it currently does. The Lake Wollumboola Protection Society have expressed their opposition to kerb and gutter in this location for this reason as it would have a negative impact on the environment of the lake.

Response: Concern has been flagged regarding the discharge of flow from the end of the constructed gutter on West Crescent, however the approval requires table drains to be reshaped to accept the flow from the kerb and gutter and levels would prevent any runoff impacting on adjoining properties. It is also noted that a relatively short section of kerb and gutter would not excessively increase peak stormwater flows during a large storm event where the existing grassed table drains would be saturated.

The requirement for kerb and gutter has been correctly applied in accordance with Council's policies.

