

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2018/0305
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Responsible Officer:	Rebecca Englund
Land to be developed (Address):	Lot 200 DP 1212459, 228 - 260 Garden Street WARRIEWOOD NSW 2102
Proposed Development:	Modification of Development Consent N0067/16 granted for Torrens title subdivision of a yet to be created Lot into 28 allotments and associated civil works
Zoning:	R3 Medium Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Abax Contracting Pty Ltd
Applicant:	Thomas Ruane Baxter

Application lodged:	20/06/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Subdivision only
Notified:	21/06/2018 to 09/07/2018
Advertised:	Not Advertised
Submissions Received:	0
Recommendation:	Approval

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 - C6.1 Integrated Water Cycle Management

SITE DESCRIPTION

Property Description:	Lot 200 DP 1212459 , 228 - 260 Garden Street WARRIEWOOD NSW 2102
Detailed Site Description:	<p>The yet to be created Lot 99 comprises land from two existing allotments, being 2 Orchard Street (Lot A DP 959150) and 204 Garden Street (Lot B DP 378841) in the Warriewood Valley Urban Land Release Area. The site forms part of the area referred to as Sector 901A, as identified on the Urban Release Area Map of PLEP 2014. With the exception of existing low-density residential development to the south and east, the site is surrounded by land zoned for medium density development that is yet to be developed.</p> <p>Lot 99 has a total area of 14,270m², divided into three parts by two yet to be constructed or dedicated public road reserves, known as 'Proposed Road No.1' and 'Proposed Road No.2'. Proposed Road No.1 provides access to the site from Garden Street, with Proposed Road No.2 providing access to the length of the site, with potential for future connections to the adjoining sites at 4 Orchard Street to the west and 206 Garden Street to the north.</p>

Map:



SITE HISTORY

On 30 July 2015, development consent N0379/14 was issued, granting consent to the two staged subdivision of 2 Orchard Street and 204 Garden Street, Warriewood. Stage 1 provides for the Torrens Title subdivision of 6 Residential lots and a large residue [Lot 99], including the construction of detention basin and associated landscaping and civil works. Stage 2 provides the subdivision of the residue lot, including the construction and dedication of a public road, the construction of a detention basin and associated landscaping and civil works.

On 29 September 2015, development application N0180/15, which sought consent for the built form on the super lot (Lot 99) was refused.

On 25 January 2016, modification application N0379/14/S96/1 was approved, to allow for individual water management systems for the 6 Torrens title lots and to delay the construction of the first detention basin until the second stage of works.

On 11 May 2016, modification application N0379/14/S96/2 was approved, to delete the requirement for one of the detention basins.

On 11 August 2016, development consent N0067/16 was issued, providing for the Torrens title subdivision of Lot 99 into 28 lots.

On 2 March 2017, the deferred commencement requirements of N0067/16 were satisfied.

On 22 May 2017, modification application N0379/14/S96/3 was approved, to allow for the removal of a retaining wall.

On 20 June 2018, the subject modification application was lodged with Council.

PROPOSED DEVELOPMENT IN DETAIL

MOD2018/0305 seeks to amend development consent N0067/16, which approved the 28 lot

subdivision of a yet to be created Lot (Lot 99 - now known as 228-260 Garden Street, Warriewood). Specifically, the s4.55(1a) modification application seeks to amend the physical location of 7 of the individual water management systems on Lots 15-21 (inclusive), the location of which is restricted by condition. With this in mind, the applicant also seeks consent to amend 3 conditions of consent, as follows:

- Amend Condition B31, which currently reads:

The OSD tanks and rainwater gardens on Lots 16-21 (inclusive) are to be located between any future dwelling and the northern front property boundary. The OSD tank is to be located wholly beneath the driveway servicing the respective dwelling.

to read as follows:

*The OSD tanks and rainwater gardens on Lots 16-21 (inclusive) are to be located **to the rear of** any future dwelling and the **southern rear** property boundary.*

- Amend Condition B33, which currently reads:

The OSD tanks and rainwater gardens on Lot 15 are to be located between any future dwelling and the northern boundary. The OSD tank is to be located wholly beneath the driveway servicing the respective dwelling. The OSD tank and rainwater garden must not be located within the lowered garden setback areas fronting Garden Street, and are not permitted within the resultant 2m setback to Garden Street.

to read as follows:

*The OSD tanks and rainwater gardens on Lot 15 are to be located **to the rear of** any future dwelling and the **southern** boundary. The OSD tank and rainwater garden must not be located within the lowered garden setback areas fronting Garden Street, and are not permitted within the resultant 2m setback to Garden Street.*

- Amend Condition C11, which currently reads:

The draft Sction 88B Instrument annexed to this consent and marked "A" is to be amended, as follows;

i. ...

ii. The OSD tanks and rainwater gardens on Lots 16-21 (inclusive) are to be located between any future dwelling and the northern front property boundary. The OSD tank is to be located wholly beneath the driveway servicing the respective dwelling.

iii. ...

iv. The OSD tanks and rainwater gardens on Lot 15 are to be located between any future dwelling and the northern boundary. The OSD tank is to be located wholly beneath the driveway servicing the respective dwelling. The OSD tank and rainwater garden must not be located within the lowered garden setback areas fronting Garden Street, and are not permitted within the resultant 2m setback to Garden Street.

to read as follows:

The draft Sction 88B Instrument annexed to this consent and marked "A" is to be amended, as follows;

- i. ...
- ii. *The OSD tanks and rainwater gardens on Lots 16-21 (inclusive) are to be located **to the rear of** any future dwelling and the **southern rear** property boundary.*
- iii. ...
- iv. *The OSD tanks and rainwater gardens on Lot 15 are to be located **to the rear of** any future dwelling and the **southern** boundary. The OSD tank and rainwater garden must not be located within the lowered garden setback areas fronting Garden Street, and are not permitted within the resultant 2m setback to Garden Street.*

In consideration of the application a review of (but not limited) documents as provided by the applicant in support of the application was taken into account detail provided within Attachment C.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

The relevant matters for consideration under Section 4.15(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15(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.
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which 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 N0067/16.
(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 has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, and Pittwater 21 Development Control 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.

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an 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	None applicable.
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)(iia) – 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)	<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>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 has been addressed via a condition in the original consent.</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>(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 will not have a detrimental social impact in the locality considering the character of the proposal.</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>
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	No submissions were received.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition of the application Council received no submissions.

MEDIATION

No requests for mediation have been made in relation to this application.

REFERRALS

No referrals were sent in relation to this application

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)

Nil

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

Pittwater 21 Development Control Plan

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
C6.1 Integrated Water Cycle Management	Yes	Yes

Detailed Assessment

C6.1 Integrated Water Cycle Management

The application seeks to amend Conditions B31, B33 and C11 in so far as they make reference to the location of the on-site detention tanks and raingardens on Lots 15-21. The location of the raingardens and OSD tanks was restricted via condition by the Planner to ensure that:

- the OSD tanks were located beneath the relevant driveway so that did not contribute to additional hard surfaces or further limit deep soil plantings in the front setback of the site,
- the raingardens are located such that the appear as part of the site (not the road reserve).

The conditions required the systems to be located within the front setback of these lots, as per the water management plan provided to support the original application. However, these were proposed to be sited in the front setbacks of these respective lots in acknowledgement of fill proposed at the rear of the yards, which was removed via condition (Condition B19). The proposed fill was to create lots that sloped down towards the front of the site, and without this fill, the natural fall of the land slopes down towards the rear of the site. As the water management facilities are required to be at the lowest part of the site, the applicant has redesigned the water management system with the tanks at the rear of these respective lots.

It is noted that this design change was assessed as part of the consideration of the satisfaction of the deferred commencement conditions in February-March 2017; However the deferred commencement process did not provide a mechanism to change the existing conditions of consent, and as such, the applicant was advised that a further modification application would be required. The modification does not change the design of the systems, just simply moves them to the lowest part of the site as a result of the approved scope of earthworks.

The applicant has provided draft wording (as above), however the wording is a bit vague compared to the remainder of the lots, in so far as it does not require the OSD to be sunken into the site and covered in turf. Subject to consistency with the wording of the other sub-conditions, the proposed amendments are considered satisfactory.

POLICY CONTROLS

Pittwater Section 94 Development Contributions Plan

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, 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:

- Consistent 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
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2018/0305 for Modification of Development Consent N0067/16 granted for Torrens title subdivision of a yet to be created Lot into 28 allotments and associated civil works on land at Lot 200 DP 1212459,228 - 260 Garden Street, WARRIEWOOD, subject to the conditions printed below:

A. Amend Condition B31, to read as follows:

B31. The OSD tanks and rainwater gardens on Lots 16-21 (inclusive) are to be located between any future dwelling and the southern property boundary. With the exception of an access hatch, the OSD is to be submerged below ground and covered in turf.

B. Amend Condition B33, to read as follows:

B33. The OSD tank and rainwater garden on Lot 15 are to be located between any future dwelling and the southern boundary. With the exception of an access hatch, the OSD is to be submerged below ground and covered in turf. The OSD tank and rainwater garden must not be located within the lowered

garden setback area fronting Garden Street, and are not permitted within the resultant 2m setback to Garden Street.

C. Amend Condition C11, to read as follows:

C11. The draft Section 88B Instrument annexed to this consent and marked "A" is to be amended, as follows;

- a. to restrict the physical location of the raingardens and onsite detention storage tanks/basin on the said lots, as follows:*
 - i. the OSD tanks and rainwater gardens on Lots 22-28 (inclusive) are to be located between any future dwelling and the eastern front property boundary. The OSD tank is to be wholly located beneath the driveway serving the respective dwelling.*
 - ii. The OSD tanks and rainwater gardens on Lots 16-21 (inclusive) are to be located to the rear of any future dwelling and the southern rear property boundary. With the exception of an access hatch, the OSD is to be submerged below ground and covered in turf.*
 - iii. The OSD tanks and rainwater gardens on Lots 2-14 (inclusive) are to be located between any future dwelling and the upper most retaining wall fronting the eastern boundary (Garden Street). With the exception of an access hatch, the OSD is to be submerged below ground and covered in turf. The OSD tanks and rainwater gardens must not be located within the lowered landscaped setback areas fronting Garden Street, and are not permitted within the resultant 2m setback to Garden Street.*
 - iv. The OSD tanks and rainwater gardens on Lot 15 are to be located to the rear of any future dwelling and the southern boundary. With the exception of an access hatch, the OSD is to be submerged below ground and covered in turf. The OSD tank and rainwater garden must not be located within the lowered garden setback areas fronting Garden Street, and are not permitted within the resultant 2m setback to Garden Street.*

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

Signed



Rebecca Englund, Principal Planner

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



Matthew Edmonds, Manager Development Assessments














ATTACHMENT A

No notification plan recorded.

ATTACHMENT B

No notification map.

ATTACHMENT C

Reference Number	Document	Date
 2018/376401	Statement of Modification	19/06/2018
 MOD2018/0305	228-260 Garden Street WARRIEWOOD NSW 2102 - Section 96 Modifications - Section 96 (1a) Minor Environmental Impact	20/06/2018
 2018/376259	DA Acknowledgement Letter - Thomas Ruane Baxter	20/06/2018
 2018/376399	Applicant Details	20/06/2018
 2018/376400	Modification Form	20/06/2018
 2018/376402	Fee Form	20/06/2018
 2018/376740	DA Acknowledgement Letter (not integrated) - Thomas Ruane Baxter	20/06/2018
 2018/376968	Notification map for 228-260 Garden Street	20/06/2018
 2018/376901	Notification Letter - Mod	20/06/2018
 2018/377213	File Note	20/06/2018
 2018/389847	ASIC Company Extract (Abax)	26/06/2018
 2018/389848	Owners Consent	26/06/2018
 2018/446186	Site Photos - 2 Orchard Street, Warriewood - Mod2018/0305	12/07/2018