

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2019/0178
<b>Responsible Officer:</b>	Claire Ryan
<b>Land to be developed (Address):</b>	Lot 201 DP 1212459, 2 Orchard Street WARRIEWOOD NSW 2102 Lot 202 DP 1212459, 4 Orchard Street WARRIEWOOD NSW 2102 Lot 203 DP 1212459, 6 Orchard Street WARRIEWOOD NSW 2102 Lot 204 DP 1212459, 8 Orchard Street WARRIEWOOD NSW 2102 Lot 205 DP 1212459, 10 Orchard Street WARRIEWOOD NSW 2102 Lot 206 DP 1212459, 12 Orchard Street WARRIEWOOD NSW 2102 Lot 200 DP 1212459, 228 - 260 Garden Street WARRIEWOOD NSW 2102
<b>Proposed Development:</b>	Modification of Development Consent N0379/14 granted for two-staged subdivision and associated civil works.
<b>Zoning:</b>	R3 Medium Density Residential R3 Medium Density Residential R3 Medium Density Residential R3 Medium Density Residential R3 Medium Density Residential R3 Medium Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Abax Contracting Pty Ltd
<b>Applicant:</b>	Lennon Project Management Pty Ltd

<b>Application lodged:</b>	23/04/2019
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Subdivision only
<b>Notified:</b>	21/05/2019 to 04/06/2019
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	2
<b>Recommendation:</b>	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

There are no assessment issues.

## SITE DESCRIPTION

<b>Property Description:</b>	<p>Lot 201 DP 1212459 , 2 Orchard Street WARRIEWOOD NSW 2102</p> <p>Lot 202 DP 1212459 , 4 Orchard Street WARRIEWOOD NSW 2102</p> <p>Lot 203 DP 1212459 , 6 Orchard Street WARRIEWOOD NSW 2102</p> <p>Lot 204 DP 1212459 , 8 Orchard Street WARRIEWOOD NSW 2102</p> <p>Lot 205 DP 1212459 , 10 Orchard Street WARRIEWOOD NSW 2102</p> <p>Lot 206 DP 1212459 , 12 Orchard Street WARRIEWOOD NSW 2102</p> <p>Lot 200 DP 1212459 , 228 - 260 Garden Street WARRIEWOOD NSW 2102</p>
<b>Detailed Site Description:</b>	<p>The subject site consists of seven (7) allotments located on the western side of Garden Street and the northern side of Orchard Street.</p> <p>The site is regular in shape with a frontages of approximately 260 along Garden Street and 81m along Orchard Street. The site has a surveyed area of 20,400m<sup>2</sup>.</p>

The site is located within the R3 Medium Density Residential zone and accommodates five two-storey detached dwellings and private roads. The site is predominantly undeveloped.

The site slopes approximately 8m from south-west to north-east and is generally cleared of vegetation.

### **Detailed Description of Adjoining/Surrounding Development**

Adjoining and surrounding development is characterised by low- and medium-density residential development.

Map:



## **SITE HISTORY**

The land has been used for residential purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

- CDC0158/13 for demolition of one single-storey dwelling was approved on 28 November 2013 by a private certifier.
- CDC0159/13 for demolition of dwelling was approved on 10 December 2013 by a private certifier.
- N0379/14 for two-staged subdivision and associated civil works. Stage 1 provides for the Torrens Title subdivision of 6 Residential lots and a large residue, including the construction of a 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 at 2 and 2A Orchard Street and 204 Garden Street, Warriewood was approved on 30 July 2015 by Council.
- N0180/15 for The construction of a 33 unit residential flat building, 22 attached dwellings and 6 semi-detached dwellings, and associated civil works, landscaping and community title

subdivision was refused on 29 September 2015 by Council.

- N0379/14/S96/1 to modify N0379/14 in relation to the location of a retaining wall was approved on 30 May 2016 by the NSW Land and Environment Court.
- N0379/14/S96/2 to modify N0379/14 to delete previously approved detention Basin 'B' and for associated landscaping was approved on 11 May 2016 by Council.
- N0067/16 for Torrens title subdivision of a yet to be created Lot into 28 allotments and associated civil works was approved on 11 August 2016 by Council.
- N0379/14/S96/3 to modify N0379/14 to delete earthworks retaining walls and landscaping and delete Condition C15 was approved on 22 May 2017 by Council.
- CDC2018/0369 for two-storey dwelling was approved on 17 April 2018 by a private certifier.
- DA2018/1323 for use of premises as an exhibition home was approved on 21 December 2018 by Council.

## PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent to modify Development Consent N0379/14 to substitute the approved species of trees, as follows:

- Substitute Golden Penda trees with "Waterhousia floribunda – 400L, along the Garden Street frontage; and
- Substitute Blushing Beauty with "Acmena smithii 'Allyn Magic – 200mm, along Road 1 and Road 2.

The substitution is proposed as the species listed in the consent are out of stock.

Given the proposed modifications relate only to a change to conditions, no site visit was considered necessary.

## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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 the application 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 N0379/14, 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	<b>Yes</b> 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 N0379/14.
(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, Pittwater Local Environment Plan 2014 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.	See discussion on "Notification & Submissions Received" in this report.

### 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 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah/Manly/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)	<p><u>Division 8A</u> of the EP&amp;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 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This documentation was submitted with the original application/This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No Additional information was requested.</p> <p><u>Clause 92</u> of the EP&amp;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/This clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition in the original consent/This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;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/This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;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><u>Clause 143A</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This matter has been addressed via a condition in the original consent/This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development,	(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the

Section 4.15 'Matters for Consideration'	Comments
including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>natural and built environment are addressed under the Warringah/Manly/Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will / will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will / 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 un/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	<p>No matters have arisen in this assessment that would justify the refusal of the application in the public interest.</p> <p>Or</p> <p>This assessment has found the proposal to be contrary to the relevant requirement(s) of the &lt;insert non-compliances/inconsistencies&gt; and will result in a development which 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.</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 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 process council is in receipt of 2 submission/s from:

Name:	Address:
Ms Kay Linda Millar	7 Orchard Street WARRIEWOOD NSW 2102
Chris Hornsby	25 Utingu Place BAYVIEW NSW 2104

The following issues were raised in the submissions and each have been addressed below:

- Proposed modifications are unclear.
- Council should apply the conditions of the Warriewood Master Plan to all plantings and house colours and designs.

The matters raised within the submissions are addressed as follows:

- Unclear Modifications

Comment:

The proposed modifications were explained to the submitter as follows:

*Modification Application MOD2019/0178 seeks consent to modify Development Consent N0379/14 to substitute the approved species of trees, as follows:*

- Substitute Golden Penda trees with "Waterhousia floribunda – 400L, located along the Garden Street frontage; and*
- Substitute Blushing Beauty with "Acmena smithii 'Allyn Magic – 200mm, located along Road 1 and Road 2.*

*The substitution is required as the species listed in the consent are out of stock nationwide.*

The submitter was satisfied with the above response.

- Planting and House Colours/Designs in Warriewood Master Plan

Comment:

As above, the proposed plant species substitution is required as the species listed in the consent are out of stock nationwide. The plant species are consistent with the intention of the original conditions and the matter has been reviewed by Council's Landscape Officer, who is satisfied with the substitution. The proposed modification does not alter house designs or colours.

## REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The modification application to substitute planting species is accepted based on the lack of currently available stock for the nominated species on the approved DA landscape plan.</p> <p>The proposed modification involves the substitution of one (1) x street tree species within the Stage 2 works as follows:</p> <ul style="list-style-type: none"> <li>substitute Xanthostemon chrysanthus 'Golden Penda' street trees with Waterhousia floribunda, planted at 400L container size, as located along the Garden Street road verge frontage; and</li> </ul>



Internal Referral Body	Comments
	<p>The proposed modification involves the substitution of one (1) x shrub species within the Stage 2 works as follows:</p> <ul style="list-style-type: none"> <li>substitute Blushing Beauty with Acmena smithii 'Allyn Magic', planted at 200mm container size, as located along Road 1 and Road 2.</li> </ul> <p>The alternative street tree selection is in accordance with Section 2.0 Plant Species of the Warriewood Valley Landscape Masterplan and Design Guidelines (Public Domain), August 2018.</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.

## 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.

### SEPP (Infrastructure) 2007

#### Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.

- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

No referral to Ausgrid was considered necessary.

## 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

Principal Development Standards

There are no development standards to consider under Part 4 of the Pittwater Local Environmental Plan 2014 in relation to this application.

## Pittwater 21 Development Control Plan

Built Form Controls

There are no built form controls to consider under the Pittwater 21 DCP 2014 in relation to this assessment.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.16 Warriewood Valley Locality	Yes	Yes
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land	Yes	Yes
D16.1 Character as viewed from a public place	Yes	Yes

## THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly effect 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.

## 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. Mod2019/0178 for Modification of Development Consent N0379/14 granted for two-staged subdivision and associated civil works. on land at Lot 201 DP 1212459,2 Orchard Street, WARRIEWOOD, Lot 202 DP 1212459,4 Orchard Street, WARRIEWOOD, Lot 203 DP 1212459,6 Orchard Street, WARRIEWOOD, Lot 204 DP 1212459,8 Orchard Street, WARRIEWOOD, Lot 205 DP 1212459,10 Orchard Street, WARRIEWOOD, Lot 206 DP 1212459,12 Orchard Street, WARRIEWOOD, Lot 200 DP 1212459,228 - 260 Garden Street, WARRIEWOOD, subject to the conditions printed below:

### **A. Add Condition No.1A - Modification of Consent - Approved Plans and supporting Documentation to read as follows:**

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) The development is to be undertaken generally in accordance with the following:

<b>Landscape Plans</b>
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Drawing No.	Dated	Prepared By
Stage 2 Landscape Plan	18 April 2019	iScape Landscape Architecture
Stage 2B Landscape Plan	18 April 2019	iScape Landscape Architecture

b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

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

**Signed**



**Claire Ryan, Principal Planner**

The application is determined on 17/06/2019, under the delegated authority of:



**Matthew Edmonds, Manager Development Assessments**