



planning consultants

Section 4.55(1A) Planning Report

Modification of Approved Subdivision

1102, 1108 and 1110 Barrenjoey Road, Palm Beach

Prepared for: Palm Beach Corporation Pty Ltd
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3.	Council Assessment Report for the Section 96(1A) Modification Application No. 482/98/596/1
4.	Modified Development Consent No. 482/98/596/1

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Abbreviations

AADT	annual average daily vehicle trips
AHD	Australian Height Datum
AHIP	Aboriginal Heritage Impact Permit
AS	Australian Standard
ASS	acid sulfate soils
BC Act	Biodiversity Conservation Act 2016
BCA	Building Code of Australia
BTA	bushfire threat assessment
CC	construction certificate
CIV	capital investment value
Council	Northern Beaches Council
DA	development application
DCP	development control plan
DECC	former NSW Department of Environment and Climate Change
DET	NSW Department of Education and Training
DFP	DFP Planning Pty Limited
DFCS	NSW Department of Family and Community Services
DGRs	Director General's Requirements
DoCS	former NSW Department of Community Services
DoPE	NSW Department of Planning and Environment
DoPI	former NSW Department of Planning and Infrastructure
DVT	daily vehicle trip
DWE	NSW Department of Water and Energy
EPA	NSW Environment Protection Authority
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	<i>Environmental Planning and Assessment Regulation 2000</i>
EPI	environmental planning instrument
ESCP	erosion and sedimentation control plan
ESD	ecologically sustainable development
FPL	flood planning level
FSR	floor space ratio
GFA	gross floor area
GSC	Greater Sydney Commission
HIS	heritage impact statement
IPC	Independent Planning Commission
JRPP	Joint Regional Planning Panel
kph	kilometres per hour
LEP	local environmental plan
LGA	local government area
LPP	Local Planning Panel
NGL	natural ground level
NorBE	neutral or beneficial effect
NOW	NSW Office of Water
NPW Act	<i>National Parks and Wildlife Act 1974</i>
NPWS	NSW National Parks and Wildlife Service
PA	planning agreement
OEH	NSW Office of Environment and Heritage
PAD	potential archaeological deposit
PVT	peak hour vehicle trip
REP	regional environmental plan

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Abbreviations

RFI Act	<i>Rivers and Foreshore Improvement Act 1948</i>
RFS	NSW Rural Fire Service
RF Act	<i>Rural Fires Act 1997</i>
RL	reduced level
RMS	NSW Roads and Maritime Services
RTA	former Roads and Traffic Authority of NSW
SCA	Sydney Catchment Authority
SC	Subdivision Certificate
SCC	site compatibility certificate
SCI	site contamination investigation
SEE	Statement of Environmental Effects
SEPP	state environmental planning policy
SIS	species impact statement
SULE	safe useful life expectancy
TSC Act	<i>Threatened Species Conservation Act 1995</i>
VPA	voluntary planning agreement
vtph	vehicle trips per hour
WM Act	<i>Water Management Act 2000</i>
WSUD	water sensitive urban design

1 Introduction

1.1 Commission

DFP has been commissioned by Palm Beach Corporation Pty Ltd to prepare a Planning Report to accompany a Section 4.55(1A) Modification Application (section 4.55 Application) for the approved subdivision of six lots into five lots, comprising two commercial lots and three residential lots (in two stages) (the proposed subdivision) at No's 1102, 1108 and 1110 Barrenjoey Road, Palm Beach (the site).

The site is located on the eastern side of Barrenjoey Road opposite Pittwater Park and the Palm Beach Public Wharf. The site is zoned part B1 Neighbourhood Centre and Part E4 Environmental Living (the B1 Zone and E4 Zone) under Pittwater *Local Environmental Plan 2014* (the LEP).

The application is made pursuant to section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) to modify Development Consent No. 482/98 issued by the former Pittwater Council (now part of Northern Beaches Council) (Council) on 21 April, 1999 for "Subdivision of six lots into five lots, comprising two commercial and three residential allotments (in two stages)" subject to conditions.

Council approved a Modification of Development Consent No. 482/98 (referred to as NO482/98/S96/1) on 2 April 2013 in respect to amended plans for the proposed subdivision (Stage 1 - Condition Ai and Stage 2- Condition Aiv) and to delete a condition requiring lodgement of a rezoning application with the Council to rectify the zone boundaries under a former LEP to match with the approved proposed subdivision layout (Stage 1 - Condition Bi).

The section 4.55 Application seeks to modify Development Consent NO482/98 (as Modified) in respect to certain conditions (referred to below) which should be deleted as they are not relevant to the proposed staged two subdivision; the building structures and other works were completed in the Stage 1 proposed subdivision; and/or are inappropriate as they refer to old Council Development Control Plans (DCP's), policies and legislation that have been replaced and to amend Stage 2 - Condition D.6 which should refer to the current Council approved plan for the proposed subdivision:

- Stage 1
 - Condition C.1 - delete
 - Condition D.2 – delete
 - Condition D.3 – delete
- Stage 2
 - Condition C.2 – delete
 - Condition D.6 – amend to refer to the current approved plan (Drawing No. PB-DA-1-1 dated 1 August 2012)
 - Condition D.10 – delete
 - Condition D.11 – delete
 - Condition D.13 – delete
 - Condition F.13 – delete
 - Condition F.14 – delete
 - Condition F.15 – delete
 - Condition F.16 – delete
 - Condition F.17 - delete
 - Condition F.18 – delete
 - Condition F.19 - delete

1 Introduction

- Condition F.20 – delete
- Condition F.21 – delete
- Condition G.22 – delete
- Condition G.23 – delete
- Condition G.24 – delete
- Condition G.25 – delete
- Condition H.26 – delete
- Condition H.27 – delete
- Condition H.28 – delete
- Condition H.29 – delete
- Condition H.30 – delete
- Condition H.31 – delete
- Condition H.32 - delete
- Condition H.33 – delete
- Condition I.34 – delete
- Condition J.37 – delete
- Condition J.38 – delete
- Condition J.39 - delete

1.2 Purpose of this Statement

The purpose of this report is to provide Council and relevant NSW State Government Agencies with the relevant information necessary to assess the proposed modifications pursuant to Part 4 of the EP&A Act and the *Environmental Planning and Assessment Regulation 2000* (the Regulation) and for Council to determine the application in accordance with section 4.55(1A) of the EP&A Act.

1.3 Material Relied Upon

This report has been prepared by DFP based on information referred to herein and/or appended to this report and site inspections undertaken on 21 June 2019 and 2 July 2019.

2 Background

2.1 Previous Development Consent

On 21 April 1999, the former Pittwater Council (now Northern Beaches Council) granted Development Consent to Development Application NO482/98 for the subdivision of the (then) existing 6 lots making up the site into 5 new allotments comprising 2 commercial allotments fronting onto Barrenjoey Road and 3 residential allotments at the rear of the site. The Consent was a staged Development Consent in 2 stages. Stage 1 involved the re-subdivision of the 6 lots into 3 lots (i.e. the 3 current lots making up the site comprising 2 commercial allotments fronting Barrenjoey Road and 1 large residential allotment at the rear). Stage 2 of the proposed subdivision under the Consent involves the subdivision of the larger residential lot at the rear into 3 residential lots.

Appendix 1 is a copy of the original Consent No. 482/98.

Consent NO482/98 has been activated by the completion of the Stage 1 subdivision of the site into 3 lots and the issue of a Construction Certificate for the associated subdivision works. Works completed at the site include the undertaking of earthworks and construction of the ramp driveway access, retaining wall, landscaping, stormwater drainage services and public utility services for the proposed Stages 1 and 2 approved subdivision of the site. **Appendix 2** is a copy of the registered Deposited Plan 1207743 for the Stage 1 plan of subdivision of the site for Lot 11 (Palm Beach Fish and Chip Shop site) and Lot 10 (residential lot at the rear of the site). Lot 2 DP 1004105 is the registered allotment for the Barrenjoey House site. Accordingly, Consent NO482/98 has been lawfully commenced and the Stage 1 proposed subdivision to create 2 commercial lots and 1 residential lot has been registered.

On 2 April 2013, the former Pittwater Council approved a modification of Development Consent NO482/98 (referred to as NO482/98/S96/1) involving the modification of Stage 1 - Condition A(i) and Stage 2 - Condition A(iv) in respect to amended plans for the subdivision of the site from 6 lots into 5 lots, comprising 2 commercial lots and 3 residential lots (in 2 stages). The approved amended plans of subdivision effectively transferred the ownership of the existing buffer landscaped area and retaining wall in-between the commercial and residential lots from the existing residential Lot 10 DP 1207743 to the commercial Lot 11 DP 1207743 (Palm Beach Fish & Chip shop site). The commercial Lot 2 (Barrenjoey House) remained unchanged and the residential Lot 10 DP 1207743 was reduced in its overall site area from 3,745m² to 3,379m². The proposed substitution of the previously approved Stage 2 plans with the approved amended Stage 2 plans for the proposed subdivision also required minor adjustments to the configuration of the Staged 2 proposed Lot 10 DP 1207743 (1,190m² including access handle), Lot 4 (1,137m²) and Lot 5 (1,052m² including access handle).

Appendix 3 is a copy of the Council Assessment report for the Section 96(1A) Modification Application No. 482/98/S96/1 including the Council approved plans for the amended proposed subdivision of the site.

Appendix 4 is a copy of the modified Consent No 482/98/596/1.

The modification of Development Consent NO482/98 approved by the former Pittwater Council on 2 April 2013 also included the deletion of Stage 1 Condition B(i) which required the Applicant to submit a rezoning application with Council to correct anomalies between the Neighbourhood Business 3(c) and the Residential 2(a) zoning under the now repealed Pittwater LEP 1993, such that the subdivision boundaries between the allotments coincided with the zoning boundaries. It is noted that the current B1 zone and E4 zone boundaries under Pittwater LEP 2014 are consistent with the current modified Consent for the proposed subdivision.

On 13 November 2014 the former Pittwater Council granted Development Consent Development Application NO119/14 for “demolition of all existing structures and construction of a shop-top housing development comprising 3 tenancies, 4 residential units and underground parking” at Lot 11 DP 1207743, No. 1102 Barrenjoey Road, Palm Beach (Palm Beach Fish & Chip shop site) subject to conditions.

2 Background

The applicant, Palm Beach Corporation Pty Ltd now intend to proceed with the Stage 2 proposed subdivision of existing Lot 10 DP1207743 into 3 residential allotments (Lots 1, 4 and 5 as shown on the approved plans of subdivision referred to in Stage 2 - Condition A.iv. of Development Consent NO482/98 (as modified)). However, in order to proceed with the Stage 2 proposed subdivision of Lot 10 DP 1207743 into 3 residential lots, it is necessary to “tidy up” the conditions of Consent as several of the conditions are either not relevant to the proposed Stage 2 subdivision as they relate to future development of the lots; the buildings structures and other works were completed as part of the Stage 1 proposed subdivision, and/or are inappropriate conditions as they refer to DCP’s, policies and legislation that has been repealed and replaced by Pittwater LEP 2014, Pittwater 21 DCP and other relevant legislation; and Stage 2 - Condition D.6 needs to be amended to refer to the current approved Drawing No. PB-DA-01-1 dated 1 August 2012 (see **Appendix 3**).

2.2 Pre-Application Meeting

On 25 June 2019 Tony Maddox of Palm Beach Corporation Pty Ltd and Rob Player of DFP attended a pre-application meeting with Council’s Planning Officers, Matt Edmonds and Rebecca Englund at which issues relating to the Section 4.55 Application to modify Development Consent NO482/98 essentially involving “tidying up” the conditions of the Consent so that the Stage 2 proposed subdivision of Lot 10 DP 1207743 into 3 residential lots is able to proceed to issuing a Subdivision Certificate and registration with the Land & Property Information Authority. It was agreed that this matter should be appropriately dealt with as a Section 4.55(1A) Modification Application under the provisions of the EP&A Act 1979.

3 Site Context

3.1 Location and Site Details

The site is located on the eastern side of Barrenjoey Road opposite Pittwater Park and the Palm Beach Public Wharf in the Northern Beaches Local Government Area (see **Figure 1**).



Figure 1 Site Location

The real property description of the site for the proposed subdivision (in 2 stages) is as follows:

- Lot 2 DP1004105;
- Lot 10 DP1207743; and
- Lot 11 DP 1207743.

Appendix 2 is a copy of Deposited Plan 1207743 which was registered on 28 June 2019.

The local heritage item “Barrenjoey House” which operates as a restaurant and guest house is located on Lot 2 DP 1004105. A single storey retail building with outdoor seating areas known as “Palm Beach Fish & Chips Shop” is located on Lot 11 DP 1207743. Lot 10 1207743 is currently vacant (apart from a temporary construction facility) and is accessed via an internal driveway from Barrenjoey Road. Substantial subdivision works relating to the approved Stages 1 and 2 proposed subdivision has been undertaken including excavation and construction of the access driveway, retaining wall, 20,000 litre stormwater retention pit, provision of services such as stormwater drainage, sewer, water, power, gas, communications as well as site landscaping and revegetation, particularly along the rear eastern boundary of Lot 11 DP 1207743 (Palm Beach Fish and Chip Shop lot) and the edges of the constructed driveway of Lot 10 DP 1207743 (residential lot) (see **Figures 2 to 7**).

3 Site Context



Figure 2 Barrenjoey House at Lot 2, DP 1004105



Figure 3 Palm Beach Fish & Chip Shop at Lot 11, DP 1207743

3 Site Context



Figure 4 Screen trees planted at rear of Lot 11, DP 1207743



Figure 5 Existing driveway with screen planting at Lot 10, DP 1207743

3 Site Context



Figure 6 Rear residential Lot 10, DP 1207743



Figure 7 Rear residential Lot 10, DP 1207743

3 Site Context

3.2 Surrounding Development

To the north of the site, along the eastern side of Barrenjoey Road is a few retail/commercial developments with dwelling houses and a residential flat building at Palm Beach Road beyond to the north. To the west of the site is Pittwater Park which includes a public car parking area and the Palm Beach Public Wharf. Generally, to the south, east and north of the site is predominantly one and two storey dwelling houses typically with landscaped front and rear gardens and with mature treed areas on mostly large residential sized lots of varying topography (see **Figure 1**).

4 Proposed Modifications

4.1 Summary of Proposed Modifications

for the proposed subdivision:

- Stage 1
 - Condition C.1 - delete
 - Condition D.2 – delete
 - Condition D.3 – delete
- Stage 2
 - Condition C.2 – delete
 - Condition D.6 – amend to refer to the current approved plan (Drawing No. PB-DA-1-1 dated 1 August 2012)
 - Condition D.10 – delete
 - Condition D.11 – delete
 - Condition D.13 – delete
 - Condition F.13 – delete
 - Condition F.14 – delete
 - Condition F.15 – delete
 - Condition F.16 – delete
 - Condition F.17 - delete
 - Condition F.18 – delete
 - Condition F.19 - delete
 - Condition F.20 – delete
 - Condition F.21 – delete
 - Condition G.22 – delete
 - Condition G.23 – delete
 - Condition G.24 – delete
 - Condition G.25 – delete
 - Condition H.26 – delete
 - Condition H.27 – delete
 - Condition H.28 – delete
 - Condition H.29 – delete
 - Condition H.30 – delete
 - Condition H.31 – delete
 - Condition H.32 - delete
 - Condition H.33 – delete
 - Condition I.34 – delete
 - Condition J.37 – delete
 - Condition J.38 – delete

4 Proposed Modifications

- Condition J.39 - delete

The Conditions which are proposed to be deleted (referred to above) from Development Consent NO428/98 (as modified) are either not relevant to the proposed subdivision as they relate to future development proposals for the allotments; the building structures such as the retaining wall, access driveway and other works including landscaping were completed as part of the Stage 1 proposed subdivision; and/or are inappropriate as they refer to old Council DCP's, policies and legislation that have been replaced.

It is important to note that this Section 4.55 Application does not propose any changes to the stamped Council approved plans of subdivision for the proposed subdivision (as modified), comprising 2 commercial lots and 3 residential lots to be carried out in 2 stages. The Section 4.55(1A) Application does not involve any site earthworks, construction of buildings or new landscaping works at the site.

4.2 Modifications to the Notice of Determination

4.2.1 Stage 1 – Condition C1

Stage 1 – Condition C1 of the consent states as follows:

“The proposal is to comply with the relevant provisions of Clauses 79A-1 of the Environmental Planning and Assessment (Amendment) Regulation, 1998.”

It is proposed to delete this Condition as Clause 78A-1 of the EP&A (Amendment) Regulation 1998 has been repealed.

4.2.2 Stage 1 - Condition D2

Stage 1 - Condition D2 of the Consent states as follows:

“Any development of Lot 10 DP 1207743 is to comply with the requirements of Council's Sand Point Locality Plan/Development Control Plan No. LP2, Development Control Plan No. 2 – Car Parking and Development Control Plan No. E3 – Driveways and Internal Roadways”

This Condition should be deleted as it is not relevant to the proposed subdivision of Lot 10 DP 1207743 into 3 residential lots and the DCP's referred to in this condition have all been replaced by Pittwater 21 DCP.

Furthermore, any future proposed development of the Council approved Stage 2 proposed subdivision in respect to the 3 residential lots (Lot 1, Lot 4 and Lot 5 as shown on the stamped Council approved plans of subdivision) will require submission of a Development Application to Council for assessment under the planning provisions and legislation applying at that time and which are currently Pittwater LEP 2014, Pittwater 21 DCP, relevant State Environmental Planning Policies (SEPP's) and the EP&A Act 1979.

4.2.3 Stage 1 – Condition D3

Stage 1 – Condition D3 of the Consent states as follows:

“Any development of Lot 11 DP 1207743 for the purposes of “Shop-Top Housing” is to comply with the requirements of Council's Development Control Plan No. R4 – Shop-Top Housing, Council's Sand Point Locality Plan/Development Control Plan No. 2 – Carparking and Development Control Plan No. E3 – Driveways and Internal Roads.”

It is proposed to delete this condition as it does not relate to the proposed subdivision but rather to the future development of Lot 11 DP 1207743 for shop-top housing. The DCP's stated in this Condition have all been replaced by Pittwater 21 DCP.

Furthermore, Council issued Development Consent NO119/14 on 13 November 2014 for the “demolition of all existing structures and construction of a shop-top housing development comprising 3 tenancies, 4 residential units and underground car parking” on Lot 11 DP 1207743, subject conditions. This consent is lawful and current and the Palm Beach

4 Proposed Modifications

Corporation Pty Ltd intend to proceed with the construction of the Council approved mixed use commercial and shop-top housing development at Lot 11 DP 1207743.

4.2.4 Stage 2 – Condition C2

Stage 2 - Condition C2 of the Consent states as follows:

“The proposal is to comply with the relevant provisions of Clauses 78A-1 of the Environmental Planning and Assessment (Amendment) Regulation 1998.”

It is proposed to delete this Condition as Clauses 78A-1 of the EP&A (Amendment) Regulation 1998 has been repealed.

4.2.5 Stage 2 – Condition D6

Stage 2 – Condition D6 of the Consent states as follows:

“The following trees identified on Drawing No PB-DA-01 dated 01-10-98 are to be retained, Nos 9, 29, 30, 38, 41 and 44.”

It is proposed to modify this Condition to refer to the current Council approved Drawing No. PB-DA-01-1 dated 1 August 2012 which identifies the same trees to be retained being trees No's 9, 29, 30, 38, 41 and 44 on this Drawing.

4.2.6 Stage 2 – Condition D10

Stage 2 – Condition D10 of the Consent states as follows:

“Any development of Lot 1, 4 and 5 is to comply with the requirements of Council's Sand Point Locality Plan – Development Control Plan No. LP2, Development Control Plan No. 2 – Car Parking and Development Control Plan No. E3 – Driveways and Internal Roadways”

It is proposed to delete this Condition as it does not relate to the proposed subdivision but rather to the development of dwelling houses on proposed Lots 1, 4 and 5 as shown on the stamped Council approved plans of subdivision which will be the subject of a future development application to be submitted to Council and assessed under the applicable planning provisions at that time and which are currently Pittwater LEP 2014, Pittwater 21 DCP relevant SEPP's and the EP&A Act 1979.

4.2.7 Stage 2 – Condition D11

Stage 2 – Condition D11 of the Consent states as follows:

“Any development of Lot 11 DP 1207743 for the purposes of “Shop-Top Housing” is to comply with the requirements of Council's Development Control Plan No R4 – Shop-Top Housing, Council's Sand Point Locality Plan/Development Control Plan No LP2, Development Control Plan No. 2 – Car Parking and Development Control Plan NOE3 – Driveways and Internal Roadways.”

It is proposed to delete this Condition as it does not relate to the proposed subdivision but rather to the future development of Lot 11 DP 1207743 for a shop-top housing development. The stated DCP's have all been replaced by Pittwater LEP 2014 and Pittwater 21 DCP. Furthermore, Development Consent NO119/14 for a mixed use commercial and shop-top housing development at Lot 11 DP 1207743 was approved by Council on 13 November 2014.

4.2.8 Stage 2 – Condition D13

Stage 2 – Condition D13 of the Consent states as follows:

“The finished surface of the access driveway is to be an earthy colour which harmonises with the surrounding vegetation to minimise the prominence of the driveway. The driveway structure is also to incorporate landscape planter boxes, which suitable plant species, or similar to soften the structure.”

It is proposed to delete this Condition as the access driveway and the landscape screening on both sides of the driveway were completed as a part of the Stage 1 proposed subdivision of the site into 2 commercial lots and 1 residential lot (see photograph at **Figure 5** of this report).

4 Proposed Modifications

4.2.9 Stage 2 – Condition F18

Stage 2 – Condition F18 of the Consent states as follows:

“Two copies of a detailed Landscape plan are to be submitted prior to release of the Construction Certificate. Each plan/sheet is to include a signed statement from a qualified practicing Landscape Architect confirming that the plan details comply with the provisions of Council’s Landscape DCP/policy (see form at Appendix 1).”

It is proposed to delete this Condition as there is no proposed new landscaping works required to be undertaken for the Stage 2 proposed subdivision of Lot 10 DP 1207743 into 3 residential lots. The new landscaping works referred to in this Condition was undertaken as a part of the Stage 1 proposed subdivision which essentially involved screen tree planting at the rear of commercial Lot 11 DP 1207743 (Palm Beach Fish and Chip shop site) and on the edges of the access driveway of residential Lot 10 DP 1207743. Furthermore, Council’s Landscape DCP/policy has been replaced by Pittwater 21 DCP which will apply to any future development of dwelling houses at proposed Lots 1, 4 and 5 as shown on the stamped Council approved plans of subdivision.

4.2.10 Stage 2 – Condition F19

Stage 2 – Condition F19 of the Consent states as follows:

“Two copies of a site remediation plan are to be submitted prior to release of the Construction Certificate. Each plan/sheet is to include a signed statement from a qualified practicing Landscape Architect confirming that the plan details comply with all of the relevant Building Code of Australia and/or Australian Standards (see format Appendix 1).”

The Stage 2 proposed subdivision of Lot 10 DP 1207743 into 3 residential lots does not require any new earthworks, building construction or landscaping works and, accordingly, there is no need for a Construction Certificate or a Site Remediation Plan. The Stage 1 proposed subdivision of the site into 2 commercial lots and 1 residential lot involved construction of the existing retaining wall, access driveway and infrastructure works including stormwater drainage and other public utility services as well as landscaping works which has been completed for both the Stage 1 and Stage 2 proposed subdivision of the site.

4.2.11 Stage 2 – Condition F20

Stage 2 – Condition F20 of the Consent states as follows:

“Details of footings within 3 metres of trees proposed to be retained are to be submitted prior to construction and that the final location of these footings are adjusted on site not to cut any tree root larger than 50mm in diameter. That a qualified Arborist be on-site at the time of constructing these footings to advise on the footings final location.”

It is proposed to delete this Condition as it does not relate to the proposed subdivision but rather to future dwelling houses on proposed Lots 1, 4 and 5 shown on the stamped Council approved plans for subdivision which will be the subject of Development Applications to be assessed by Council under the applicable planning provisions at that time and which are currently Pittwater LEP 2014, Pittwater 21 DCP, relevant SEPP’s and the EP&A Act 1979.

4.2.12 Stage 2 – Condition F21

Stage 2 – Condition F21 of the Consent states as follows:

“Applicant is to submit further landscape information prior to construction showing the following details:

- *Exact tree species, locations and pot sizes (trees to be minimum of 35 litres).*
- *Street tree planting along Barrenjoey Road. Street trees or plantings have been indicated on CAD drawing No PB-DA-04 but have not been shown on the landscape plan PB-DA-05. Street trees are to be in accordance with Council’s DCP and are to be planted at 200 litre size. Exact species should also be indicated. Council’s landscape architect is to approve street tree planting concept prior to construction.*
- *Mass planting of endemic trees and shrubs in the area shown in red on the consent plans. In this regard, the planting is to be in suitable species and sufficient quantities and spacing to soften and screen the driveway structure and turning areas.”*

4 Proposed Modifications

It is proposed to delete this Condition as it does not relate to the Stage 2 proposed subdivision of Lot 10 DP 1207743 into 3 residential lots. Furthermore, the Council stamped approved plans of subdivision referred to in Stage 1 Condition Ai and Stage 2 Condition Aiv do not include CAD Drawing No PB-DA-04 or Landscape plan PB-DA-05.

It is further noted that Development Consent No 119/14 for the mixed use commercial and shop-top housing development at Lot 11 DP 1207743 (Palm Beach Fish and Chip Shop site) does not require as a condition of consent any street tree planting along Barrenjoey Road.

It is understood that mass planting of trees was undertaken as part of the Stage 1 proposed subdivision and comprises the screen trees planting at the rear of Lot 11 DP 1207743 (Palm Beach Fish and Chip Shop site) and along the edges of the access driveway.

4.2.13 Stage 2 – Condition G22

Stage 2 – Condition G22 of the Consent states as follows:

“Prior to commencement of the project, a Project Manager is to be designated. Further, the Notification of Commencement form (copy attached) is to be returned to Council, a minimum 2 days prior to commencement of site works.

If an alternate Project Manager is appointed after the approved plans are collected from Council, that Project Manager is to co-sign the “Notification of Commencement” form.

In the event that Council is nominated to issue any associated Compliance Certificates, the fee as specified in Council’s Plan of Management is to be paid prior to commencement of site works.”

It is proposed to delete this Condition as there are no new site works required for the Stage 2 proposed subdivision of Lot 10 DP 1207743 into 3 residential lots. All building structures and other works were completed with the Stage 1 proposed subdivision.

4.2.14 Stage 2 – Condition G23

Stage 2 – Condition G23 of the Consent states as follows:

“Prior to commencement of site works, a qualified Building Surveyor, Builder or Site Manager is to certify that the required erosion controls have been installed. No further site works are to commence, until such time as that certification has been obtained and a copy afforded to the accredited certifier or Council (see copy of form attached).”

It is proposed to delete this Condition as the Stage 2 proposed subdivision of Lot 10 DP 1207743 into 3 residential lots does not propose any new site works and, accordingly there is no need for any erosion control measures to be installed at the site.

4.2.15 Stage 2 – Condition G24

Stage 2 – Condition G24 of the Consent states as follows:

“Prior to commencement of site works, a qualified Arborist, Horticulturalist or Landscape Architect is to certify that appropriate protection, fencing etc., has been provided around those trees or landscaped areas, located outside of the building area(s). No further site works are to take place until this certification has been obtained and a copy forwarded to the accredited certifier or Council (see copy of form attached).”

It is proposed to delete this Condition as the Stage 2 proposed subdivision of Lot 10 DP 1207743 into 3 residential lots does not require any new site works and, accordingly, there will be no impact on existing trees and vegetation at the site.

4.2.16 Stage 2 – Condition G25

Stage 2 – Condition G25 of the Consent states as follows:

“A hoarding is to be provided around the site to prevent the entry of the general public. The hoarding is not to encroach upon the public footpath without the prior approval of Council.”

It is proposed to delete this Condition as the Stage 2 proposed subdivision of Lot 10 DP 1207743 into 3 residential lots does not involve any new site works and, accordingly there is no need for a hoarding to be provided around the site to prevent the entry of the general public.

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4.2.17 Stage 2 – Condition H26

Stage 2 – Condition H26 of the Consent states as follows:

“A certificate is to be submitted by a Registered Surveyor, certifying that site excavation and/or filling (including around those trees nominated on the approved plan as being retained) has been carried out in accordance with the level shown on the approved plans. No further building works are to take place until this certification has been obtained and a copy forwarded to the accredited certifier or Council (see copy of form attached).”

It is proposed to delete this Condition as the Stage 2 proposed subdivision of Lot 10 DP 1207743 into 3 residential lots does not involve any site excavation and/or filling and there is no proposed building works. There will be no impact on existing trees and vegetation at the site for the Stage 2 proposed subdivision.

4.2.18 Stage 2 – Condition H27

Stage 2 – Condition H27 of the Consent states as follows:

“A Structural Engineer is to certify that site disturbance and any interim or permanent retaining measures have been carried out correctly. No further building works are to commence until this certification has been obtained and a copy forwarded to the accredited certifier or Council (see copy of form attached).”

It is proposed to delete this Condition as the Stage 2 proposed subdivision of Lot 10 DP 1207743 into 3 residential lots does not require any site disturbance and any interim or permanent retaining measures at the site. The earthworks and retaining wall structure, as well as the access driveway and landscaping works were all undertaken as a part of the Stage 1 proposed subdivision creating 2 commercial lots and 1 residential lot.

4.2.19 Stage 2 – Condition H28

Stage 2 – Condition H28 of the Consent states as follows:

“As the site is located in a slip liable area, a Structural Engineer and a Geotechnical Engineer are to certify that site disturbance and any interim or permanent retaining measures and the construction of the driveway and drainage structures have been carried out correctly. No further building works are to commence until this certification has been obtained and a copy forwarded to the accredited certifier or Council (see copy of form attached).”

It is proposed to delete this Condition as the Stage 2 proposed subdivision of Lot 10 DP 1207743 into 3 residential lots does not involve any site disturbance and any interim or permanent retaining measures nor any construction of a driveway and drainage structures at the site. All of these works were undertaken as a part of the Stage 1 proposed subdivision to create 2 commercial lots and 1 residential lot.

4.2.20 Stage 2 – Condition H29

Stage 2 – Condition H29 of the Consent states as follows:

“A Certificate is to be submitted by a qualified Building Surveyor, Builder or Site Manager, confirming that stormwater drainage, including on-site stormwater detention facilities have been provided in accordance with the conditions of development consent, approved engineering details or Council Engineering DCP-Policy. Trenches are not to be backfilled until this certification has been obtained and a copy forwarded to the accredited certifier or Council (see copy of form attached).”

It is proposed to delete this Condition as the Stage 2 proposed subdivision of Lot 10 DP 1207743 into 3 residential lots does not require any new stormwater drainage works including onsite stormwater detention facilities at the site as these works were all undertaken as a part of the Stage 1 proposed subdivision.

4.2.21 Stage 2 – Condition H30

Stage 2 – Condition H30 of the Consent states as follows:

“Prior to the commencement of works on site, tree protection barriers are to be placed around nominated species and maintained for the duration of the works. The bafflers are to be constructed of chain mesh fencing (1.6 metres in height) and be permanent in nature. Such barriers are to be indicated on relevant site plan and not to be removed without

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expressed permission of Council officers. No stockpiling of materials, rubbish or ground disturbance to occur inside this barrier. Compromise of these barriers will entail possible forfeit of retention sums in relation to Council reinstating barriers following reasonable request for reinstatement of the applicant in this consent.

- *All trees within 3 metres from excavation or construction are to be protected.”*

It is proposed to delete this Condition as the Stage 2 proposed subdivision of Lot 10 DP 1207743 into 3 residential lots does not involve any new building or site works and, accordingly, there is no need to provide tree protection barriers to existing trees at the site.

4.2.22 Stage 2 – Condition H31

Stage 2 – Condition H31 of the Consent states as follows:

“Prior to commencement of works a reorder or evidence of supply of plant material is to be submitted to Council’s Landscape Architect. Failure to submit will involve breach of this consent/approval.”

It is proposed to delete this Condition as the Stage 2 proposed subdivision of Lot 10 DP 1207743 into 3 residential lots does not require any new landscaping works at the site. All of the required landscaping works were undertaken as a part of the Stage 1 proposed subdivision to create 2 commercial lots and 1 residential lots.

4.2.23 Stage 2 – Condition H32

Stage 2 – Condition H32 of the Consent states as follows:

“Council’s landscape section is to be notified and to carry out a site inspection following completion of soil works prior to commencement of planting.”

It is proposed to delete this Condition as the Stage 2 proposed subdivision of Lot 10 DP 1207743 into 3 residential lots does not involve any soil excavating or landscaping works. All of the necessary earthworks and landscaping works at the site were undertaken as a part of the Stage 1 proposed subdivision creating 2 commercial lots and 1 residential lot.

4.2.24 Stage 2 – Condition H33

Stage 2 – Condition H33 of the Consent states as follows:

“Evidence of a 12-month maintenance program for all landscape works and a EVE year maintenance program for mature trees is to be submitted to Council’s Landscape Architect.”

It is proposed to delete this Condition as there are no new proposed landscaping works for the Stage 2 proposed subdivision to create the residential Lots 1, 4 and 5 on the stamped Council approved plans of subdivision. The existing landscaped areas including mature trees and shrubs within the Stage 2 proposed subdivision (Lot 10 DP 1207743) are all well maintained. It is further noted that Stage 2 - Condition C6 requires the retention of the six (6) significant endemic trees referred to as No’s 9, 29, 30, 38, 41 and 44 on the Council stamped approved Drawing No. PB-DA-01-1, dated 1 August 2012. (see Appendix 2

4.2.25 Stage 2 – Condition I34

Stage 2 – Condition I34 of the Consent states as follows:

“A Certificate is to be submitted by a qualified Engineer or Architect confirming that the driveway has been constructed in accordance with the approved plans and Council’s policy DCP – E3. The use or occupation of this building cannot commence until this Certification has been obtained and a copy forwarded to the accredited certifier or Council (see copy of form attached).

It is proposed to delete this Condition as the driveway for the proposed subdivision was constructed as part of the Stage 1 proposed subdivision of the site into 2 commercial lots and 1 residential lot. There are no new proposed driveway sections to be constructed for the Stage 2 proposed subdivision to create the 3 residential lots. Furthermore, Council’s policy DCP-E3 has been replaced by Pittwater 21 DCP.

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4.2.26 Stage 2 – Condition J37

Stage 2 – Condition J37 of the Consent states as follows:

“A Restriction on Use of Land is to be created, burdening Lots 1, 4 and 5, the terms of which restrict future buildings within those lots to the building envelopes shown on the approved plans. Full details in this regard are to be submitted to Council, prior to release of the Subdivision Certificate.

It is proposed to delete this Condition as the stamped Council approved plans as referred to in Stage 1 - Condition Ai and Stage 2 - Condition A.iv. of the Consent for the proposed subdivision do not show building envelopes on Lots 1, 4 and 5.

It is understood that the approved plans referred to in the original consent NO482/98 issued by the former Pittwater Council on 21 April 1999 showed building envelopes for future dwelling houses on Lots 1, 4 and 5 of the Stage 2 proposed subdivision. It is noted that the Palm Beach Corporation Pty Ltd and DFP have not been able to source copies of the original stamped approved Council plans showing building envelopes on proposed Lots 1, 4 and 5 for the original consent NO482/98.

However, it is our understanding that the building envelopes shown on the original stamped approved plans are no longer appropriate. The amended plans for the proposed subdivision approved by Council under the Section 96(1A) Modification Application NO482/98/S96/1 issued on 2 April 2013 has amended the subdivision layout of residential Lots 1, 4 and 5 and commercial Lot 11 DP 1207743 (Palm Beach Fish and Chip Shop site) resulting in the building envelopes being likely to be in inappropriate locations including overlapping the allotment boundaries (see **Appendix 2**).

It is the opinion of DFP that imposing a Condition restricting future dwelling houses and other ancillary development such as garages/carports, swimming pools and the like to be within a restricted building envelope on the residential Lots 1, 4 and 5 of the Stage 2 proposed subdivision is likely to result in a poorer built form outcome and potential environmental impacts in respect to the local low density residential character context as well as ensuring satisfactory protection of the scenic quality and natural environmental features of the site; particularly the large mature trees and rock outcrops.

It will be necessary for any future proposal to construct a dwelling house on the Stage 2 proposed subdivision of residential lots 1, 4 and 5 to submit a Development Application to Council which will be assessed on its merits in accordance with the applicable planning provisions at that time which are currently Pittwater LEP 2014, Pittwater 21 DCP, relevant SEPP's, and the EP&A Act 1979.

Indeed, in the 20 year period since the original consent NO482/98 for the proposed subdivision of 6 lots into 5 lots, comprising 2 commercial lots and 3 residential lots (in 2 stages) at the site was approved by the former Pittwater Council, there has been a comprehensive replacement of the land use zoning and planning controls under Pittwater LEP 2014 and Pittwater 21 DCP with the objectives of providing for low-impact residential development in E4 zoned areas with special ecological, scientific or aesthetic values; to ensure that residential development is of a low density and scale integrated with the landform and landscape; and to encourage residential development that retains and enhances existing vegetation and wildlife.

4.2.27 Stage 2 – Condition J38

Stage 2 – Condition J38 states as follows:

“A Certificate is to be submitted by a qualified Engineer or Architect confirming that the driveway has been constructed in accordance with the approved plans and Council's DCP-E3, the Subdivision Certificate will not be released until this Certification has been obtained and a copy forwarded to the accredited Certifier or Council (see copy of form attached).”

This Condition is essentially the same as Condition Stage 2 - I34. It is proposed to delete this Condition as the driveway for the proposed subdivision was constructed as part of the Stage 1

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proposed subdivision of the site into 2 commercial lots and 1 residential lot. There are no new proposed new driveway sections to be constructed for the Stage 2 proposed subdivision to create the 3 residential lots. Furthermore, Council's policy DCP – E3 has been replaced by Pittwater 21 DCP.

4.2.28 Stage 2 – Condition J39

Stage 2 – Condition J39 of the Consent states as follows:

“The drainage and driveway service and reinstatement landscaping on Lots 1, 4 and 5 together with regeneration works within the areas marked in red on the consent plans are to be completed prior to release of Stage 2 Final Plan of Subdivision.”

It is proposed to delete this Condition as the drainage and driveway services and reinstatement landscaping on proposed Lots 1, 4 and 5 as shown on the stamped Council approved plans of subdivision together with the regeneration landscaping works, were all undertaken as part of the Stage 1 proposed subdivision. There is no new proposed drainage and driveway services, or any new proposed landscaping works required to be undertaken for the Stage 2 proposed subdivision to create the 3 residential lots.

The regeneration landscaping works involved screen tree planting at the rear of commercial Lot 11 DP 1207743 (Palm Beach Fish and Chip Shop site) has been undertaken and is not located within proposed residential lots 1, 4 and 5 (see **Figures 3 and 4**).

5 Statutory Provisions

5.1 General

Section 4.55 of the EP&A Act contains the provisions that must be considered by a consent authority in determining an application to modify a Notice of Determination. In this regard, the relevant provision is section 4.55(1A) of the EP&A Act.

This application is lodged under section 4.55(1A) as the amendments proposed are considered to be minor in nature and have only minimal environmental impact.

In addition to the EP&A Act, clause 115 of the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation) contains the information that must be submitted with an application to modify a consent. The requirements under the EP&A Act and EP&A Regulation in the following subsections.

5.2 Section 4.55(1A) of the Act

Section 4.55(1A) of the Act applies to modifications where a minimal environmental impact may occur. Specifically, section 4.55(1A) provides that:

“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:”

5.2.1 Minimal Environmental Impact (section 4.55(1A)(a))

“(a) It is satisfied that the proposed modification is of minimal environmental impact”.

It is considered that the Section 4.55 application to “tidy up” the consent by deleting certain conditions (referred to in Section 4 of this report) as they are not relevant to the proposed Stage 2 subdivision; the building structures and other works were all undertaken as a part of the Stage 1 proposed subdivision of the site; and/or are inappropriate as they refer to old Council DCP’s, policies and legislation that have been replaced; and the amendment of Stage 2 – Condition D6 to refer to the current approved plans (Drawing No. PB-DA-1-1 dated 1 August 2012) will have minimal (if any) environmental impact on the site and the Palm Beach locality.

In particular, the Section 4.55 Application does not propose any changes to the stamped Council approved plans of subdivision for the proposed subdivision (as modified) comprising 2 commercial lots and 3 residential lots to be carried out in 2 stages. The Section 4.55 Application does not involve any new proposed earthworks, removal of existing trees and other vegetation or construction of buildings and other structures at the site.

The intention of the Section 4.55 Application is to modify certain conditions of the Consent to enable the Stage 2 proposed subdivision of Lot 10 DP 1207743 into 3 residential lots to be finalised.

5.2.2 Substantially the Same Development (section 4.55(1A)(b))

“(b) It is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all)”.

The Section 4.55 Application is considered to be substantially the same development as the development for which the consent was originally granted as it is for the approved subdivision of 6 lots into 5 lots, comprising 2 commercial lots and 3 residential lots (in 2 stages) at the site as shown on the stamped Council approved plans in accordance with Stage 1 Condition Ai and Stage 2 Condition A.iv. of Development Consent No. 482/98 as modified.

5.2.3 Notification (section 4.55(1A)(c))

“(c) It has notified the application in accordance with:

(i) The regulations, if the regulations so require, or

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- (ii) *A development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modifications of a development consent”.*

In accordance with Pittwater 21 DCP, Council will decide whether public notification of the Section 4.55 Application is necessary and the manner by which it is undertaken.

5.2.4 Consideration of Submissions (section 4.55(1A)(d))

- “(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”.*

Should Council notify the subject application in accordance with section 4.55(1A)(c), it must consider any submissions made during a notification period.

Subsections (1) and (2) of section 4.55 do not apply to the proposed modification. Subsection (3) is addressed in Section 6 of this submission.

5.2.5 Matters for Consideration and Reasons for Granting Consent

Section 4.55(3) of the EP&A Act requires that such of the matters referred to in section 4.15(1) of the EP&A Act as are of relevance to the proposed modification must be taken into consideration in determining the application for modification. These relevant matters are addressed in Section 6.0 of this Report.

The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.

The Section 4.55 Application to modify certain conditions of the consent for the proposed subdivision (in 2 stages) at the site will achieve the relevant objects (under Section 1.3) of the EP&A Act 1979 and the matters for consideration under Section 4.15 of the EP&A Act 1979 and the environmental planning instruments applying to the site.

5.3 Clause 115 of the EP&A Regulation 2000

Subclause 115(1) of the Regulation details the information required to be submitted with an application to modify a Development Consent under section 4.55. These details are contained in this report and the accompanying application form.

6 Environmental Planning Assessment

The following subsections provide an environmental assessment of the proposed modifications to the consent for the proposed subdivision (in two stages) at the site in respect of the relevant matters for consideration under section 4.15(1) of the EP&A Act.

The key environmental planning issues associated with the proposed development are:

- Compliance with relevant planning policies and controls;
- Flora and Fauna;
- Built Form and Streetscape;
- Heritage Conservation;
- Transport, Traffic and Parking; and
- Stormwater and Drainage.

An assessment of these issues is provided in the following subsections.

6.1 Planning Controls

The following subsections assess the proposal against the relevant provisions of applicable Environmental Planning Instruments (EPIs), Draft EPIs, Development Control Plans (DCPs), Planning Agreements and matters prescribed by the Regulation in accordance with section 4.15(1)(a) of the EP&A Act.

6.1.1 State Environmental Planning Policies

There are no State Environmental Planning Policies (SEPP's) which are relevant to the assessment of this section 4.55 application to modify the consent in respect to the proposed subdivision (in 2 stages) of the site.

6.1.2 Pittwater Local Environmental Plan 2014

The site is zoned part E4 – Environmental Living and part B1 – Neighbourhood Centre under Pittwater LEP 2014 as shown on the Zoning Map at **Figure 8** below.

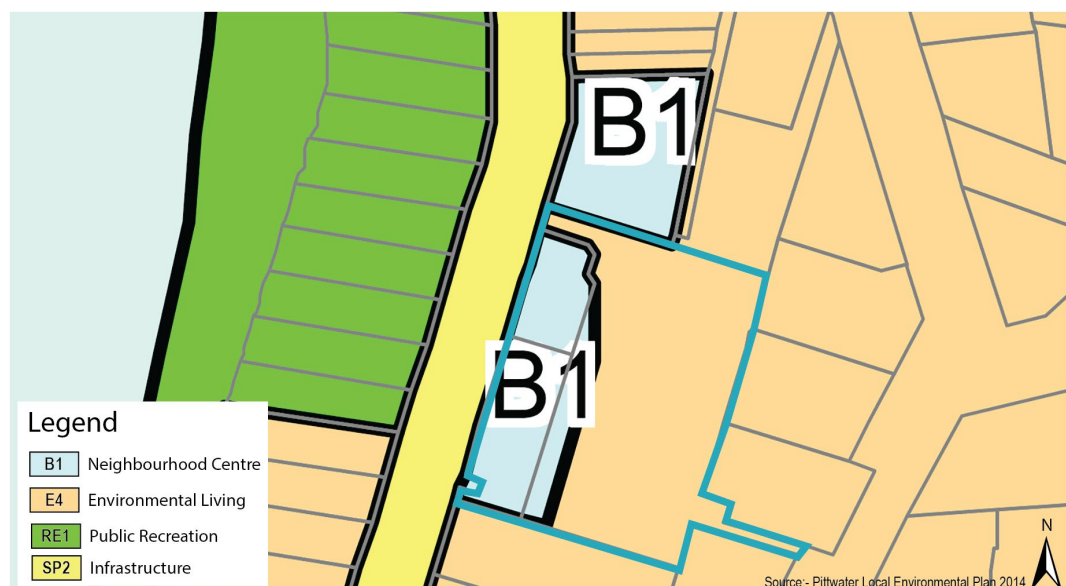


Figure 8 Zoning Map

Pursuant to clause 4.1 of Pittwater LEP 2014 the subdivision of any land requires the development consent of Council in accordance with the minimum lot size standard shown on the Lot Size Map in relation to that land. A 1,200m² minimum lot size standard applies to the proposed subdivision of existing residential Lot 10 DP 1207743. There is no minimum lot size

6 Environmental Planning Assessment

standard which applies to the commercial Lot 2 DP 1004105 and Lot 11 DP 1207743 under Pittwater LEP 2014.

Notwithstanding, the Stage 2 proposed subdivision of Lot 10 DP 1207743 into three residential lots as approved by Council under the existing Consent (as modified) will involve a variation to the 1,200m² minimum lot size standard under the Pittwater LEP 2014 as follows:

Lot 10 DP 1207743– 1,190m² including access handle;

Lot 4 – 1,137m²; and

Lot 5 – 1,052m² including access handle.

The Council Assessment report on the Section 96(1A) modification application N0482/98/S69/1 (see **Appendix 2**) for the proposed subdivision approved a SEPP 1 Objection Submission to vary the 1,200m² minimum lot size standard for the Stage 2 proposed subdivision and states as follows:

“In their submitted SEPP 1 Objection, the Applicant assumes the intent behind the minimum lot size development control of 1,200sqm for the Site as being higher than the area that would otherwise have been required (normally 700sqm for 2(a) zoned land in Palm Beach) in recognition of the environmental sensitivity of the Site, due to its steep topography and the high visual amenity of the locality. It is agreed that this is the essence of the intent behind the larger minimum lot size being set for the Site. The steep and elevated nature of the residential zoned land on the Site makes it prominent, thus larger lot areas are necessary in order to allow ample opportunity to construct a dwelling that sits in a generous landscaped setting and allow sufficient design opportunity to retain existing trees where possible and step the dwelling down the slope with the falling topography.

The town planning consultants for the Applicant have provided the following justification for the proposed variations to the minimum lot size:

- *the number of allotments is not being increased as a result of the modification proposed;*
- *the maintenance and, thus ownership of the buffer landscaping between the residential lots and commercial lots is more important (for aesthetic reasons and limiting amenity impacts) for the commercial premises on Lot 11 DP 1207743 than it would be for the residential lots, thus this buffer landscaping has been transferred to Lot 11 DP 1207743;*
- *the proposed residential lots will be of a similar size to surrounding residential zoned allotments in Palm Beach and not appear out of character with their surroundings.*

It is agreed that the above points are true. In addition, when compared with the original approved subdivision, it is considered that the proposed modification will provide a better opportunity for the future development of the lots to be compatible with the environmental and visual sensitivity of the Site. The shape and configuration of the 3 residential lots is more regularised as a result of the modification with area changes being relatively minor. The loss of area from the residential lots is also the result of the transferral of the landscaped buffer area in-between the commercial and residential lots from the residential lots to the commercial lots. In effect, the landscaping remains where it is and would still act as a landscaped screen and buffer between the uses and landscaped setting for the future dwellings above it.

Thus, notwithstanding the numerical variations proposed, it is considered that the proposed modified subdivision would still satisfy the underlying intent of the minimum lot size development standard, as described above.”

The Section 4.55 application to modify certain conditions of the Consent for the proposed subdivision does not involve any changes to the Council approved plans of subdivision and, accordingly, there are no changes to the size or configuration of the two existing commercial lots and the three proposed residential lots.

A clause 4.6 request to vary the 1,200m² minimum lot size standard under Pittwater LEP 2014 is not required for this section 4.55 Application as it is not a development application and there is no change to the Council approved plans of subdivision as specified in Stage 1 – Condition A(i) and Stage 2 – Condition A(iv) of the Consent.

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It is considered that the Stage 2 proposed subdivision of Lot 10 DP 1207743 to create three residential lots for future dwelling houses is consistent with the objectives of the E4 zone being as follows:

- “• to provide for low-impact residential development in areas with special ecological, scientific or aesthetic values;
- to ensure that residential development does not have an adverse effect on those values;
- to provide for residential development of a low density and scale integrated with the landform and landscape.
- to encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.”

The site contains a heritage item under Schedule 5 of Pittwater LEP 2014, which is known as “Barrenjoey House” and which is located on Lot 2 DP 1004105. The section 4.55 Application does not seek to change the configuration of Lot 2 DP 1004105, nor does it propose any works to Barrenjoey House. It is considered that the section 4.55 Application to modify certain conditions of the Consent for the proposed subdivision will have no impact upon the heritage significance of Barrenjoey House.

6.1.3 Draft Local Environmental Plans

There are no Draft Local Environmental Plans that are relevant to the assessment of the section 4.55 application to modify certain conditions of the consent for the proposed subdivision (in 2 stages).

6.1.4 Pittwater 21 Development Control Plan

Part D12 of Pittwater 21 DCP relates to development in the Palm Beach Locality. No planning controls are strictly applicable to the section 4.55 Application to modify certain conditions of the Consent for the proposed subdivision (in 2 stages). Any future development applications to construct dwelling houses on the Stage 2 proposed subdivision (Lots 1, 4 and 5) will need to comply with the relevant planning controls under Pittwater 21 DCP and/or the applicable planning controls at that time.

6.2 Likely Impacts of the Development

The following subsections assess the likely impacts of the development in accordance with section 4.15(1)(b) of the EP&A Act.

6.2.1 Flora and Fauna

The section 4.55 Application to modify certain conditions of the Consent in respect to the proposed subdivision will have no adverse impacts on native flora and fauna at the site. The Stage 2 proposed subdivision of Lot 10 DP 1207743 into three residential lots will not involve any removal of existing trees and vegetation and does not propose any new buildings, earthworks or other works at the site.

The proposed modified Stage 2 – Condition C6 will require the retention of the significant trees at the site being Trees Nos. 9, 29, 30, 38, 41 and 44 as shown on Drawing No. PB-DA-01-1 dated 1 August 2012.

6.2.2 Existing and/or Future Character

The section 4.55 Application to modify certain conditions of the Consent is to enable the Stage 2 proposed subdivision of Lot 10 DP 1207743 into three residential allotments to proceed to a Subdivision Certificate and registration. Future development applications for dwelling houses on the three proposed residential lots will need to comply with the applicable planning provisions at that time including Pittwater LEP 2014 and Pittwater 21 DCP demonstrating consistency with the desired low density and low impact residential character and protecting the sensitive natural environmental features and visual prominence of the site in this part of the Palm Beach locality.

6 Environmental Planning Assessment

6.2.3 Transport, Traffic and Parking

The driveway for the Stage 2 proposed subdivision of Lot 10 DP 1207743 into three lots has already been constructed. The section 4.55 Application does not require any new driveway sections to be constructed.

The future development applications for dwelling houses for the Stage 2 proposed subdivision of Lot 10 DP 1207743 into three residential lots will need to provide car parking provision and layout requirements in accordance with Council's Pittwater 21 DCP.

The site of the proposed subdivision is in close proximity to bus services providing public transport to commercial centres, employment areas and other community facilities in the Northern Beaches LGA, Sydney CBD and other parts of the Sydney Metropolitan Area.

6.2.4 Stormwater and Drainage

The section 4.55 Application to modify certain conditions of the Consent for the proposed Stage 2 subdivision will not involve any proposed new stormwater drainage works.

6.3 Suitability of the Site for Development

The section 4.55 Application to modify certain conditions of the Consent for the proposed subdivision will remain substantially the same as the development for which the original consent was granted and as such the site remains suitable for the development.

6.4 Public Interest

In accordance with section 4.15(1)(e) of the EP&A Act, the proposed modification of certain conditions of the Consent is considered to be in the public interest as it essentially involves "tidying up" certain conditions of the Consent which are not relevant; the building structures and other works (i.e. access driveway, retaining wall, stormwater drainage services, public utility services and landscaping works) have all been completed as a part of the Stage 1 proposed subdivision; and/or are inappropriate as they refer to old Council DCP's, policies and legislation that have been replaced by Pittwater LEP 2014, Pittwater 21 DCP, relevant SEPP's and the EP&A Act. It is also considered necessary to amend Stage 2 – Condition D6 to refer to the current approved plan (Drawing No. PB-DA-1-1 dated 1 August 2012).

7 Conclusion

This report accompanies an application under section 4.55(1A) of the EP&A Act to modify certain conditions of Development Consent No. 482/98 (as modified).

The section 4.55 Application involves minor modifications to the Consent to delete certain conditions (refer to Section 4 of this report) which are not relevant to the proposed Stage 2 subdivision; or relate to building structures and works completed as a part of the Stage 1 proposed subdivision and/or are inappropriate as they refer to old Council DCP's, policies and legislation that have been replaced; and to amend Stage 2 – Condition D.6 which should refer to the current approved plan (Drawing No. PB-DA-1-1 dated 1 August 2012).

Accordingly, the proposed modifications to the Consent are considered to be acceptable in this particular instance and can be approved by Council under section 4.55(1A) of the EP&A Act.