

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2020/0195
<b>Responsible Officer:</b>	Kelsey Wilkes
<b>Land to be developed (Address):</b>	Lot 1 DP 1252335, 701 Barrenjoey Road AVALON BEACH NSW 2107
<b>Proposed Development:</b>	Modification of Development Consent N0516/17 granted for Construction of a four 4 unit Seniors Living development with basement car parking landscaping and strata subdivision
<b>Zoning:</b>	R2 Low Density Residential SP2 Infrastructure
<b>Development Permissible:</b>	Yes - Zone R2 Low Density Residential Yes - Zone SP2 Infrastructure
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Aladdin (Aus) Pty Ltd
<b>Applicant:</b>	Adam Alamein

<b>Application Lodged:</b>	13/05/2020
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Seniors Living
<b>Notified:</b>	Not Notified
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

### PROPOSED DEVELOPMENT IN DETAIL

This application seeks consent to amend condition B13 of consent N0516/17 which states

*"All utility services including overhead power supply and communication cables located in the adjacent road verge and those to service the development are to be placed and/or relocated underground for the total frontage of the development site to any public road at the full cost of the developer"*

to read as

*"All utility services including power supply and communications cables specifically to service the*

*development and not being a part of the public infrastructure are to be placed and/or relocated underground within the boundaries of the development site".*

In justifying the variation the applicant states:

*"Condition of consent (B13) would require the removal of 2 spans of overhead cable - (pole PB62501 and including pole PB96065 and Street Lighting (pole PB6065) at the frontage to 701-703 Barrenjoey Road, Avalon. The public benefit achieved by the imposition of the condition is minimal and is outweighed by the cost burden to the applicant. This extent of cabling brings this application within the exception in Cl.20 - Undergrounding of Utility services - Pittwater 21 DCP, and we apply to the Council to exercise this discretion in favour of the applicant and amend condition B13.*

*The control that is the subject of this application is within C1.20 - says:*

*"all existing and proposed utility services to the site, or adjacent to the site within a public road reserve, are to be placed underground for the total frontage of the site to any public road".*

*Also - **Variations** within C 1.20 say:*

*"Based on technical practicalities and advice from the energy supplier the merit for not proceeding with undergrounding of utility services will be considered for the following circumstances subject to achieving the outcomes of this control:*

- *Electricity wires carrying 16,000 volts, 33,000 volts or more, and/or*
- *Short lengths of overheads of two spans or less*

*The applicant's request therefore enlivens the discretion or variation within the second bullet point to the C1.20 control.*

*As this application fits within the 'variation' we initially did not provide an advice from an energy supplier as the initial 4.55 application was able to be assessed without such a report. However for completeness please also see enclosed this application a letter from Blackwood Electrical Services advising against interference with the existing infrastructure.*

*The outcomes of the controls are met as follows:*

- *Visual pollution by aerial cables is reduced*

*Comment:*

*Condition B13 would not remove the greater and significant cluster of overhead wires to the south of the subject property on Barrenjoey Road at pole PB62501 which prior to continuing in a northerly direction across Kevin Avenue diverts wires across Barrenjoey Road to North Avalon. The contribution to this Outcome would be de minimis or minimal.*

- *Improved safety by removal of visual clutter*

*Comment:*

*As above the removal of visual clutter can not be improved by a condition that can do nothing about the greater and more vast extent of overhead wires immediately to the south of Kevin Avenue. As regards safety, while poles and wires are above ground at least they are visible and can not be come into contact with by accident by excavating, landscaping or other services maintenance, building and gardening undertakings.*

- *Opportunities for street tree planting is enhanced*

Comment:

*There remains ample opportunity for street tree planting to occur. Further the subject site will be landscaped as per its development consent therefore enhancing streetscape and vegetation canopy along Barrenjoey Road will be achieved.*

- *Safety of building occupants is maintained and enhanced*

Comment:

*This outcome is better met by leaving the poles and wires as they are - see last sentence of bullet point 2 above.*

- *Security of utility services is improved*

Comment:

*This is a responsibility of the owner of the infrastructure. On the Northern Beaches of Sydney it is Ausgrid. Ausgrid purchased the electricity infrastructure off the NSW State and a part of that contract was the acceptance of maintenance and security obligations. At the time this control was drafted into the DCP the electricity infrastructure was State owned and obviously an arm of the State ie, Pittwater Council was tasked with improving streetscapes whilst minimising State expenditure. This chain of 'duty' and delegation is now not what it once was and the Council should not seek to place the expense and burden of security of electrical infrastructure onto individual citizens when a large private corporate entity now has ownership. In fact to do so could amount to a breach of the Environmental Planning and Assessment Act 1979 - where to mandate an obligation that is not supported by the Act is in fact a breach of the Act.*

- *Design and construction of the undergrounding is funded by the developer*

Comment:

*This is answered within the comments above.*

*Council can therefore be satisfied that the proposed modification is of minimal environmental impact and that the development to which the consent as modified will be substantially the same development as the development for which the consent was originally granted".*

In addition to the above, the applicant has also provided an email from Ausgrid dated 9 September 2020 which states:

*"Ausgrid has no requirements for the powerlines to be undergrounded or poles to be relocated as a result of the development at 701-703 Barrenjoey Rd Avalon.*

## **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 - C1.20 Undergrounding of Utility Services

### SITE DESCRIPTION

<b>Property Description:</b>	Lot 1 DP 1252335 , 701 Barrenjoey Road AVALON BEACH NSW 2107
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment identified as Lot 1 in DP 1252335 and is located on the corner of Kevin Avenue and Barrenjoey Road, Avalon Beach.</p> <p>The site is triangular in shape with a frontages to Kevin Avenue and Barrenjoey Road and a rear boundary adjoining a residential allotment. The site has a surveyed area of 1069m<sup>2</sup>.</p> <p>The site is primarily located within the R2 Low Density Residential Zone, with a small portion at the east of the site located within the SP2 Infrastructure (Classified Road) Zone.</p> <p>The site is currently a construction site in relation to N0516/17</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>The adjoining and surrounding area is characterised by a variety of development and land uses including residential to the north and west, public reserves and Avalon Beach to the east and a Pre-School, School and Church to the south.</p>

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:

### Modification Application Mod2019/0211

Modification of Development Consent N0516/17 granted for Construction of a four (4) unit Seniors Living Development with basement car parking, landscaping and strata subdivision  
Approved 16 August 2019

### Modification Application Mod2019/0072

Modification of Development Consent N0516/17 granted for Construction of a four (4) unit Seniors Living Development with basement car parking, landscaping and strata subdivision  
Refused 12 June 2019

### Development Application N0516/17

Construction of a four (4) unit Seniors Living Development with basement car parking, landscaping and strata subdivision  
Approved 6 July 2018

### Complying Development Certificate CDC0089/17

Demolition of existing structures on 703 Barrenjoey Road  
Approved 31 May 2017

### Complying Development Certificate CDC0084/17

Demolition of existing structures on 701 Barrenjoey Road  
Approved 31 May 2017

## 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 N0516/17, 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	<p><b>Yes</b></p> <p>The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons:</p> <p><i>The proposal relates to the amendment of condition B13 which requires all utility services within the road reserve and those to service the development to be placed or relocated underground. The application was referred to Ausgrid who raise no objections to the proposal. It is considered that the deletion of this condition would not result in any significant increase in impact on the environment and therefore is of minimal environmental impact.</i></p>
(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	<p>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 N0516/17 for the following reasons:</p> <p><i>As mentioned above, the proposal relates only to the amendment of condition B13 to exclude the undergrounding of public infrastructure and require the undergrounding of utility services which service the development only. The development as a whole which includes the construction of a four (4) unit Seniors Living Development with basement car parking, landscaping and strata subdivision remains unchanged and therefore substantially the same as that already approved under N0516/17.</i></p>
(c) it has notified the application in accordance with:	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979,

Section 4.55(1A) - Other Modifications	Comments
(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	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	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (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	<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

Section 4.15 'Matters for Consideration'	Comments
Regulation 2000 (EP&A Regulation 2000)	<p>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 clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</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 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.</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.</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 clause is not relevant to this application.</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) <b>Environmental Impact</b> 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) <b>Social Impact</b> The proposed development 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 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 'Matters for Consideration'	Comments
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	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.

## BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application was not notified.

## REFERRALS

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

## 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 (Housing for Seniors or People with a Disability) 2004

This modification application does not propose any additional physical works, therefore it is considered the initial assessment of the SEPP (Housing for Seniors or People with a Disability) 2004 detailed within the assessment report of development application N0516/17 is sufficient and no further assessment of this matter is required as a result.

## 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:

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

## Pittwater Local Environmental Plan 2014

Is the development permissible?	Zone R2 : Yes Zone SP2: Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Zone R2 : Yes Zone SP2: Yes

### Principal Development Standards

The application relates to underground utility services. There are therefore no principal development standards that apply.

### Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
5.10 Heritage conservation	Yes

## Pittwater 21 Development Control Plan

### Built Form Controls

The application relates to underground utility services. There are therefore no built form controls that apply.

## Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
C1.20 Undergrounding of Utility Services	No	Yes

## Detailed Assessment

### C1.20 Undergrounding of Utility Services

#### Description of non-compliance

This modification application seeks consent to amend Condition B13 of consent N0516/17 which requires all utility services including overhead power supply and communication cables located in the adjacent road verge and those to service the development to be placed and/or relocated underground for the total frontage of the development site to any public road.

The applicant seeks to modify this condition to state *all utility services including power supply and communications cables specifically to service the development and not being part of the public infrastructure are to be placed and/or relocated underground within the boundaries of the development site.*

The control of this clause states that *all existing and proposed utility services to the site, or adjacent to the site within a public road reserve, are to be placed underground for the total frontage of the site to any public road.*

The applicant seeks to vary this requirement based on the variation of this clause which allows merit consideration for *short lengths of overheads of two spans or less.*

The applicant has provided a statement from the relevant energy supplier for consideration. This statement outlines technical practicalities and advice demonstrating that the undergrounding of utility services within the road reserve is unnecessary in this particular circumstance.

#### Merit Consideration

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

*Visual pollution by aerial cables is reduced (En, S)*

#### Comment:

Amending condition B13 to exclude the undergrounding of public infrastructure located in the road verge is considered reasonable in terms of the above outcome as this is not considered to result in adverse visual pollution given the existing streetscape character. Furthermore, the condition would require that utilities to service the development site are placed underground within the boundaries of the site and this ensures no additional visual clutter from above ground power supply and communication infrastructure.

*Improved safety by removal of visual clutter (En, S)*

#### Comment:

It is not considered that the removal of visual clutter created by existing above ground infrastructure

within the road verge would result in improved safety in this circumstance due to the minimal cables and poles fronting the development site.

*Opportunities for street tree planting is enhanced (En)*

Comment:

Amending condition B13 to exclude the undergrounding of public infrastructure located in the road verge is not considered to remove any opportunity for street tree planting. It is noted that vegetation currently exists within the road reserve fronting Barrenjoey Road and provides adequate screening despite the presence of existing above-ground infrastructure. Sufficient space exists within the road reserve for vegetation to be enhanced if required. The development will also provide for substantial vegetation screening within the site's front setback areas as indicated within the approved landscape plan and relevant conditions included under consent N0516/17.

Notwithstanding the above, the eastern portion of the site is located within the SP2 Infrastructure (Classified Road) Zone and pursuant to Clause 5.1A(3) of the PLEP 2014, may be developed in the future for the purpose of a road which would then largely eliminate opportunity for street tree planting from what exists currently.

*Safety of building occupants is maintained and enhanced. (S)*

Comment:

Amending condition B13 to require the undergrounding all utility services including power supply and communications cables specifically to service the development will ensure that the safety of building occupants is maintained and enhanced.

*Security of utility services is improved. (S)*

Comment:

The proposal was referred to Ausgrid. No response was received within the 21 day statutory period and therefore, it is assumed that no objections are raised regarding the above and no conditions are recommended.

*Design and construction of undergrounding is funded by the developer. (Ec)*

Comment:

The proposed amendment of condition B13 will ensure that all utility services including power supply and communications cables specifically to service the development are placed underground at full cost to the developer. The public infrastructure within the road verge will remain as existing.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant outcomes of the P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

## **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

## **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

## **POLICY CONTROLS**

### **Northern Beaches Section 7.12 Contributions Plan 2019**

Section 7.12 contributions were levied on the Development Application.

## **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. Mod2020/0195 for Modification of Development Consent N0516/17 granted for Construction of a four 4 unit Seniors Living development with basement car parking landscaping and strata subdivision on land at Lot 1 DP 1252335,701 Barrenjoey Road, AVALON BEACH, subject to the conditions printed below:

### **A. Modify Condition B13 of Consent N0516/17 to read as follows:**

All utility services including power supply and communications cables specifically to service the development and not being a part of the public infrastructure are to be placed and/or relocated underground within the boundaries of the development site.

Reason: Provision of utility services in a manner that facilitates the future underground provision of cable services.

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

**Signed**



**Kelsey Wilkes, Planner**

The application is determined on 19/10/2020, under the delegated authority of:



**Tony Collier, Acting Development Assessment Manager**