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Section 4.55(1A) Planning Report

Modification of Approved Subdivision

1102, 1108 and 1110 Barrenjoey Road, Palm Beach

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Abbreviations

AS	Australian Standard
ASS	acid sulfate soils
CC	construction certificate
CIV	capital investment value
Council	Northern Beaches Council
DA	development application
DCP	development control plan
DFP	DFP Planning Pty Limited
DoPE	NSW Department of Planning and Environment
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	<i>Environmental Planning and Assessment Regulation 2000</i>
FPL	flood planning level
FSR	floor space ratio
GFA	gross floor area
LEP	local environmental plan
LGA	local government area
LPP	Local Planning Panel
PA	planning agreement
OEH	NSW Office of Environment and Heritage
SEE	Statement of Environmental Effects
SEPP	state environmental planning policy
VPA	voluntary planning agreement

1 Introduction

1.1 Commission

DFP has been commissioned by Antony Mattox 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 original subdivision) at No's 1102, 1108 and 1110 Barrenjoey Road, Palm Beach (the original site).

The Section 4.55 Application specifically relates to the approved Stage 2 subdivision of No. 1110 Barrenjoey Road, Palm Beach (the residential site) from one into three residential lots involving minor boundary adjustments to provide each of the three lots with an access handle legal site frontage to Barrenjoey Road and with reciprocal rights of carriageway and easements for services and drainage (the proposed modified residential subdivision).

The original site is located on the eastern side of Barrenjoey Road opposite Pittwater Park and the Palm Beach Public Wharf. The original 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 (see **Appendix 1**).

Council approved a Modification of Development Consent No. 482/98 (referred to as Application No. 482/98/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 Council to rectify the zone boundaries under a former LEP to match with the approved proposed subdivision layout (Stage 1 - Condition Bi) (see **Appendix 2**).

Council approved a further Modification of Development Consent No. 482/98 which is referred to as Application No. Mod 2019/0335 on 3 August 2019 in respect to the following:

- Delete Stage 1 Conditions C1, D2 and D3;
- Delete Stage 2 Conditions C2, D10, D11 and J37; and
- Amend Stage 2 Condition D6. (see **Appendix 3**).

This Section 4.55(1A) Application seeks to modify Development Consent No. 482/98 (as Modified) in respect to Stage 2 Condition A.iv. requesting Council's approval to a proposed modified plan of subdivision of the residential site involving minor boundary adjustments to enable each of the three residential lots to have an access handle legal site frontage to Barrenjoey Road and with reciprocal rights of carriageway and easements for services and drainage (see **Appendix 4**).

The reason for seeking Council's approval to the proposed modified plan of subdivision (see **Appendix 4**) is to resolve a problem with Sydney Water requirements for the reticulated sewerage mains connection to the three residential lots that has been preventing the applicant obtaining a Section 73 Certificate and thereby being able to register the Stage 2 – one into three lot subdivision of the residential site.

Sydney Water has advised the applicant that it would be necessary to excavate the residential site to the three proposed residential lots and install an additional sewer mains line for the current approved plan of subdivision. This would not only have significant and unnecessary costs for this additional sewer mains connection (works and further time delays), it would also result in adverse environmental impacts requiring the removal of existing mature screen trees along the lower western portion of the site and the existing driveway, unnecessary excavation of the site and adverse visual impacts with the loss of the existing screen trees as

1 Introduction

viewed from the public domain areas of Pittwater, the adjacent public reserve and as viewed from Barrenjoey Road.

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 recent site inspections.

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 (No. 1110 Barrenjoey Road) at the rear into 3 residential lots. **Appendix 1** is a copy of the original Consent No. 482/98.

Consent No. 482/98 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 5** 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 No. 482/98 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 No. 482/98 (referred to as No. 482/98/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 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 2** is a copy of the modified Consent No. 482/98/596/1. **Appendix 6** is a copy of the Council approved plans for the amended proposed subdivision of the original site.

The modification of Development Consent No. 482/98 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) zoning 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 State 1 registered subdivision of the original site.

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.

In order to proceed with the Stage 2 proposed subdivision of Lot 10 DP 1207743 into 3 residential lots, it was necessary for the applicant to submit a further Section 4.55(1A) Modification Application (Mod 2019/0335) which was approved by Council on 3 August 2019

2 Background

in order to “tidy up” the Consent as several of the conditions were either not relevant to the proposed Stage 2 – 1 into 3 residential lot subdivision as they related 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 needed to be amended to refer to the current approved Drawing No. PB-DA-01-1 dated 1 August 2012 (see **Appendix 3**).

This current Section 4.55(1A) Modification Application to the Consent is in respect to Stage 2 - Condition A.iv. seeking Council’s approval to a proposed modified plan of subdivision involving minor boundary adjustments to enable each of the three residential lots to have an access handle frontage to Barrenjoey Road with reciprocal rights of carriageway and easements for services and drainage. **Appendix 4** is a copy of the proposed modified plan of subdivision for the Stage 2 residential site from one into three residential lots.

Appendix 7 is a “History of Events – 1110 Barrenjoey Road, Palm Beach” prepared by the Applicant (Tony Mattox, the Palm Beach Corporation Pty Ltd) which outlines the protracted negotiations with Sydney Water officers, particularly over the past 1.5 years to provide a satisfactory solution for the provision of the sewer mains connection points to each of the three allotments in the Stage 2 proposed residential subdivision of the site. More specifically, Sydney Water officers have specified that a major sewer line extension would have to be constructed from the new collection pit in the footpath at the bottom of the existing driveway, along the site boundary between Barrenjoey House and Lot 1 and then turn right up the western side of the driveway to the flat area at the top of the driveway. The requirements for the construction of a Sydney Water main sewer extension line compared to a private “domestic line” to the sewerage connection points would require excavation of a deep trench between the western edge of the driveway and the existing screening trees in this deep soil planting area which would destroy the screen trees at the site.

The Section 4.55(1A) application is seeking Council’s approval to the proposed modified plan of subdivision (see **Appendix 4**) involving a boundary adjustment so that each of the three lots has an access handle legal site frontage to Barrenjoey Road. This would enable a private domestic sewer connection to the collection chamber at the base of the driveway for each of the three residential lots in the Stage 2 proposed subdivision. It would require significantly less excavation to provide a private “domestic” line to the sewerage connection points for each of the three lots in the proposed modified plan of subdivision, thereby enabling the retention of the existing screen trees at the residential site (see “History of Events” report at **Appendix 7**).

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 original site for the proposed subdivision (in 2 stages) is as follows:

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

Appendix 5 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 DP 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 Modifications to the Notice of Determination

4.1.1 Stage 2 – Condition A.iv.

Stage 2 – Condition A.iv of the Consent currently states as follows:

“The development is to be carried out generally in accordance with Plans numbered PB-DA-01-1, PB-DA-02-1, PB-DA-03-1, PB-DA-01B-1, 06A-1 and 06B-1, dated 1 August 2012, prepared by the Palm Beach Corporation Pty Ltd, as amended in red or as modified by any condition of consent.”

It is proposed to amend this Condition to read as follows:

*“The development is to be carried out generally in accordance with Plans numbered PB-DA-01-1, PB-DA-02-1, PB-DA-03-1, PB-DA-01B-1, 06A-1 and 06B-1, dated 1 August 2012, prepared by the Palm Beach Corporation Pty Ltd, as amended in red or as modified by any condition of consent and **as amended by Plan 20688DP-D, dated 8 April 2020 prepared by Adam Clerke, Surveyor.**”*

The proposed modified plan of subdivision involves a minor boundary adjustment to provide an access handle to each of the three residential lots creating a legal site frontage to Barrenjoey Road and with reciprocal rights of carriageway and easements for drainage and easements for services (see **Appendix 4**).

The reason why the Applicant is seeking Council's approval to the proposed modified plan of subdivision is to enable the construction of a private “domestic” sewer pipe line to the sewerage connection points of the collection chamber at the base of the driveway via the access handles of the three residential lots. This would avoid the potential loss of the existing mature screen trees along the edges of the existing driveway and the western boundary of the residential site.

The proposed modified plan of subdivision would result in a minor change to the lot sizes as follows:

Allotment	Total Site Area	Net Site Area (excludes access handles)
Lot 101	1,110m ²	1,052m ²
Lot 102	1,145m ²	1,108m ²
Lot 103	1,122m ²	987m ²

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 would have no 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”.

The proposed modified plan of subdivision will have a minimal environmental impact on the site and locality as it involves no physical works. Indeed, the purpose of the proposed modified Stage 2 subdivision proposal is to enable ‘domestic’ sewerage mains pipe connection to the three residential lots via the proposed access handles thereby avoiding the necessity for the extensive site evacuation and destruction of the existing screen trees and vegetation at the site.

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 original site as shown on the stamped Council approved plans (as modified) in accordance with Stage 1 Condition Ai and proposes only minor boundary adjustments to the Stage 2 Condition A.iv. approved plan of subdivision under Development Consent No. 482/98 (as modified) as shown on the proposed modified plan of subdivision (see **Appendix 4**) in order to provide each of the three residential lots with an access handle legal site frontage to Barrenjoey Road. The proposed modified plan of subdivision for the Stage 2 subdivision of the residential site is required to satisfy Sydney Water requirements for the provision of reticulated sewer mains connection to the three proposed residential lots to avoid the destruction of the mature screening trees.

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*
- (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 Statutory Provisions

Nevertheless, because this Section 4.55(1A) Modification Application:

- Only involves minor boundary adjustments that do not create any additional lots; and
- Has minimal environmental impact.

It would appear that public notification of the Application would not be required.

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 Stage 2 – Condition 4.iv. relating to a minor boundary adjustments to the one into three lot residential subdivision of the site of the Consent 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 modification to the Consent for the proposed modified Stage 2 plan of subdivision from one into three lots at the residential site (see **Appendix 4**) 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;
- Stormwater and Drainage; and
- Provision of services.

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 original site.

6.1.2 Pittwater Local Environmental Plan 2014

The original 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.

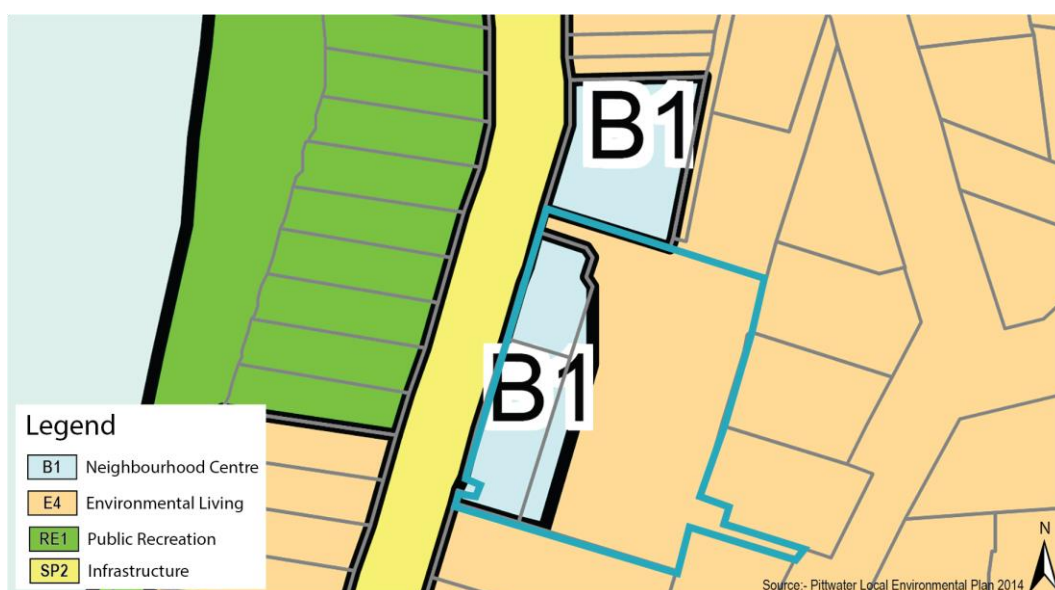


Figure 8 Zoning Map

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

6 Environmental Planning Assessment

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 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) involved a variation to the 1,200m² minimum lot size standard under the Pittwater LEP 2014 as follows:

Lot 10 – 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 No. 482/98/S69/1 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 current Section 4.55(1A) Application for the proposed modified plan of subdivision for Stage 2 of the proposed one into three residential lot subdivision of the site (see **Appendix 4**) will result in the following lot sizes:

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Lot	Total Site Area	Net Site Area (excluding access handle)
Lot 101	1,110m ²	1,052m ²
Lot 102	1,145m ²	1,108m ²
Lot 103	1,122m ²	987m ²

Hence, the proposed modified plan of subdivision (see **Appendix 4**) will result in a minor variation in the net site areas (excludes the access handles) of the three residential lots but, in effect, there will be no change to the areas available for building footprints for a new dwelling and site landscaping on each of the three lots.

A clause 4.6 request to vary the 1,200m² minimum lot size standard under Pittwater LEP 2014 is not required for this current section 4.55(1A) Application as it is not a development application

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 original 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 Stage 2 – Condition A.iv. of the Consent for the proposed modified plan of subdivision (one into three residential lots each with access handles) 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 Stage 2 – Condition A.iv. 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 Stage 2 – Condition A.iv. of the Consent for the proposed modified plan of subdivision. Any future development applications to construct dwelling houses on the Stage 2 proposed three residential lots subdivision will need to comply with the relevant planning controls under Pittwater LEP and 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.

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6.2.1 Flora and Fauna

The section 4.55 Application to modify Stage 2 – Condition A.iv. for the proposed modified plan of subdivision of the Consent 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.

Stage 2 – Condition C6 of the Consent requires the retention of the significant trees at the residential 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 Stage 2 – Condition A.iv. of the Consent is to enable the Stage 2 proposed subdivision of Lot 10 DP 1207743 into three residential allotments each with an access handle to facilitate the provisions of reticulated sewer main services to each lot so that the application can obtain a Section 73 Certificate from Sydney Water and then 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.

6.2.3 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 proposed modified plan of subdivision provides for all three residential lots to have reciprocal rights of carriageway over the existing driveway (see **Appendix 4**).

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 parking and driveway 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 Stage 2 – Condition A.iv. of the Consent for the proposed Stage 2 subdivision will not involve any proposed new stormwater drainage works. The proposed modified plan of subdivision provides for all necessary easements for drainage for the three residential lots (see **Appendix 4**).

6.2.5 Provision of Services

All essential public utility services including water, gas, sewerage, electricity and telecommunications are available for the three lots in the Stage 2 proposed residential subdivision of the site.

The proposed modified plan of subdivision for the one into three residential lots at the site provide for the necessary easements for public utility services (see **Appendix 4**).

6.3 Suitability of the Site for Development

The section 4.55 Application to modify Stage 2 – Condition A.iv. of the Consent for the proposed modified plan of subdivision will remain substantially the same as the development

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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 Stage 2 – Condition A.iv. of the Consent in respect to the proposed modified plan of subdivision is considered to be in the public interest.

7 Conclusion

This report accompanies an application under section 4.55(1A) of the EP&A Act to modify Stage 2 – Condition A.iv. of Development Consent No. 482/98 (as modified) in respect to the proposed modified plan of subdivision for the residential site (see **Appendix 4**).

The section 4.55 Application involves a minor modification to the Consent involving the amendment of Stage 2 – Condition A.iv. in respect to the proposed modified plan of subdivision to provide each of the three residential lots with an access handle site frontage to Barrenjoey Road with provision of reciprocal rights of carriageway, easements for drainage and easements for services.

The purpose of the Section 4.55 application for the proposed modified plan of subdivision is to enable a private “domestic” sewerage line connection to the collection chamber at the base of the existing driveway. This will enable the retention of existing mature screen trees at the site, avoid unnecessary excavation of the site and avoid potential adverse visual impacts with the loss of the screen trees as viewed from the public domain areas of Pittwater, the adjacent public reserve and from Barrenjoey Road.

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