

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2020/0352
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Responsible Officer:	Rhiannon McLardy
Land to be developed (Address):	<p>Lot 3 DP 270907, 73 Lorikeet Grove WARRIEWOOD NSW 2102</p> <p>Lot 4 DP 270907, 75 Lorikeet Grove WARRIEWOOD NSW 2102</p> <p>Lot 5 DP 270907, 77 Lorikeet Grove WARRIEWOOD NSW 2102</p> <p>Lot 6 DP 270907, 79 Lorikeet Grove WARRIEWOOD NSW 2102</p> <p>Lot 7 DP 270907, 3 Baz Retreat WARRIEWOOD NSW 2102</p> <p>Lot 8 DP 270907, 5 Baz Retreat WARRIEWOOD NSW 2102</p> <p>Lot 9 DP 270907, 7 Baz Retreat WARRIEWOOD NSW 2102</p> <p>Lot 10 DP 270907, 9 Baz Retreat WARRIEWOOD NSW 2102</p> <p>Lot 11 DP 270907, 8 Baz Retreat WARRIEWOOD NSW 2102</p> <p>Lot 12 DP 270907, 10 Baz Retreat WARRIEWOOD NSW 2102</p> <p>Lot 13 DP 270907, 12 Baz Retreat WARRIEWOOD NSW 2102</p> <p>Lot 14 DP 270907, 14 Baz Retreat WARRIEWOOD NSW 2102</p> <p>Lot 15 DP 270907, 16 Baz Retreat WARRIEWOOD NSW 2102</p> <p>Lot 16 DP 270907, 18 Baz Retreat WARRIEWOOD NSW 2102</p> <p>Lot 17 DP 270907, 20 Baz Retreat WARRIEWOOD NSW 2102</p> <p>Lot 18 DP 270907, 22 Baz Retreat WARRIEWOOD NSW 2102</p> <p>Lot 19 DP 270907, 24 Baz Retreat WARRIEWOOD NSW 2102</p> <p>Lot 20 DP 270907, 26 Baz Retreat WARRIEWOOD NSW 2102</p> <p>Lot 21 DP 270907, 28 Baz Retreat WARRIEWOOD NSW 2102</p> <p>Lot 22 DP 270907, 30 Baz Retreat WARRIEWOOD NSW 2102</p> <p>Lot 2 DP 270907, 71 Lorikeet Grove WARRIEWOOD NSW 2102</p> <p>Lot 23 DP 270907, 65 - 69 Lorikeet Grove WARRIEWOOD NSW 2102</p>
Proposed Development:	Modification of Development Consent N0182/13 granted for 40 Lot subdivision of existing sites and demolition of existing structures

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

There are no assessment issues.

SITE DESCRIPTION

Property Description:	Lot 3 DP 270907 , 73 Lorikeet Grove WARRIEWOOD NSW 2102 Lot 4 DP 270907 , 75 Lorikeet Grove WARRIEWOOD NSW 2102 Lot 5 DP 270907 , 77 Lorikeet Grove WARRIEWOOD NSW 2102 Lot 6 DP 270907 , 79 Lorikeet Grove WARRIEWOOD NSW 2102 Lot 7 DP 270907 , 3 Baz Retreat WARRIEWOOD NSW 2102 Lot 8 DP 270907 , 5 Baz Retreat WARRIEWOOD NSW 2102 Lot 9 DP 270907 , 7 Baz Retreat WARRIEWOOD NSW 2102 Lot 10 DP 270907 , 9 Baz Retreat WARRIEWOOD NSW 2102 Lot 11 DP 270907 , 8 Baz Retreat WARRIEWOOD NSW 2102 Lot 12 DP 270907 , 10 Baz Retreat WARRIEWOOD NSW 2102 Lot 13 DP 270907 , 12 Baz Retreat WARRIEWOOD NSW 2102 Lot 14 DP 270907 , 14 Baz Retreat WARRIEWOOD NSW 2102
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	<p>Lot 15 DP 270907 , 16 Baz Retreat WARRIEWOOD NSW 2102</p> <p>Lot 16 DP 270907 , 18 Baz Retreat WARRIEWOOD NSW 2102</p> <p>Lot 17 DP 270907 , 20 Baz Retreat WARRIEWOOD NSW 2102</p> <p>Lot 18 DP 270907 , 22 Baz Retreat WARRIEWOOD NSW 2102</p> <p>Lot 19 DP 270907 , 24 Baz Retreat WARRIEWOOD NSW 2102</p> <p>Lot 20 DP 270907 , 26 Baz Retreat WARRIEWOOD NSW 2102</p> <p>Lot 21 DP 270907 , 28 Baz Retreat WARRIEWOOD NSW 2102</p> <p>Lot 22 DP 270907 , 30 Baz Retreat WARRIEWOOD NSW 2102</p> <p>Lot 2 DP 270907 , 71 Lorikeet Grove WARRIEWOOD NSW 2102</p> <p>Lot 23 DP 270907 , 65 - 69 Lorikeet Grove WARRIEWOOD NSW 2102</p>
<p>Detailed Site Description:</p>	<p>The subject site consists of twenty-two (22) allotments located on the western side of Warriewood Road.</p> <p>The site is irregular in shape with a frontage of 183.65m along Warriewood Road and a depth of 138.075m along the south-eastern boundary of the site. The site has a surveyed area of 2.2474 hectares.</p> <p>The site is located within the R3 zone and accommodates room PLEP 2014.</p> <p>The site slopes gently away from Warriewood Road.</p> <p>The site currently does not have any significant vegetation.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by new subdivisions to the north-west and established low-density residential to the north-east.</p>

Map:



SITE HISTORY

The land has been used for residential purposes for a period of time. A search of Council's records has revealed a substantial site history with numerous applications relating to the construction of dwellings on individual lots within the site. The most relevant applications have been detailed:

N0182/13 for 40 Lot subdivision of 2 existing lots, demolition of existing structures and dwellings and construction of associated infrastructure in three stages. Approved by the Court on Appeal 15 October 2014

N0182/13/s96/1 for 40 Lot subdivision of existing sites and demolition of existing structures. A section 96(8) modification of a Court issued consent seeking to modify condition C19 relating s.94 monetary contribution and staging of those payments. Approved by Appeal Consent Orders 3 August 2015

N0182/13/s96/2 for 40 Lot subdivision of existing sites and demolition of existing structures - Modify condition C19 regarding amount of S94 was dismissed by the Court on Appeal 3 December 2015.

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 N0182/13, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.56 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.56- Other Modifications	Comments
(1) 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 development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under N0182/13.
(b) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Pittwater Local Environment Plan 2014 and Pittwater 21 Development Control Plan.
(c) it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and	Written notices of this application have been sent to the last address known to Council of the objectors or other persons who made a submission in respect of N0182/13.
(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 4.56 of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 96 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 79C 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clause 50(1A)</u> of the EP&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&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&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&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate</p>

Section 79C 'Matters for Consideration'	Comments
	from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.
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	(i) 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. (ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	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 has been publicly exhibited from 18/08/2020 to 01/09/2020 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of 1 submission/s from:

Name:	Address:
Dragica Roso Veselko Roso	4 / 25 Gladstone Street NEWPORT NSW 2106

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

- Roaming cats

The matters raised within the submissions are addressed as follows:

- Roaming cats

Concern has been raised regarding the issue of roaming cats, in particular the impact that they may have on neighbouring properties, native wildlife, noise and attacking the public.

Comment:

The condition has been amended to allow for the keeping of cats on the premises however, cats are to be kept inside the dwelling at all time. This limits the impact of the cats on neighbouring properties and the surround environment.

This matter as conditioned does not warrant the refusal of the application.

REFERRALS

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	The proposed modification has been considered, and Conditions E5 (i) & (ii) have been amended to reflect the requirements for keeping of domestic pets applied to more recent development consents within the Warriewood Valley area. The keeping of domestic cats is to be allowed, with a requirement that they are to be kept indoors at all times. The amended conditions are to be reflected in an amended Community Management Statement.

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 (Coastal Management) 2018

The site is subject to SEPP Coastal Management (2018). Accordingly, an assessment under the SEPP has been carried out as follows:

11 Development on land in proximity to coastal wetlands or littoral rainforest

- (1) *Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:*
 - (a) *the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or*

- (b) *the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.*

Comment:

The proposed modification of the condition will not impact significantly on the biophysical, hydrological or ecological integrity of the adjacent coastal wetland, or the quality and quantity of surface and groundwater flows.

As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

15 Development in coastal zone generally—development not to increase risk of coastal hazards

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

Comment:

It is considered the proposal complies with this clause.

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

The modification is for the change of a condition only and an assessment against the Principal Development Standards is not required for this application.

Compliance Assessment

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

Pittwater 21 Development Control Plan

Built Form Controls

The modification is for the change of a condition only and an assessment against the built form controls is not required for this application.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
C6.3 Ecologically Sustainable Development, Safety and Social	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
Inclusion		

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

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Pittwater Local Environment Plan;
- Pittwater Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

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

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2020/0352 for Modification of Development Consent N0182/13 granted for 40 Lot subdivision of existing sites and demolition of existing structures on land at Lot 3 DP 270907,73 Lorikeet Grove, WARRIEWOOD, Lot 4 DP 270907,75 Lorikeet Grove, WARRIEWOOD, Lot 5 DP 270907,77 Lorikeet Grove, WARRIEWOOD, Lot 6 DP 270907,79 Lorikeet Grove, WARRIEWOOD, Lot 7 DP 270907,3 Baz Retreat,

WARRIEWOOD, Lot 8 DP 270907,5 Baz Retreat, WARRIEWOOD, Lot 9 DP 270907,7 Baz Retreat, WARRIEWOOD, Lot 10 DP 270907,9 Baz Retreat, WARRIEWOOD, Lot 11 DP 270907,8 Baz Retreat, WARRIEWOOD, Lot 12 DP 270907,10 Baz Retreat, WARRIEWOOD, Lot 13 DP 270907,12 Baz Retreat, WARRIEWOOD, Lot 14 DP 270907,14 Baz Retreat, WARRIEWOOD, Lot 15 DP 270907,16 Baz Retreat, WARRIEWOOD, Lot 16 DP 270907,18 Baz Retreat, WARRIEWOOD, Lot 17 DP 270907,20 Baz Retreat, WARRIEWOOD, Lot 18 DP 270907,22 Baz Retreat, WARRIEWOOD, Lot 19 DP 270907,24 Baz Retreat, WARRIEWOOD, Lot 20 DP 270907,26 Baz Retreat, WARRIEWOOD, Lot 21 DP 270907,28 Baz Retreat, WARRIEWOOD, Lot 22 DP 270907,30 Baz Retreat, WARRIEWOOD, Lot 2 DP 270907,71 Lorikeet Grove, WARRIEWOOD, Lot 23 DP 270907,65 - 69 Lorikeet Grove, WARRIEWOOD, subject to the conditions printed below:

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

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

a) Modify Condition E5 to read as follows:

The existing conditions E5(i) and E5(ii), within development consent N0182/13 are to be replaced as follows: -

- E5 (i) Ferrets and rabbits are not permitted to be kept on site
- E5 (ii) Domestic dogs and cats are to be kept from entering wildlife habitat areas at all times. Cats are to be kept inside the dwelling at all times. Dogs are to be kept in an enclosed area and/or inside the dwelling, or on a leash such that they cannot enter areas of wildlife habitat or bushland unrestrained, on the site or on surrounding properties or reserves.

The Community Management Statement By-Law 28.1 shall be amended to reflect the above requirements

Reason: To protect native wildlife in accordance with relevant Natural Environment LEP/DCP controls.

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Stage 2 of this consent relates to the subdivision of the residue lot (Lot 12) to create 29 residential lots and 1 common lot under Community Title. The applicant is to submit a Neighbourhood Development Contract and Community Management Statement which incorporates all of the statutory requirements of Schedule 2 of the Community Land Development Act, 1989 and is to specifically address the following:

- (i) Ferrets and rabbits are not to be kept on site.
- (ii) Domestic dogs and cats are to be kept from entering wildlife habitat areas at all times. Cats
- (iii) Space management strategies including activity coordination, site cleanliness, rapid repair
- (iv) Matters relevant under conditions E1 and E3 above, in particular the management and res

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

Signed



Rhiannon McLardy, Planner

The application is determined on 09/10/2020, under the delegated authority of:



Rodney Piggott, Manager Development Assessments