

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2020/0164
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<b>Responsible Officer:</b>	Kent Bull
<b>Land to be developed (Address):</b>	Lot 10 DP 1207743, 1110 Barrenjoey Road PALM BEACH NSW 2108
<b>Proposed Development:</b>	Modification of Development Consent N0482/98 granted for subdivision of six lots into five lots comprising two commercial and three residential allotments in two stages
<b>Zoning:</b>	E4 Environmental Living
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Antony Mattox
<b>Applicant:</b>	Antony Mattox

<b>Application Lodged:</b>	01/05/2020
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Subdivision only
<b>Notified:</b>	11/05/2020 to 25/05/2020
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	4.1 Minimum subdivision lot size: %
<b>Recommendation:</b>	Approval

### PROPOSED DEVELOPMENT IN DETAIL

The s.4.55(1a) modification application seeks consent to modify Development Consent N0482/98, as modified, in the following way:

- Amend Stage 2 - Condition A.iv to reference to an amended plan of subdivision.

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

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

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.

**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 Local Environmental Plan 2014 - 4.1 Minimum subdivision lot size  
 Pittwater 21 Development Control Plan - B2.2 Subdivision - Low Density Residential Areas  
 Pittwater 21 Development Control Plan - C4.7 Subdivision - Amenity and Design

**SITE DESCRIPTION**

<b>Property Description:</b>	Lot 10 DP 1207743 , 1110 Barrenjoey Road PALM BEACH NSW 2108
<b>Detailed Site Description:</b>	<p>The site currently comprises three separate lots; 1102 Barrenjoey Road (Lot 11 DP 1207743), 1108 Barrenjoey Road (Lot 2 DP 1004105) and 1110 Barrenjoey Road (Lot 10 DP 1207743), Palm Beach. The site is irregular in shape and adjoins both Barrenjoey Road to the east and Pacific Road to the west, with a maximum width of approximately 80m, a maximum depth of approximately 90m, and a total area of 5017m<sup>2</sup>. The current division of the 3 lots is a result of the Stage 1 subdivision approved pursuant to N0482/98, as amended.</p> <p>1102 Barrenjoey Road currently contains a single storey fish and chip shop and outdoor eating areas. 1108 Barrenjoey Road contains an existing two storey heritage listed building</p>

known as 'Barrenjoey House' (item 2270076). With the exception of a driveway, 1110 Barrenjoey Road that has a surveyed area of 1137m<sup>2</sup>, is generally free from any development, and features a number of existing canopy trees and rock outcrops.

1102 and 1108 Barrenjoey Road are zoned B1 Neighbourhood Centre, with 1110 Barrenjoey Road zoned E4 Environmental Living, under the provisions of PLEP 2014.

This Section 4.55(1A) Application specifically applies to the Stage 2 subdivision approved pursuant to N0482/98, as amended, that relates to 1110 Barrenjoey Road (Lot 10 DP 1207743), Palm Beach.

The site is identified as being subject to the Northern Beaches Council Flood Hazard Map, Estuarine Hazard Map, Pittwater Geotechnical Hazard Map and the Pittwater Biodiversity Map.

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

Development adjoining the rear of the site is characterised by low-density residential dwellings of varying architectural style and age within a landscaped/bushland settings. Directly adjoining the north of the site include commercial tenancies and adjacent to the west is a Council carpark associated with Pittwater Park and Palm Beach Wharf.

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:

21 April 1999

Development Application N0482/98 was approved by Council for the subdivision of 6 lots into 5 lots at the subject site in two stages:

Stage 1 - the subdivision of 6 lots into 3 lots (as currently reflected on site).

Stage 2 - the subdivision of the rear lot (currently 1110 Barrenjoey Road) into 3 lots.

N0482/98 was approved with a condition requiring building footprints to be restricted on title on the 3 lots resulting from the Stage 2 subdivision.

2 April 2013

Modification Application N0482/98/S96/1 was approved by Council, to alter the division of the resultant lots.

3 September 2019

Modification Application Mod2019/0335 was approved by Council, to delete a number of Stage 1 and Stage 2 conditions as well as amending Stage 2 Condition D6 to read as follows; The following trees identified on Drawing No PB-DA-01-1, dated 01-08-2012 are to be retained, Nos 9, 29, 30, 38, 41 and 44.

28 November 2019

Pre-lodgement meeting PLM2019/0246 was held between the applicant and Council to discuss the construction of a new dwelling on proposed Lot 4 (subject site) of 1110 Barrenjoey Road, Palm Beach.

29 April 2020

Development Application No. DA2020/0016 for the construction of a dwelling house granted subject to a deferred commencement condition that needs to be satisfied before the consent can operate from any other conditions.

**APPLICATION HISTORY**

15 May 2020

Site inspection undertaken by the development assessment officer.

18 May 2020

Phone correspondence between an adjoining property owner and the development assessment officer to clarify the proposed works.

25 May 2020 - 18 June 2020

Various email and phone correspondence between the applicant and the development assessment officer to clarify matters relating to proposed lot sizes, right of carriageways and easements.

18 June 2020

Final plan of subdivision submitted to Council. This plan was accepted by Council for assessment.

**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 Development Consent No. N0482/98, 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:

<b>Section 4.55(1A) - Other Modifications</b>	<b>Comments</b>
<p>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:</p>	
<p>(a) it is satisfied that the proposed modification is of minimal environmental impact, and</p>	<p><b>Yes</b> The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons:  The application seeks minor boundary adjustments to provide an access handle to each of the three (3) residential lots. The proposal will not result in an increase to the density on the land and as such is not considered to result in unreasonable impacts on the amenity of the area. Further, the modified plan of subdivision does not seek the removal of any native vegetation or removal of rock outcrops on the land, and therefore is not seen to have impacts upon the natural environment.</p>
<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>	<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 N0482/98 for the following reasons:  The application involves modifications that are to facilitate a legal site frontage to Barrenjoey Road and with reciprocal rights of carriageway and easements for drainage and easements for</p>



Section 4.55(1A) - Other Modifications	Comments
	services for each of the three residential allotments. Whilst there is a minor reduction to the lot sizes as a result of these proposed changes, the configuration of these lots remain comparable to that approved under the development consent (as amended). Further, the modified plan of subdivision does not result in an additional residential allotment.
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require,</p> <p>or</p> <p>(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</p>	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.
<p>(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.</p>	No submissions were received in relation to this application.

### 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 'Matters for Consideration'	Comments
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)(iiiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to amendments to the plan of subdivision.</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 clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p>
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 (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 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 of the application Council received no submissions.

## REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The application is for modification of approved subdivision under consent N0482/98. 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.</p> <p>The proposed modified plan of subdivision is proposed 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. In terms of the landscape component of the application, this avoids the loss of the existing mature screen trees along the edges of the existing driveway and the western boundary of the residential site, maintaining the existing landscape buffer between the commercial and residential uses of the subdivision land.</p> <p>Council's Landscape Referral section supports the modification application subject to continuance of all related landscape conditions under Consent approvals.</p>
NECC (Bushland and Biodiversity)	<p>The application is for modification of approved subdivision under consent N0482/98. The Section 4.55 Application specifically relates to minor boundary adjustments to the approved Stage 2 subdivision of No. 1110 Barrenjoey Road, Palm Beach (the residential site).</p> <p>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. No impact to biodiversity values is likely to result from the proposed works.</p> <p>Council's Biodiversity Referral section supports the modification application subject to continuance of all related biodiversity conditions under Consent approvals.</p>
NECC (Development Engineering)	<p>The proposal seeks to amend boundaries for the rear Lot 1, Lot 4 and Lot 5 in stage 2 for the sewer reticulation works.No Development Engineering objection is raised subject to ensuring that the</p>



Internal Referral Body	Comments								
	constructed driveway and services are contained within the proposed easement as shown on the amended subdivision plan.								
Strategic and Place Planning (Heritage Officer)	<b>HERITAGE COMMENTS</b>								
	<b>Discussion of reason for referral</b>								
	The proposal has been referred to Heritage as it is within proximity to two heritage items								
	<p><b>“Barrenjoey House” (restaurant and accommodation) - 1108 Barrenjoey Road</b></p>								
	<p><b>“Winten” (house) - 21 Palm Beach Road</b></p>								
	<b>Details of heritage items affected</b>								
	Details of the items as contained within the Pittwater heritage inventory are as follows								
	<p><b>Barrenjoey House</b></p> <p><u>Statement of significance:</u> Barrenjoey House is historically significant as it has been in nearly continuous use as a restaurant and guest house since it was built in 1923 by Albert Verrills. It was also the first place in Palm Beach to have a telephone and as such it holds social significance for the Palm Beach community.</p> <p><u>Physical description:</u> This plastered two-storey plastered brick building with pitched roof was built as a guest house in 1923. It features a sunny dining room with windows the length of one wall overlooking the water and a large terrace with canvas canopy for outdoor dining. The interior retains traditional character including wallpaper and emu chandeliers.</p> <p><b>Winten</b></p> <p><u>Statement of significance:</u> Winten was built in the 1920s as a holiday house. As such it has historical significance as one of the earliest developments in Palm Beach.</p> <p><u>Physical description:</u> Winten is located on a steep site, with the view from the street screened by luxuriant vegetation creating a natural bush setting. Winten is a single storey cottage weatherboard to sill and asbestos sheet and battens with shingle gabled roof and casement windows.</p> <table border="1" data-bbox="512 1912 1439 2136"> <thead> <tr> <th colspan="3" data-bbox="512 1912 852 1957">Other relevant heritage listings</th></tr> </thead> <tbody> <tr> <td data-bbox="512 1957 852 2092">Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</td><td data-bbox="852 1957 948 2092">No</td><td data-bbox="948 1957 1439 2092"></td></tr> <tr> <td data-bbox="512 2092 852 2136">Australian Heritage</td><td data-bbox="852 2092 948 2136">No</td><td data-bbox="948 2092 1439 2136"></td></tr> </tbody> </table>	Other relevant heritage listings			Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No		Australian Heritage	No
Other relevant heritage listings									
Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No								
Australian Heritage	No								

Internal Referral Body	Comments		
	Register		
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	No	
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	N/A	
	<b>Consideration of Application</b>		
	<p>The proposal seeks consent to modify an approved subdivision. Proposed modifications include access handles for Lots 101, 102, 103 and subsequent changes to easements and the right of carriageway. The proposal will allow for the construction of domestic wastewater services rather than a sewer main requiring significant excavation at the rear of Barrenjoey House. The proposed modification is considered to have no impact upon Barrenjoey House or Winten.</p> <p>Thus Heritage raises no objections and requires no conditions.</p> <p>Consider against the provisions of CL5.10 of PLEP.</p> <p>Is a Conservation Management Plan (CMP) Required? No            Has a CMP been provided? No            Is a Heritage Impact Statement required? No            Has a Heritage Impact Statement been provided? No</p>		
	<b>Further Comments</b>		
	COMPLETED BY: Brendan Gavin, Principal Planner		
	DATE: 6 May 2020		

External Referral Body	Comments		
Ausgrid: (Electricity Supply)	<p>The proposal was referred to Ausgrid who provided a response in an email stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.</p>		

### ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\*

All, Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and

operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

## **State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)**

### **SEPP 55 - Remediation of Land**

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

### **SEPP (Infrastructure) 2007**

#### Ausgrid

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

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

#### Comment:

The proposal was referred to Ausgrid who provided a response in an email stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

### **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:

#### **13 Development on land within the coastal environment area**

- (1) *Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:*
- (a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*

- (b) *coastal environmental values and natural coastal processes,*
- (c) *the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
- (d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
- (e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
- (f) *Aboriginal cultural heritage, practices and places,*
- (g) *the use of the surf zone.*

Comment:

The proposed modifications are unlikely to result in adverse impact to the integrity and resilience of the biophysical, hydrological (surface and ground water) and ecological environment, coastal environmental values and natural coastal process, the water quality of the marine estate, or to marine vegetation, native vegetation and fauna and their habitats, underdeveloped lands and rock platforms. The modifications do not restrict any existing public open space or safe access along the foreshore for members of the public, including persons with a disability. The application is not seen to likely to adversely impact upon Aboriginal cultural heritage, practices and places. The modifications will not adversely impact the use of the surf zone.

- (2) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*
  - (a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or
  - (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
  - (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment:

The proposed modifications have been designed, sited and will be managed to avoid an adverse impact on the cultural and environmental aspects referred to in Subclause (1).

**14 Development on land within the coastal use area**

- (1)
  - (a) has considered whether the proposed development is likely to cause an adverse impact on the following:
    - (i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
    - (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
    - (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,
    - (iv) Aboriginal cultural heritage, practices and places,
    - (v) cultural and built environment heritage, and
  - (b) is satisfied that:
    - (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or

- (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
  - (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and
- (c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

The proposed modifications are not likely to cause an impact on the existing access along the foreshore for members of the public, including persons with a disability and will not cause any overshadowing, wind tunneling or loss of views from public places to foreshores. The visual amenity and scenic qualities of the coast, including the coastal headlands will be preserved. The modifications are not seen to have an adverse impact on the cultural and built environment heritage. It is considered that the modifications has satisfied the requirement to be designed, sited and will be managed to avoid an adverse impact to the above mentioned cultural and environmental aspects. The proposed modifications are considered acceptable when taking account of the surrounding coastal and built environment.

**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:

The proposed modifications are not likely to cause increased risk of coastal hazards on the subject site or other land.

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

**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

Development Standard	Requirement	Approved*	Proposed	% Variation	Complies
Minimum subdivision lot size:	1200sqm	Lot 1: 1059.35m <sup>2</sup> (now referred to as Lot 101)	Lot 101: 970m <sup>2</sup> (Excluding handles and right of carriageway)	Change from approved: - 89m <sup>2</sup>	No (See discussion under Clause 4.1 below)
		Lot 4: 987.66m <sup>2</sup>	Lot 102: 931m <sup>2</sup> (Excluding handles	Change from approved: -	



		(now referred to as Lot 102)	and right of carriageway)	56.66m <sup>2</sup>	
		Lot 5: 967.89m <sup>2</sup> (now referred to as Lot 103)	Lot 103: 986.7m <sup>2</sup> (Excluding handles)	Change from approved: +18.81m <sup>2</sup>	

\*Approved lot sizes as indicated within the assessment report for Modification Application No. N0482/98/S96/1 dated 2 April 2013.

#### Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
2.6 Subdivision - consent requirements	Yes
4.1 Minimum subdivision lot size	No
5.10 Heritage conservation	Yes

#### Detailed Assessment

##### **4.1 Minimum subdivision lot size**

In 'Gann v Sutherland Shire Council [2008] NSWLEC 157', the Court was prepared to distinguish an earlier line of authority, and hold that, since Section 4.55 was a "free-standing" provision, it could be utilised to modify a consent even where (in that case) no SEPP 1 or Clause 4.6 Objection could be lodged.

By application of that case in the context of this application, the Council can consider (and approve) a modification that still results in a breach of the minimum subdivision lot size control, without reference to SEPP 1 or Clause 4.6, relying instead on the "free-standing" power of Section 4.55.

In this regard, the matters for consideration under SEPP 1 or Clause 4.6 provide a reasonable and consistent means of assessing any Section 4.55 that is beyond the provisions of the planning controls.

Whilst this modification application will result in lot sizes that are lesser than that permitted by Clause 4.1 of the PLEP 2014, the application does not strictly need to address the requirements of Clause 4.6. This application has been made under section 4.55 of the EP&A Act, which is a free-standing provision which in itself authorises the development to be approved notwithstanding any breach of development standards. Section 4.55 is subject to its own stand-alone tests (such as the substantially the same test and consideration of all relevant section 4.15 matters) and does not rely upon having a Clause 4.6 variation objection in order to determine the modification.

Clause 4.6 regulates whether development consent may be granted, not whether an existing consent may be modified, and therefore does not apply to Section 4.55 modification applications. Notwithstanding that Clause 4.6 does not apply to modification applications, the merits of the departure have been assessed and found that the development satisfies the underlying objectives of Clause 4.1 Minimum subdivision lot size under PLEP 2014 and the variation can be supported on its merit.

The modification results in a further breach of the development standard by 89m<sup>2</sup> for Lot 101 (970m<sup>2</sup>), 56.66m<sup>2</sup> for Lot 102 (931m<sup>2</sup>), and an increase to the lot size by 18.81m<sup>2</sup> for Lot 103 (970m<sup>2</sup>). These

changes to the plan of subdivision are 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. The application has indicated that these modification 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. In this regard, Council is satisfied that the modified development is substantially the same development as previously approved and therefore no assessment against the objectives of Clause 4.6 is required and the departure from the development standard is supported in this instance.

## Pittwater 21 Development Control Plan

### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach Locality	Yes	Yes
B1.2 Heritage Conservation - Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B2.2 Subdivision - Low Density Residential Areas	No	Yes
C4.1 Subdivision - Protection from Hazards	Yes	Yes
C4.2 Subdivision - Access Driveways and Off-Street Parking Facilities	Yes	Yes
C4.5 Subdivision - Utility Services	Yes	Yes
C4.6 Service and delivery vehicle access in subdivisions	Yes	Yes
C4.7 Subdivision - Amenity and Design	No	Yes

### Detailed Assessment

#### **B2.2 Subdivision - Low Density Residential Areas**

A requirement of this control details that subdivisions are not to result in allotments with a slope in excess of 16.7 degrees (30%). Notwithstanding the existing development consent, the variations within the control allow considerations for the purposes of an adjustment to a boundary between allotments that does not create an additional lot. As this application does not seek to create an addition lot, and if rather for the purposes of changes to reciprocal rights of carriageway, easements for drainage, easements for services and for a minor boundary adjustment to provide an access handle to each of the three residential lots, the variation is seek as applicable in this instance. The modification application is also seen to comply with the relevant outcomes of this control, as is therefore recommended to be supported on merit.

#### **C4.7 Subdivision - Amenity and Design**

The requirements of this control detail that a building envelope should be nominated on each proposed lot within which any future building is to be contained. The following discussion within the assessment report for Modification Application No. Mod2019/0335 provided support for the deletion of Condition J37

which had initially imposed specific building footprints as part of the development consent:

*"Upon review of assessment report produced as part of the original consent, there appears to*

As discussed earlier within this report, whilst the application proposes minor changes to the approved lot sizes for proposed Lot 101, 102 and 103, the resultant allotments are seen to continue being sufficiently sized, with adequate usable site area to accommodate a dwelling house.

The changes as proposed are considered to satisfy the relevant outcomes of this control and is therefore recommended to be supported on merit.

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

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

### **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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

### **POLICY CONTROLS**

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

Section 7.12 contributions were levied on the Development Application.

#### **Consideration of modifications sought**

The modifications sought are considered individually, as follows:

##### Stage 2

- Amend Condition A.iv to reference to an amended plan of subdivision. Condition A.iv current reads 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.*

Comment: As detailed earlier within this assessment report, the proposed plan of subdivision is considered substantially the same development as previously approved and is seen to achieve consistency with the PLEP and P21 DCP. To enable the construction of necessary sewer connection points for the three residential allotment, it is recommended that the condition be amended to reference the amended plan.

### **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. Mod2020/0164 for Modification of Development Consent N0482/98 granted for subdivision of six lots into five lots comprising two commercial and three residential allotments in two stages on land at Lot 10 DP 1207743, 1110 Barrenjoey Road, PALM BEACH, subject to the conditions printed below:

### **A. Amend Stage 2 Condition A.iv 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\_5, dated 16 June 2020 prepared by Adam Clerke, Surveyor.*

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

### **B. Add Condition "Compliance with Other Department, Authority or Service Requirements" under heading K. GENERAL ADVICE to read as follows:**

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

<b>Other Department, Authority or Service</b>	<b>EDMS Ref</b>
Ausgrid	Response

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au))

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

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

**Signed**



**Kent Bull, Planner**

The application is determined on 26/06/2020, under the delegated authority of:



**Matthew Edmonds, Manager Development Assessments**