

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2019/0169
<b>Responsible Officer:</b>	Claire Ryan
<b>Land to be developed (Address):</b>	Lot 1 DP 202857, 7 Trentwood Park AVALON BEACH NSW 2107
<b>Proposed Development:</b>	Modification of Development Consent N0530/15 granted for subdivision of one lot into three demolition of existing detached garage and extension of existing access road to provide access to new lots
<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>	James Brian Dargaville Margot Christina Dargaville
<b>Applicant:</b>	Gartner Trovato Architects
<b>Application lodged:</b>	16/04/2019
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Subdivision only
<b>Notified:</b>	03/05/2019 to 17/05/2019
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	1
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

### 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

<b>Property Description:</b>	Lot 1 DP 202857 , 7 Trentwood Park AVALON BEACH NSW 2107
<b>Detailed Site Description:</b>	<p>The Assessing Officer inspected the subject site on 17 July 2019.</p> <p>The subject site consists of one (1) battleaxe allotment located on the eastern side of Trentwood Park, Avalon Beach.</p> <p>The site is irregular in shape with a frontage of 12.79m along the cul-de-sac of Trentwood Park and a surveyed area of 5,417m<sup>2</sup>.</p> <p>The site is located within the E4 Environmental Living zone and accommodates a detached dwelling house and garage.</p> <p>The site is heavily vegetated with a slope of approximately 39m from the west (rear) to east (front).</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by detached dwelling houses. To the south of the site is heritage-listed Ruskin Rowe Heritage Conservation Area.</p>

Map:



## SITE HISTORY

The land has been used for residential purposes for an extended period of time. A search of Council's records has revealed the following relevant recent history:

- N0259/14 for Subdivision of site into three (3) lots was withdrawn on 19 March 2015 by the Applicant.
- N0530/15 for Subdivision of one lot into three, demolition of existing detached garage and extension of existing access road to provide access to new lots was refused on 10 January 2017 by Council. The refusal was appealed through the NSW Land and Environment Court, where the appeal was upheld on 15 November 2017.
- Pre-lodgement Meeting PLM2018/0179 was held on 23 August 2018 for Subdivision of one lot into 4.
- DA2019/0393 for Subdivision of one lot into two is currently under assessment.
- DA2019/0394 for Construction of a dwelling house (Lot 1) is currently under assessment.
- DA2019/0395 for Construction of a dwelling house (Lot 3) is currently under assessment.

## PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks to modify Development Consent N0530/15 in order to provide a boundary adjustment to the driveway.

## 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 N0530/15, 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 N0530/15.
(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 2014.
(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 N0530/15.
(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 2014 applies to this proposal.
Section 4.15 (1) (a)(iia) – 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>Clause 50(1A)</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allows Council to request additional information. No additional information was requested.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This 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 insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p>



Section 79C 'Matters for Consideration'	Comments
	<p>Clause 98 of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p> <p>Clause 143A of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan 2014 section in this report.</p> <p>(ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) 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 classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection. A Bush Fire Report was submitted for the conciliation conference of the original application (prepared by Bushfire Protection Planners Pty Ltd dated 24 August 2017) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report and the recommendations by the NSW Rural Fire Service were included as conditions of consent.

## 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 process council is in receipt of 1 submission/s from:

Name:	Address:
Ms Elizabeth Sodahl Inge Sodahl	43 C Chisholm Avenue AVALON BEACH NSW 2107

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

- Objections to works proposed under DA2019/0393, DA2019/0394, and DA2019/0395 (applications on subject site currently under assessment).
- The proposed modifications will result in unreasonable environmental impacts on trees, and further erode biodiversity.
- The proposal is not substantially the same as that for which consent was granted.
- The driveway is inconsistent with the objectives of the E4 Environmental Living zone.
- Emergency services access should be considered.
- Council's Development Engineer is not supportive of the proposal.
- Documentation submitted is misleading and shows works beyond just boundary adjustment. A plan referenced in the Statement of Environmental Effects (A01(H)) is not online for viewing.

The matters raised within the submissions are addressed as follows:

- Other DAs on Site  
Comment:  
Objections to works under DA2019/0393, DA2019/0394, and DA2019/0395 will be assessed in association with those applications.
- Environmental Impacts  
Comment:  
This modification application proposes boundary adjustment to the approved driveway area only. The proposal does not include driveway extension through other lots beyond that already approved. The proposed modifications do not require removal of additional trees.
- Substantially the Same  
Comment:  
This modification application proposes boundary adjustment to the approved driveway area. This results in a development that is materially and substantially the same as that which consent was granted for. As above, the impacts of other development applications currently on site will be assessed through those applications.
- E4 Environmental Living Zone  
Comment:  
As above, the proposal includes boundary adjustment only and is therefore acceptable in relation to the objectives of the E4 Environmental Living zone.
- Emergency Services Access  
Comment:  
The approved development provided acceptable emergency services access. The proposed

modifications do not alter such access.

- Development Engineer

Comment:

Council's Development Engineer was initially not supportive of the proposed modifications as the subdivision plan had not been prepared by a surveyor including the required information. The Applicant provided an amended subdivision plan on 13 June 2019, which Council's Development Engineer was supportive of.

- Documentation / Plans

Comment:

Other than demonstrating the boundary adjustment, the plans submitted with the development application show indicative building locations, consistent with the approved plans. No further works are shown on the plans. Plan A01(H) was placed online for public viewing on 18 April 2019 (prior to the notification period commencement) and remains online.

## REFERRALS

Internal Referral Body	Comments
NECC (Development Engineering)	<p>The proposed modification of the previously approved subdivision to include access handles for proposed lots 2 and 3 up to the boundary with Trentwood Park has been assessed. The submitted plan for the proposal has been undertaken by the Architect and not the Surveyor. As such the information required for a plan of subdivision has not been shown and as the applicant proposes to replace the approved plan, it is considered that the new plan must be prepared by the Surveyor. The plan is to include bearings and distances for all the boundary lines. The plan is to include the proposed lot area for each lot and a separate lot area excluding the proposed access handle. The proposed right of way including the passing bay is to be shown on the plan together with the approved building footprints.</p> <p>Development Engineers cannot support the application due to insufficient information to assess the proposed subdivision lot size in accordance with Clause 4.1 of Pittwater LEP 2014.</p> <p><b>Additional Information submitted 18/06/2019</b></p> <p>The submitted survey plan for the proposed modification is acceptable.</p> <p>Development Engineers raise no objection to the proposed modification subject to the deletion of the plans by Adam Clerke in condition A 1 of the Court consent 2017/00202349 and the addition of the new plan by Adam Clerke, Ref:11713DP_3 dated 7/06/2019.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been



External Referral Body	Comments
	received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

## **ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\***

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

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

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

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

### **SEPP 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. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

### **SEPP (Coastal Management) 2018**

The site is classified as being within the littoral rainforests area, according to the State Environmental Planning Policy (Coastal Management) 2018. Accordingly, an assessment under the SEPP has been carried out as follows:

#### **10 Development on certain land within coastal wetlands and littoral rainforests area**

- (1) *The following may be carried out on land identified as “coastal wetlands” or “littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map only with development consent:*
- (a) *the clearing of native vegetation within the meaning of Part 5A of the Local Land Services Act 2013,*
  - (b) *the harm of marine vegetation within the meaning of Division 4 of Part 7 of the Fisheries Management Act 1994,*
  - (c) *the carrying out of any of the following:*
    - (i) *earthworks (including the depositing of material on land),*
    - (ii) *constructing a levee,*
    - (iii) *draining the land,*
    - (iv) *environmental protection works,*
  - (d) *any other development.*

Comment:

The proposed development falls under (d), being modification of Development Consent N0530/15 for subdivision of one lot into three. The proposed modification seeks consent for boundary adjustment to the driveway. The proposed modification is in accordance with Clause 10 above.

#### **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 modification does not materially change the approved development, nor increase risk of coastal hazards on the subject site or adjacent sites.

#### **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:	700sqm	Lot 1: 901sqm (1,205sqm with access)	Lot 1: 879sqm (890sqm with access)	N/A	Yes
		Lot 2: 2,535sqm (2,823sqm)	Lot 2: 2,676sqm (2,907sqm with access)	N/A	Yes

		Lot 3: 1,390sqm	Lot 3: 1,389sqm (1,621sqm with access)	N/A	Yes
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#### Compliance Assessment

Clause	Compliance with Requirements
2.6 Subdivision - consent requirements	Yes
4.1 Minimum subdivision lot size	Yes
5.10 Heritage conservation	Yes
7.10 Essential services	Yes

### **Pittwater 21 Development Control Plan**

#### Built Form Controls

There are no built form controls under the P21 DCP to consider as part of this application.

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.1 Avalon Beach Locality	Yes	Yes
A5.1 Exhibition, Advertisement and Notification of Applications	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	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.2 Bushfire Hazard	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
C4.1 Subdivision - Protection from Hazards	Yes	Yes
C4.5 Subdivision - Utility Services	Yes	Yes
C4.6 Service and delivery vehicle access in subdivisions	Yes	Yes

### **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.

## **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. Mod2019/0169 for Modification of Development Consent N0530/15 granted for subdivision of one lot into three demolition of existing detached garage and extension of existing access road to provide access to new lots on land at Lot 1 DP 202857,7 Trentwood Park, AVALON BEACH, 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) Modification Approved Plans

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
A01 Sketch Design Site Plan	15 October 2018	Gartner Trovato Architects
Plan of Proposed Subdivision of Lot 1 in D.P.202857	7 June 2019	Adam Clerke Surveyors

b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

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

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

**Signed**



**Claire Ryan, Principal Planner**

The application is determined on 26/07/2019, under the delegated authority of:



**Matthew Edmonds, Manager Development Assessments**