

Statement of Environmental Effects

Section 4.55 (2) Application

2 Macpherson Street, Warriewood

Amend Building Envelope Plan

20 August 2021

PREPARED BY

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Contents

1	Introduction	2
2	Site and Surrounding Locality	3
2.1	The Site	3
2.2	Surrounding Development	4
2.3	Approval History	5
2.3.1	Development Application (N0398/2017)	5
2.3.2	Development Application (DA2019/0887)	5
3	Section 4.55(2) Modification.....	6
3.1	Overview of Proposed Modification	6
3.2	Example of future floor plan	8
3.3	Amended Conditions	10
4	EP&A Act 1979 – Section 4.55(2) Assessment.....	11
4.1	Substantially the Same	11
4.2	Lot Layout	11
4.3	Land Use	12
4.4	Ministerial Concurrence	12
4.5	Section 4.15 Considerations	12
5	EP&A ACT 1979 - Section 4.15 Assessment	13
5.1	Pittwater Local Environmental Plan 2014	13
5.2	Section 4.15(1)(a)(ii): Development Control Plans.....	14
5.2.1	Pittwater 21 Development Control Plan	14
5.3	Additional Pittwater DCP Assessment	18
5.4	Section 4.15(1)(a)(iia): Planning Agreements.....	18
5.5	Section 4.15(1)(a)(iv): Regulations	18
5.6	Section 4.15(1)(b): Likely Impacts	18
5.7	Section 4.15(1)(c): Suitability of the Site	19
5.8	Section 4.15(1)(d): Submissions.....	19
5.9	Section 4.15(1)(e): The Public Interest.....	19
6	Conclusion.....	20

Annexure

Annexure 1: Amended Architectural Plans

Annexure 2: Traffic Supplementary Letter

1 Introduction

This modification application has been prepared by Karimbla Construction Services (NSW) Pty under the provisions of Section 4.55 (2) of the Environmental Planning and Assessment Act 1979 (EP & A Act). It seeks to modify development application (2019/0887) located at located 2 Macpherson Street, Warriewood which was approved by the Northern Beaches Council on 28 July 2020.

Resulting from further detailed design, specifically around maximising site efficiency, consent is sought to introduce zero-lot boundaries on 16 of the approved residential lots (lots 4 – 11 and 14 - 21). The proposed changes are consistent with Section C6 - Design Criteria for Warriewood Release Area controls of Pittwater Development Control Plan 21. The changes shown on revised building envelope plan are considered to result in substantially the same development as that approved under (2019/0887) number.

This report includes the following information:

- Description of the site, its context and approval history.
- A description of the proposed modifications along with suggested condition amendments.
- Assessment of modified proposal against relevant environmental planning instruments, policies and guidelines relevant to the Site.
- A summary and conclusion of the issues addressed.

Further, the following supporting documentation is attached in Annexures 1.

Overall, the assessment has found that:

- The proposed development is substantially the same as that originally approved.
- The proposal will not result in any unacceptable environmental impacts.
- The proposed modifications meet the relevant requirements of section 4.15 and 4.22 of the Act 1979.

Accordingly, it is recommended that the application be approved under Section 4.55(2) of the Act 1979.

2 Site and Surrounding Locality

2.1 The Site

The subject site is located on the corner of Macpherson Street and Warriewood Road and is legally described as Lot 25 Section C in DP5464 being 2 Macpherson Street, Warriewood. The site is an irregularly shaped parcel of land and has a total area of approximately 2.3 hectares and a street frontage of over 120 metres to Macpherson Street.

The subject site is located within the Warriewood Valley Urban Release Area, identified in Section A4.16 of the Pittwater Development Control 2014 as a precinct for future development. The Warriewood Valley Urban Release Area is situated at the base of the escarpment, known as Ingleside Chase Reserve, between Mona Vale and Warriewood.

The sites locational context is shown at **Figure 1**.

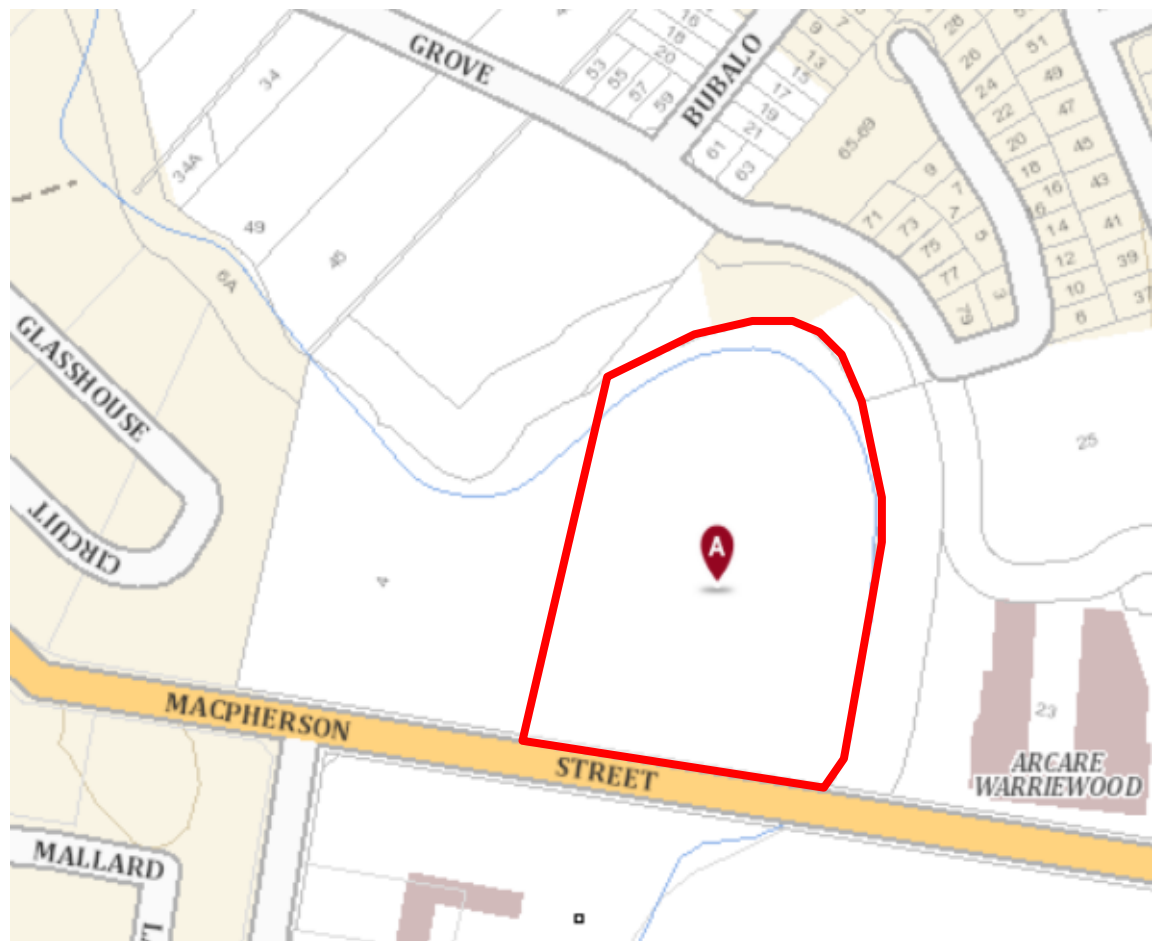


Figure 1: Site Map (Source: Land Registry Services, July 2021)

2.2 Surrounding Development

The character of the immediate locality is predominately residential in nature and consists of a range of low to medium density residential development. The immediate northern neighbouring sites are currently undergoing residential construction as shown in **Figure 2** and described in the list below.

- North: The site to the immediate north of the subject site is a housing estate known as 'Karinya'.
- East: The site to the immediate east of the subject site (23-27 Warriewood Road, Warriewood) is a recently constructed Nursing Home known as Arcae Aged Care.
- South: The site across Macpherson Street to the south is a sewage treatment plant is operated by Sydney Water. This lot is zoned SP2 Infrastructure.
- West: Land to the immediate west is undeveloped and characterised by mature vegetation. Further west, are two aged care facilities known as Anglicare Warriewood Brook and ARV Marcus Loane House,

An aerial photo identifying the site is shown at **Figure 2** below.



Figure 2: Aerial Photo (Source: Near maps, July 2021)

2.3 Approval History

2.3.1 Development Application (N0398/2017)

Consent was granted (N0398/17) by the Land and Environmental Court on 31 May 2019 for civil works including cut and fill to create a suitable building platform for future development, private road, drainage works.

2.3.2 Development Application (DA2019/0887)

Consent was granted (2019/0887) by the Northern Beaches Council on 28 July 2018 for the subdivision of land into 24 community title lots comprising 22 residential lots and 2 residue lots. Forming part of this consent was the provision of building envelopes, which includes details of the indicative footprint of 21 detached two storey dwellings with separate driveways, integrated garage zones and 20sqm private open space to the rear. The dwellings have a 900mm setback to the side at ground level and 1500mm side setback at first floor level.

The subdivision layout with associated building envelope and setbacks approved under DA/2019/0087 is shown in **Figure 3** below.

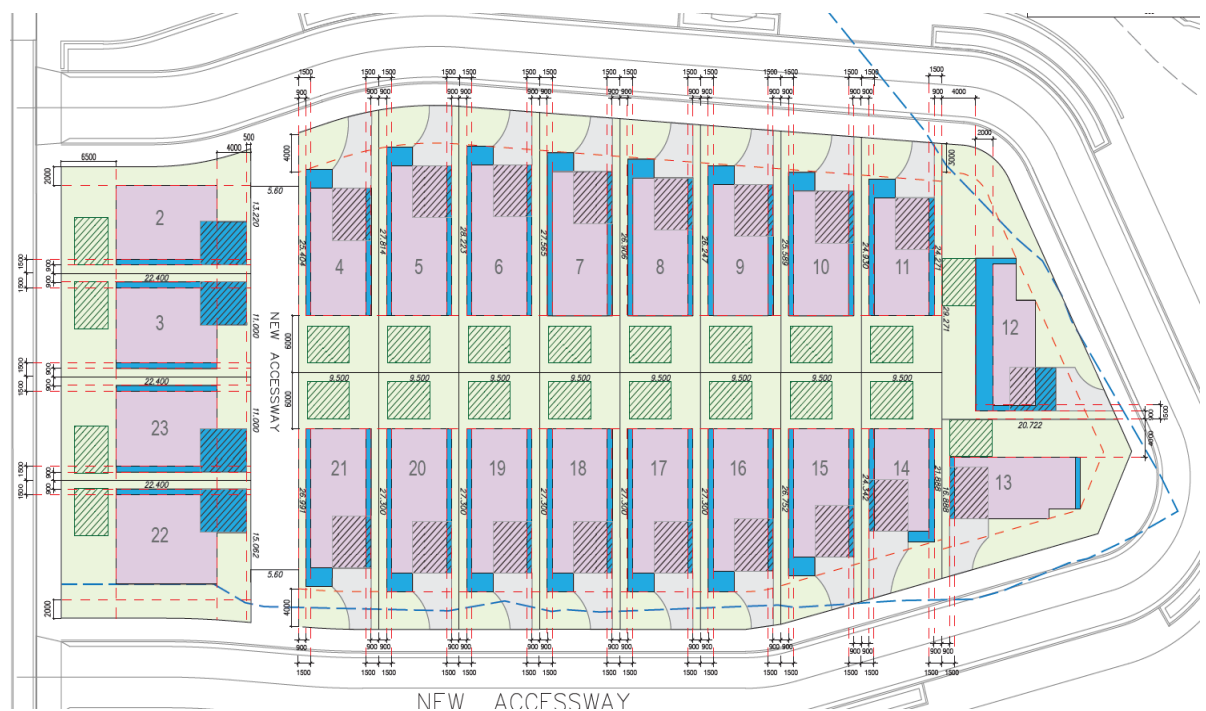


Figure 3: Approved Subdivision Layout (Source: Approved Drawings)

3 Section 4.55(2) Modification

3.1 Overview of Proposed Modification

This application has been prepared by Karimbla Construction Services (NSW) Pty Ltd to support a Section 4.55 (2) modification application to Northern Beaches Council. Specifically, this application seeks consent to vary the approved lot boundary setbacks established by DA2019/0887 for 16 allotments along with the corresponding conditions of consent.

Further detailed design has established that the revised building envelopes make for an efficient use of the site, noting the large front and rear setbacks already in place. It is proposed the 16 allotments, being lots 4 – 11 and 14 – 21, will have the following setbacks introduced:

- 900mm on the southern side applying to both ground level and first storey.
- Zero setback to ground level on northern side, while maintaining 1500mm setback to first storey.

It is noted that these allotments already provide for generous front and rear setbacks, with private open space requirements exceeding those normally required. Additionally, the proposed side setbacks on the southern side of the ground level will remain, ensuring separation between the buildings as originally intended. The proposed modifications are reflected in **Figures 4 and 5** below.

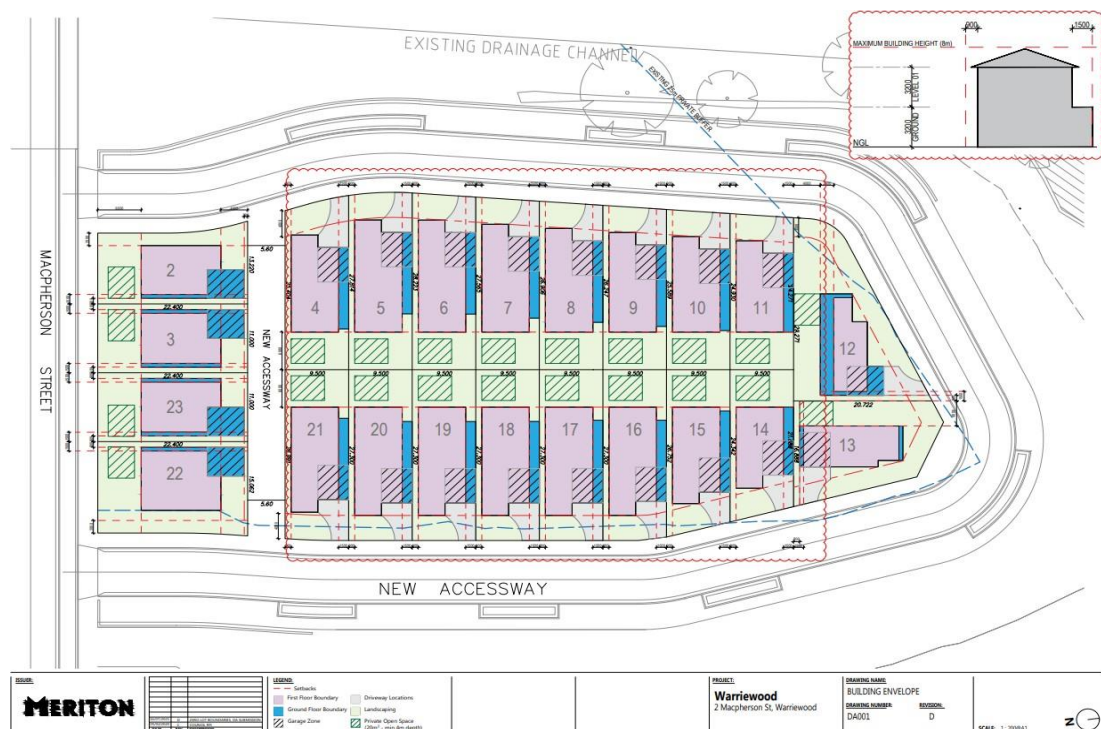


Figure 4: Proposed Building Envelope Plan (Source: Annexure 1)

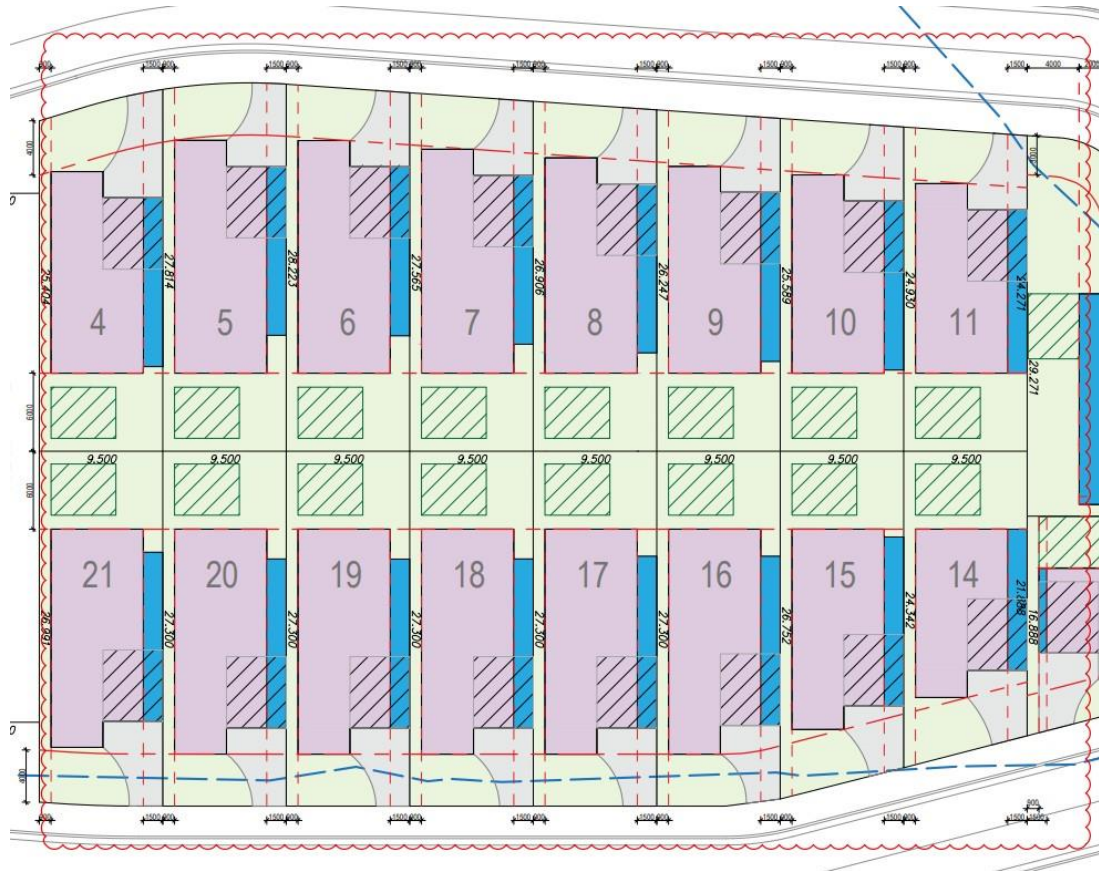


Figure 5: Zero-lot Boundary Lots (Source: Annexure 1)

3.2 Example of future floor plan

While not the subject of this consent, thought has been giving to the dwelling layouts facilitated by these changes. A number of examples of dwelling floor plans that could be utilised on the sites which propose zero-lot boundaries are shown below. It is noted that the dwelling floor plans are indicative only as dwelling houses will be subject to future Development Applications.

Refer to **Figures 6 – 9** below.



Figure 6: Zero-lot Boundary Floor Plan Example



Figure 7: Zero-lot Boundary Floor Plan Example



Figure 8: Zero-lot Boundary Floor Plan Example



Figure 9: Zero-lot Boundary Floor Plan Example

3.3 Amended Conditions

The proposed amendments to the development conditions are detailed below. Text to be removed is shown ~~struck through~~ and new proposed text is coloured **red**.

Condition 2 – Approved Plans and Supporting Documentation

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

a) *Approved Plans*

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA000 Rev A B Cover Sheet	5 February 2020 16 July 2021	Meriton
DA001 Rev C D Building Envelope	5 February 2020 16 July 2021	Meriton
DA002 Rev C D Driveway and garage locations	5 February 2020 16 July 2021	Meriton
DA003 Rev C D Private Open Space	5 February 2020 16 July 2021	Meriton
DA004 Rev C D Setbacks	5 February 2020 16 July 2021	Meriton
DA005 Rev C D Indicative Elevation	5 February 2020 16 July 2021	Meriton

Reports/ Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Traffic Report Rev C Ref 256447	14 July 2019	ARUP
Pre-Construction Traffic Supplementary letter	27 November 2019	ARUP
Traffic Supplementary Letter	27 July 2021	ARUP

4 EP&A Act 1979 – Section 4.55(2) Assessment

Section 4.55 of the Act 1979 provides a mechanism for the modification of development consents. This section of the Act sets out the statutory requirements and heads of consideration for the assessment of such a modification application, depending on whether the application is made under section 4.55(1), 4.55(1A) or 4.55(2).

Section 4.55 (2) of the Environmental Planning and Assessment Act 1979 (EP&A) states that a consent authority may modify a development 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)”.*
- b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*
- c) it has notified the application in accordance with:*
 - (i) the regulations, if the regulations so require, or*
 - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- 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.*
- e) Subsections (1) and (1A) do not apply to such a modification.*

Further, subsection (3) requires that 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, and the reasons given by the consent authority for the grant of the consent that is sought to be modified.

These heads of consideration are addressed below.

4.1 Substantially the Same

The development, as proposed to be modified, is substantially the same development as that originally approved. The site will continue to be used for residential dwellings, albeit with some minor updates to the proposed building setbacks on 16 of the allotments. The proposed updates do not affect the ability for future residents to enjoy suitable area for recreation and amenity, nor limit internal amenity within the dwellings such as adequate solar and natural ventilation.

The substantially the same test is undertaken below in light of the respective elements of the modification.

4.2 Lot Layout

The proposed modifications are not of an extent such that the development would be considered dissimilar to the original approved design. The proposal has introduced zero-lot boundaries on 16 residential lots to accommodate a more efficient building footprint.

The changes sought to the approved building envelopes will not affect the already approved subdivision layout. All parcels of land proposed to contain future dwellings remain unaltered and therefore substantially the same as that originally approved.

4.3 Land Use

The approved use, being future residential lots will not be altered. The subdivision will still comprise of residential lots that range in size between 240sqm to 389sqm, with lot frontages between 10 to 28m. The proposed modification does not change the purpose of the approved development nor does it alter the overall description of the development.

The modifications relate to creation of zero-lot boundaries and reconfiguration of building envelopes on 16 residential lots. There is not change to the approved building height, and separate Development Applications will be submitted for future dwelling houses.

4.4 Ministerial Concurrence

The Northern Beaches Council is required to consult with the relevant referral bodies which issued General Terms of Approval or a condition of consent on the original application. This process will be undertaken during the proposal's notification phase.

4.5 Section 4.15 Considerations

The EP&A Act Section 4.15 assessment of the modifications is undertaken in Section 5 below.

5 EP&A ACT 1979 - Section 4.15 Assessment

5.1 Pittwater Local Environmental Plan 2014

The site is within the R3 Medium Density Residential Zone. The relevant objectives of the zone are:

- *provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide for a limited range of other land uses of a low intensity and scale, compatible with surrounding land uses.*

The proposal retains the approved 'subdivision' for the purpose of future dwelling houses, which is permissible with consent in the R3 Zone. The proposal, as modified, will continue to provide a range of housing options for the Warriewood Valley Release Area, allowing free standing traditional homes on all allotments.

The following table provides an assessment of the proposed development against the relevant clauses contained within the PLEP 2014.

Part 6 Urban Release Areas				
Relevant Clause	Provision	Approved	Proposed	Complies
Clause 6.1 (3)	Development consent must not be granted for development on land in a buffer area or sector or at an address mentioned in Column 1 of the table to this clause unless the consent authority is satisfied that the total number of dwellings shown opposite that buffer area, sector or address in Column 2 of that table will be erected.	24 Lot Community Title Subdivision to accommodate future residential development; 22 lots will be for future residential dwellings and the remaining 2 lots will be for the private access loop road + creek buffer lot and the 25m inner creek line corridor which will be dedicated to Council.	No Change	Yes, As Approved

Part 7 Additional Local Provisions				
Relevant Clause	Provision	Approved	Proposed	Complies
Clause 7.10 Essential service	<p>Development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required—</p> <p>(a) the supply of water,</p> <p>(b) the supply of electricity,</p> <p>(c) the disposal and management of sewage,</p> <p>(d) stormwater drainage or on-site conservation,</p> <p>(e) suitable vehicular access.</p>	<p>The proposed development will have access to an adequate supply of water, electricity, as well as adequate means for the disposal and management of sewerage.</p> <p>Existing infrastructure and utility services that are available to the site were considered and approved under DA N0398/17. The relevant service providers were consulted during the project and their requirements were incorporated into the detailed design of the development.</p>	No Change	Yes, As Approved

5.2 Section 4.15(1)(a)(ii): Development Control Plans

5.2.1 Pittwater 21 Development Control Plan

Pittwater Development Control Plan 21 applies to development across the Local Government Area.

The following table provides a summary of the proposed modifications under DA-2019/0887 against the controls contained in Pittwater Development Control Plan 2021 (PDCP 2021). The proposal is for modifications only and therefore the proposal has been assessed against the relevant controls only.

C6 Design Criteria for Warriewood Release Area C6.9 Residential Land Subdivision Approval				
Provision		Approved	Proposed	Complies
Approval Pathway	Pathway 1: DA for subdivision	<p>All 22 proposed lots have an area greater than 225sqm and lot width greater than 9 metres.</p> <p>A Building Envelope Plan (BEP) has been submitted as part of the application.</p> <p>Registration of each lot can be conditioned as part of the consent.</p>	No change proposed.	Yes, As Approved
Application	Proposed lots equal to or greater than 225 square metres in area, and with a lot width equal to or greater than 9 metres.			
Plans required	Plan of Subdivision showing the building envelope for each lot is required. Plans of each dwelling are not required, as these will be included as part of any future Development Application or Complying Development Certificate.			
Section 88B restriction on dwelling design	No			
Timing of subdivision (registration of the subdivision with Land and Property Information)	Prior to approval of any land use including residential development.			
Pathway 1 – Application for subdivision only <i>If a Plan of Subdivision incorporating a Building Envelope Plan is provided with the Development Application, it must be in accordance with the following:</i> <ul style="list-style-type: none"> ○ The Building Envelope, shown on the Plan of Subdivision, should be at a legible scale and include the following elements: • maximum permissible building envelope (including site coverage for a Complying Development Certificate), specifying setbacks, storeys and articulation zones; • landscaped areas and deep soil areas; • preferred location of private open space; • driveway location and location of any hardstand areas; • garage size (single or double) and location; and • zero-lot line boundaries. 		<p>A Building Envelope Plan (BEP) is provided with the Development Application.</p> <p>The BEP shows setbacks, first floor and second floor storeys, garage locations, landscaping areas, private open space areas and driveway locations.</p> <p>The BEP demonstrates that future dwellings can comply with the building</p>	<p>An amended Building Envelope Plan is provided with the S4.55(2) application. The only changes apply to 16 residential lots (lots 4-11 and 14-21).</p> <p>The 16 affected residential lots have been reconfigured and will show zero-lot boundaries. This is consistent with Councils Pathway 1 requirements.</p>	Complies

C6 Design Criteria for Warriewood Release Area C6.9 Residential Land Subdivision Approval			
Provision	Approved	Proposed	Complies
<ul style="list-style-type: none"> Other elements that may be relevant to include on the Building Envelope depending on the particular lot/development proposed include: <ul style="list-style-type: none"> extent of basement car parking; retaining walls; easements; for corner lots, the preferred entry/frontage; frontage where vehicular access is not permitted; and special fencing requirements. 	requirements specified in Councils Requirements.	The amended BEP demonstrates that future dwellings can comply with the building requirements specified in Councils Pathway 1 Requirements.	
Additional requirements for specified development types			
<p>The location of a zero-lot line dwelling is to be determined with regard to the allotment orientation and ability to achieve the solar access provisions within this DCP. The location of a zero-lot line dwelling should only occur on the southern side boundary of east-west allotments and on either side boundary of north-south allotments.</p> <p>The location of all nominated zero-lot lines must be identified on the proposed Plan of Subdivision (refer to control C6.10 Residential Subdivision Approval Requirements).</p> <p>Where a zero-lot line is nominated, the following is to be ensured:</p> <ul style="list-style-type: none"> a Section 88B instrument is to be applied to both the benefited lot and the burdened lot and shall include a notation identifying the potential for a building to have a zero-lot line; the burdened lot is to include an easement for access and maintenance on the burdened boundary in accordance with the following: <ul style="list-style-type: none"> 900mm for single storey zero-lot walls; or 1200mm for two storey zero-lot walls; the easement is to enable servicing, construction and maintenance of the adjoining dwelling; the Section 88B instrument is to be worded so that Council is removed from any dispute resolution process between adjoining allotments; and 	900mm on both side boundaries of each dwelling to ground level, and 1500mm setback to first storey.	900mm on the southern side applying to both ground level and first storey. Zero setback to ground level on northern side, while maintaining 1500mm setback to first storey.	Alternate Solution Proposed – see assessment below.

C6 Design Criteria for Warriewood Release Area C6.9 Residential Land Subdivision Approval			
Provision	Approved	Proposed	Complies
<ul style="list-style-type: none"> <i>no overhanging eaves, gutters or services (including rainwater tanks, hot water units, air conditioning units, downpipes, electrical conduits or the like) of the dwelling on the benefited lot will be permitted within the easement.</i> <p><i>Where buildings are to be located on boundaries, retaining walls (as required) are to be built as part of the subdivision works. Details of the fill (depth, source and amount of fill material to be deposited) and retaining walls are to be submitted with the application.</i></p>			

5.3 Additional Pittwater DCP Assessment

Additional requirements for residential development within the Warriewood Valley Release Area seek to ensure adequate separation between dwellings. While zero-lot boundaries are supported, criteria for such a design are outlined. Specifically, the requirement for an easement to be applied to lots enabling access for maintenance is required at a certain width. For the purpose of a two-storey dwelling, this adjoining easement width is to be 1200mm. As the proposed adjoining setback width between dwellings remains at 900mm, the proposal technically does not comply with this requirement.

The proposed setback width is considered acceptable in the circumstances for the following reasons:

- A reduction of only 300mm is considered minor. A 900mm setback provides adequate width to enable access for maintenance, both in the form of an elevated platform (ladder/scaffolding).
- The future dwellings can be designed to ensure no encroachment into the burdened lots from eaves, gutters or services (including rainwater tanks, hot water units, air conditioning units, downpipes, electrical conduits or the like).
- Notations can be placed on the lots identifying the potential for a building to have a zero-lot line.

While an alternate solution is proposed, it is considered suitable in the context of the site and what has already been consented to. Further, it is noted that future dwellings will be the subject of development consent, via either provisions for a Complying Development Certificate to be issued, or through a Local Development Application. Further refinement to the future dwellings can be undertaken at this time.

5.4 Section 4.15(1)(a)(iiia): Planning Agreements

No planning agreements have been entered into in respect of the site or the proposed development.

5.5 Section 4.15(1)(a)(iv): Regulations

The Development Application has been made in accordance with the requirements contained in Clause 50(1A) of the *Environmental Planning and Assessment Regulation 2000*.

5.6 Section 4.15(1)(b): Likely Impacts

The likely impacts of the development including environmental impacts on both the natural and built environment, and the potential social and economic impacts of the proposal have been assessed.

Site Layout and Building Configuration

Ensuring a consistent 900mm setback to the southern setback of all dwellings the subject of this modification application will ensure adequate landscaping and separation can be maintained between all dwellings. The future design of dwellings can limit opportunities for amenity impacts to arise between dwellings with appropriate floor layouts as shown above, while still maintain natural ventilation, solar access and acoustic separation. When the proposed changes are analysed in the context of what has already been approved, the proposed development results in substantially the same impacts as that already approved.

Natural Environment

There are no environmental impacts that will result from the proposed amendments to Condition 1 of the consent.

The proposed development will continue to provide appropriate environmental management and mitigations methods to ensure that there are no significant detrimental impacts to the surrounding environment.

Built Environment

The proposed changes are consistent with *Section C6 - Design Criteria for Warriewood Release Area controls of Pittwater Development Control Plan 21* and have been made in response to further improving the amenity of the lot design and creating a better design outcome for future housing development.

Any proposed built form is subject to a future Development Application that would be assessed according to Council's LEP and DCP requirements.

Social and Economic Impact

The proposed development will continue to provide employment opportunities during the construction period.

5.7 Section 4.15(1)(c): Suitability of the Site

The proposed modification does not compromise the site suitability for the development, beyond that which was considered for the original approval.

The site remains suitable and capable for providing future low density residential housing in an area that is well sought after.

5.8 Section 4.15(1)(d): Submissions

It is anticipated that Council will publicly notify the application. Any submissions received in response to the public exhibition will be reviewed as part of the assessment process.

5.9 Section 4.15(1)(e): The Public Interest

There are no features of this proposal that could be interpreted as detrimental to the public interest.

On the contrary, the proposed zero-lot boundaries will vastly improve the building envelope arrangement and overall result in improved amenity and a better design outcome for future housing development.

6 Conclusion

The proposal seeks Council's consent to modify the approved development located 2 Macpherson Street, Warriewood.

The proposal seeks to introduce zero-lot boundaries on 16 of the approved future residential lots. These changes are in response to further improving the amenity of the lot design and creating a better design outcome for future housing development.

In accordance with Section 4.55(2) of the EP&A Act, Council may modify the consent as:

- The consent, as proposed to be modified, is substantially the same development as that originally approved as the proposed changes seek only minor changes to the southern setbacks of 16 of the allotments. These changes will not result in decreased amenity, solar access or ventilation for the future residents because a sufficient setback remains to allow solar access and natural ventilation.
- The proposed modifications will not result in any significant additional environmental impacts in relation to adjoining and surrounding properties.
- The proposal as modified will continue to align with aims and objectives of relevant State and local planning instruments, and planning guidelines, as discussed within this report.

Our assessment of the proposed development concludes that:

The proposed changes are consistent with Section C6 - Design Criteria for Warriewood Release Area controls of Pittwater Development Control Plan 21 and have been made in response to further improving the amenity of the lot design and creating a better design outcome for future housing development.

In light of the above, we therefore recommend that the proposed modification is supported by Council and we trust that this information is sufficient to enable a prompt assessment of the proposed modification.

Annexure 1: Amended Architectural Plans

Annexure 2: Traffic Supplementary Letter