

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2018/0173
Responsible Officer:	Tyson Ek-Moller
Land to be developed (Address):	Lot B DP 404336, 28 Mona Street MONA VALE NSW 2103
Proposed Development:	Modification of Development Consent N0295/17 granted for subdivision of one (1) lot into two (2) lots including construction of a common driveway, retaining wall and storm water drainage system
Zoning:	R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Janine Elizabeth Cocks Darren James Cocks
Applicant:	Rutlin Pty Ltd
Application lodged:	06/04/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Subdivision only
Notified:	13/04/2018 to 27/04/2018
Advertised:	Not Advertised
Submissions Received:	1
Recommendation:	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

Pittwater Local Environmental Plan 2014 - Zone R2 Low Density Residential

Pittwater 21 Development Control Plan - 2014 - B2.2 Subdivision - Low Density Residential Areas

Pittwater 21 Development Control Plan - 2014 - C4.5 Subdivision - Utility Services

SITE DESCRIPTION

Property Description:	Lot B DP 404336 , 28 Mona Street MONA VALE NSW 2103
Detailed Site Description:	<p>The subject site is identified as 28 Mona Street, Mona Vale (Lot B, DP 404336). Aside from an angled front boundary, the site is otherwise a regularly shaped allotment, the front of which is oriented towards the southeast and adjoins the Mona Street road reserve; the other boundaries adjoin other residential premises. The area of the allotment is 1,388m² (based on submitted survey plans), and contains a northeast-to-southwest (i.e. a side-to-side) fall of approximately 1.8 to 2 metres. The rear half of the site contains a large two storey detached dwelling house (approved by Complying Development Certificate No. CDC0050/17), while the front half of the site is vacant apart from a temporary driveway, trees/vegetation and building materials.</p> <p>The subject site is within an R2 Low Density Residential zone; all boundaries adjoin sites that are also R2 zoned. There are a number of other zone boundaries within the surrounding area that are as follows:</p> <ul style="list-style-type: none"> • E4 Environmental Living zoned areas are located approximately 20m northwest, 60m southwest and 150m northeast of the subject site. • An RE1 Public Recreation zone is located west of the subject site, and is approximately 130m away at its nearest point. • W1 Natural Waterway zones are located northeast and northwest of the site, and are approximately 180m and 205m from the subject site at their nearest respective points. <p>There are no hazards affecting the subject site; aside from Class 5 Acid Sulphate soils and biodiversity considerations (Wildlife Corridor excluding Cat 1/Cat 2/Core Species) there</p>

are no other affectations on the site. There are currently no easements affect either allotment. The subject site is not within a heritage conservation area nor does it contain a heritage item ; there are no heritage items within the immediate vicinity,

Development within surrounding residential-zoned sites and areas consists predominately of low-density residential development (i.e. detached dwelling houses and associated structures such as pools, outbuildings, etc.). The subdivision pattern of the area includes a large variety of differently sized/shaped allotments that mostly follows the local road network, though there are a number of "battleaxe" style subdivisions and allotments within the immediate surroundings.

An inspection of the subject site was undertaken by the assessing officer on 3 May 2018. This inspection confirmed that construction of the dwelling approved by CDC0050/17 was either complete or close to completion. The inspection also confirmed the presence of large trees at the front of the site and that the existing layout of the site is consistent with previously approved plans. No issues were identified.

Map:



SITE HISTORY

Site background:

Date Comments

07/02/2014 Development Application No. N0332/13 approved for the demolition of an existing heritage listed dwelling and associated structures.

26/07/2016 Development Application No. N0087/16 withdrawn. The application proposed a new

double storey dwelling and single storey secondary dwelling and pool.

13/04/2017 Complying Development Certificate No. CDC0050/17 received for the construction of a new dwelling.

20/11/2017 Development Application No. N0295/17 approved for the subdivision of one (1) lot into two (2) lots including construction of a common driveway, retaining wall and storm water drainage system.

06/04/2018 Subject modification application lodged.

30/04/2018 Development Application No. DA2018/0193 approved for the construction of a new swimming pool. The pool would be located within the rear setback of Lot 1 approved by Development Consent No. N0295/17 (i.e. to the rear of existing dwelling at the rear of the site).

Site background:

Date	Comments
06/04/2018	Subject modification application lodged.
01/05/2018	Submission received.
03/05/2018	Site inspection undertaken.

PROPOSED DEVELOPMENT IN DETAIL

The subject modification seeks to modify Development Consent No. N0295/17, which approved the subdivision of one (1) lot into two (2) lots including construction of a common driveway, retaining wall and storm water drainage system. The applicant proposes to delete consent conditions B19 and F3, which for reference are as follows:

B19

"All utility services located in the adjacent Mona Street road reserve and those to service the development are to be placed and/or relocated underground for the total Mona Street frontage of the development site at full cost to the developer."

F3:

"A Restriction on Use of Land is to be created, burdening Lot 1, the terms of which restrict future buildings within Lot 1 to the building envelope shown on the approved plans. Full details in this regard are to be submitted to Council on the final plan of Subdivision / and an accompanying Section 88B instrument. The creation of the Restriction on Use of Land is achieved through registration of the Plan of Subdivision.

Northern Beaches Council shall be nominated as the prescribed authority for variation or removal of the instruments."

No other changes are proposed.

In consideration of the application a review of (but not limited) documents as provided by the applicant in support of the application was taken into account detail provided within Attachment C.

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 N0295/ in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.15(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15(1A) - Other Modifications	Comments
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 proposed modification is of minimal environmental impact, and	Yes The modification, as proposed in this application, is considered to be of minimal environmental impact.
(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	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 DA N0295/17.
(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 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.
(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 4.55 (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	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(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&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No Additional information was requested.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structure. This clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p> <p>Clause 143A of the EP&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) Environmental Impact 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) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact 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 “Public Exhibition” 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.

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:
Mr Christopher James Weber	94 Waterview Street MONA VALE NSW 2103

The subject application was notified in accordance with Council's notification policy. In response, one (1) submission was received.

Issues raised:

The author of the submission enquired as to whether any trees were proposed for removal; if so, then the removal of any trees are opposed.

Response:

No trees are proposed to be removed by the subject modification application. In their discussion regarding the proposed removal of Condition F3, the applicant indicates that any removal of the large tree within approved Lot 2 would require separate assessment. Further, condition B13 in Development Consent No. N0295/17 reads as follows:

"In accordance with Pittwater 21 DCP Control B4.22 Protection of Trees and Bushland Vegetation, all existing trees as indicated in the Survey Plan and/or approved Landscape Plan shall be retained except where Council's prior written consent has been obtained, for trees that stand within the envelope of approved development areas and removal is approved through an arborist report. For all other tree issues not related to a development application, applications must be made to Council's Tree Management Officers."

MEDIATION

No requests for mediation have been made in relation to this application.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	No landscape objections to the proposed modifications.
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	An external referral was made to the relevant energy supply authority on 11 April 2018. No response was received.

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

The considerations of SEPP 55 were considered by the assessment of Development Application No. N0295/17.

SEPP (Infrastructure) 2007

The provisions of the SEPP were not applicable to the subject modification application; a referral was however made to the relevant energy supply authority, though no response was received.

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:	700m ²	Lot 1: 688m ² Lot 2: 700m ²	Unchanged		N/A
Minimum subdivision lot size for community title schemes					N/A
Minimum lot sizes for dual occupancies					N/A
Rural Subdivision:					N/A
Minimum subdivision lot size for strata plan schemes in certain rural, residential and environment protection zones					N/A
Height of Buildings:					N/A
Floor Space Ratio					N/A
Density controls for certain residential accommodation					N/A

Compliance Assessment

Clause	Compliance with Requirements
2.6 Subdivision - consent requirements	N/A
4.1 Minimum subdivision lot size	N/A
4.6 Exceptions to development standards	N/A

Detailed Assessment

Zone R2 Low Density Residential

The proposal is to modify an existing approval. Subdivisions are not specified as a form of development that are permissible within the R2 zone, however they are a form of development that would require consent pursuant to CI 2.6 of PLEP 2014.

Pittwater 21 Development Control Plan - 2014

Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
Front building line	6.5m		Unaltered	N/A
Rear building line	6.5m		Unaltered	N/A
Side building line	2.5m		Unaltered	N/A
	1m		Unaltered	N/A
Building envelope	3.5m		Unaltered	N/A
	3.5m		Unaltered	N/A
Landscaped area	50%		Unaltered	N/A

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.9 Mona Vale Locality	Yes	Yes
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes
B2.2 Subdivision - Low Density Residential Areas	Yes	Yes
C4.5 Subdivision - Utility Services	No	Yes
D9.1 Character as viewed from a public place	Yes	Yes

Detailed Assessment

B2.2 Subdivision - Low Density Residential Areas

Note: Due to the nature of the proposed modifications, this assessment shall only discuss the development control relating to a minimum 175m² building footprint.

As indicated, the applicant seeks for consent condition F3 to be deleted. The reasons for the change are outlined as follows:

- Alternative locations for a future dwelling which achieves relevant development objectives can be provided within the area of the approved allotment.
- The location of the indicative envelope on the original plans was to demonstrate that a dwelling could be accommodated which satisfies Council's controls. Limitations of future development to within the indicative envelope is an unnecessary restriction that limits the design of a future dwelling from achieving the desired future character of the locality in terms of high quality compatible development.
- A future development proposal would be required to assess and justify the impacts of a future development on the approved allotment.
- Should the imposition of the condition be required for the protection of the large tree (formerly identified in the original arboricultural assessment as Tree 3), then an alternative condition requiring that the tree be retained would be more appropriate.
- A future Complying Development cannot be approved if it would have an impact on trees.

The condition was recommended to both protect Tree 3 towards the front of the site in addition to ensuring that the landscaped area of the approved lot was retained. As indicated in the response to the submission, a condition (B13) has already been approved that would require consent from Council should any further tree removal be required; no changes are proposed to this condition. While it is unclear how a 175m² building footprint would hinder a dwelling design that could satisfy the desired character requirements of the locality, it is agreed that a future development application would need to demonstrate consistency with applicable development controls, including landscaped area. Further, it is agreed that SEPP (Exempt and Complying Development Codes) 2008 would need to consider Tree 3 if a complying development proposal were made for a new dwelling on the subject site, as condition B13 of the consent would apply to the site for the life of the development.

In summary, the proposed modification to remove consent condition F3. A replacement condition is not warranted, as the retention of Tree 3 is already addressed by another condition within Development Consent No. N0295/17.

C4.5 Subdivision - Utility Services

By proposing the deletion of consent condition no. B19, the approved development (if modified as proposed) would no longer satisfy the requirements of Section C4.5 of Pittwater 21 DCP. The condition was recommended to ensure compliance with Section C4.5, as no variation was sought to the development controls

In seeking a variation to the subsequent noncompliance, the applicant has provided the following justifications:

*"The existing overhead lines comprise less than one span and undergrounding would require an additional pole to be provided along the subdivision frontage adjacent to lot 1. **This satisfies the provision for variation of the controls relating to two spans or less.***

The variation has no impact on the following Control Objectives

- *Adequate utility services capacity to meet the demands of subdivision development. (En, S)*
- *Safety of building occupants being maintained and enhanced. (S)*
- *Security of utility services is improved. (S)*

The instillation of an additional pole would have an adverse impact on visual amenity and visual clutter."

A response to the above is as follows:

Contrary to the applicant's claims, the variations within Part C1.20 of the DCP do not apply to the subject application. While there are exemptions permitted within Section C4.5 of the DCP, they apply to:

- Electricity wires carrying 16,000 volts, 33,000 volts or more, **and**
- Short lengths of overheads of two spans or less

While the proposal would affect a short length of less than one span, the applicant has not addressed the second requirement; there is no information to suggest that the street utilities carry 16kV and/or 33kV wires. Regardless, due to the:

- Current zoning of the area;
- Current minimum subdivision lot size requirements within PLEP 2014; and
- Development layouts and allotment sizes of surrounding sites,

it is unlikely that new development on surrounding allotments would trigger DCP requirements for the undergrounding of utilities within other parts the road reserve in the foreseeable future. Due to the relatively narrow (i.e. 21.355m) frontage of the subject site and noting that overhead electricity infrastructure is currently located on both sides of Mona Street, it is highly unlikely that enforcement of the controls in this instance would significantly reduce visual clutter and/or pollution within the surrounding area. It is agreed, that the installation of an additional pole (if required) would also be inconsistent with the outcomes of the controls.

With regard to the above, the removal of consent condition B19, and the subsequent noncompliance that would be associated with this modification is considered to be supportable 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

Pittwater Section 94 Development Contributions 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. Mod2018/0173 for Modification of Development Consent N0295/17 granted for subdivision of one (1) lot into two (2) lots including construction of a common driveway, retaining wall and storm water drainage system on land at Lot B DP 404336, 28 Mona Street, MONA VALE, subject to the conditions printed below:

Condition B19 is to be deleted.

Condition F3 is to be deleted.

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

Signed



Tyson Ek-Moller, Planner

The application is determined under the delegated authority of:



Steven Findlay, Manager Development Assessments














ATTACHMENT A

No notification plan recorded.

ATTACHMENT B

No notification map.

ATTACHMENT C

Reference Number	Document	Date
 2018/226323	Report - Statement of Environmental Effects	22/03/2018
 MOD2018/0173	28 Mona Street MONA VALE NSW 2103 - Section 96 Modifications - Section 96 (1a) Minor Environmental Impact	06/04/2018
 2018/219964	DA Acknowledgement Letter - Rutlin Pty Ltd	06/04/2018
 2018/226321	Development Application Form	10/04/2018
 2018/226322	Fee Form	10/04/2018
 2018/226320	Applicant Details	10/04/2018
 2018/229097	DA Acknowledgement Letter (not integrated) - Rutlin Pty Ltd	11/04/2018
 2018/229851	Notification map for 28 Mona Street	11/04/2018
 2018/229847	Notification Letter - Mod	11/04/2018
 2018/264255	Online Submission - Weber	26/04/2018
 2018/267445	Site inspection photos	02/05/2018
 2018/274542	Landscape Referral Response	03/05/2018
 2018/276400	Response to objector (Weber) regarding submission issues	04/05/2018
 2018/276205	Site inspection photos	04/05/2018