

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2019/0335
Responsible Officer:	Rebecca Englund
Land to be developed (Address):	Lot 10 DP 1207743, 1110 Barrenjoey Road PALM BEACH NSW 2108
Proposed Development:	subdivision of six lots into five lots comprising two commercial and three residential allotments in two stages
Zoning:	B1 Neighbourhood Centre E4 Environmental Living
Development Permissible:	Yes - Zone B1 Neighbourhood Centre Yes - Zone E4 Environmental Living
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Palm Beach Sea Foods Pty Ltd Palm Beach Corporation Pty Ltd
Applicant:	Palm Beach Corporation Pty Ltd

Application lodged:	12/07/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Subdivision only
Notified:	30/07/2019 to 13/08/2019
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
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

There are no assessment issues.

SITE DESCRIPTION

Property Description:	Lot 10 DP 1207743 , 1110 Barrenjoey Road PALM BEACH NSW 2108
Detailed Site Description:	<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 5017m². 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 known as 'Barrenjoey House'. With the exception of a driveway, 1110 Barrenjoey Road is generally free from any development, and features a number of existing canopy trees and rock outcrops.</p> <p>1102 and 1108 Barrenjoey Road are zoned B1 Neighbourhood Centre, with 1110 Barrenjoey Road zoned E4 Environmental Living, under the provisions of PLEP 2014. The site is identified as being subject to geotechnical hazard, and is located within the coastal zone.</p>

Map:



SITE HISTORY

On 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.

On 2 April 2013, Modification Application N0482/98/S96/1 was approved by Council, to alter the division of the resultant lots.

On 25 June 2019, a prelodgement meeting was held between the applicant and Council to discuss the proposed deletion of the restricted building footprints.

On 26 August 2019, Council wrote to the applicant requesting further clarification regarding a number of changes sought in the modification application.

On 30 August 2019, the applicant amended the application to solely relate to those modifications highlighted in the 'Proposed Development in Detail' section of the report, below.

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:

Stage 1

- Delete Condition C1
- Delete Condition D2

- Delete Condition D3

Stage 2

- Delete Condition C2
- Amend Condition D6 to reference to an amended plan
- Delete Condition D10
- Delete Condition D11
- Delete Condition J37

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.55 Assessment

The relevant matters for consideration under Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55(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 N0482/98.
(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 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.	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	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 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p>
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	No submissions were received in relation to this application.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would

Section 4.15 'Matters for Consideration'	Comments
	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 of the application Council received no submissions.

REFERRALS

No referrals were sent in relation to this application

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP (Coastal Management) 2018

The site is located with the Coastal use and Coastal Environment Area as identified by *State Environmental Planning Policy (Coastal Management) 2018* (CM SEPP), and the provisions of this policy are applicable in relation to this proposal. Following detailed assessment of the proposed development, the consent authority can be satisfied of the following:

- the proposal is not likely to cause an adverse impact upon the matters listed in clause 13(1) of the CM SEPP,
- the proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in clause 13(1),
- the proposal is not likely to cause an adverse impact upon the matters listed in clause 14(1) of the CM SEPP,
- the proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in clause 14(1), and
- the proposal is not likely to cause increased risk of coastal hazard on the site or other land.

As such, the proposal is considered to be consistent with the provisions of the CM SEPP, including the matters prescribed by clauses 13, 14 and 15 of this policy.

Pittwater Local Environmental Plan 2014

Is the development permissible?	Zone B1 : Yes Zone E4 : Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Zone B1 : Yes Zone E4 : Yes

Compliance Assessment

Clause	Compliance with Requirements
2.6 Subdivision - consent requirements	Yes
4.1 Minimum subdivision lot size	Yes

Pittwater 21 Development Control Plan

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A4.12 Palm Beach Locality	Yes	Yes
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes
B2.2 Subdivision - Low Density Residential Areas	Yes	Yes

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 1

- Delete Condition C1, which reads as follows:

The proposal is to comply with the relevant provisions of Clauses 78A-1 of the Environmental Planning and Assessment (Amendment) Regulation, 1998.

Comment: The *Environmental Planning and Assessment (Amendment) Regulation 1998* has been repealed. However, the clause in question, being clause 78A-1, identified a prescribed

condition which required all building work to be carried out in accordance with the Building Code of Australia. It is noted that there are no physical works proposed under Stage 1 of the consent, and the condition is also replicated in the Stage 2 section of the consent. As such, the request to delete this condition is supported.

- Delete Condition D2, which reads as follows:

Any development of Lot 1 is to comply with the requirements of Council's Sand Point Locality Plan/Development Control Plan No LP2, Development Control Plan No 2 – Carparking and Development Control Plan No E3 – Driveways and Internal Roadways.

Comment: The referenced policies have been repealed. Such matters would be relevant matters of consideration in any future development application relating to the sites. As such, it is recommended that the condition be deleted.

- Delete Condition D3, which reads as follows:

Any development of Lot 3 for the purposes of "Shop-Top Housing" is to comply with the requirements of Council's Development Control Plan No R4 – Shop-Top Housing, Council's Sand Point Locality Plan/Development Control Plan No LP2, Development Control Plan No 2 – Carparking and Development Control Plan No E3 – Driveways and Internal Roadways.

Comment: The referenced policies have been repealed. Such matters would be relevant matters of consideration in any future development application relating to the sites. As such, it is recommended that the condition be deleted.

Stage 2

- Delete Condition C2, which reads as follows:

The proposal is to comply with the relevant provisions of Clauses 78A-1 of the Environmental Planning and Assessment (Amendment) Regulation, 1998.

Comment: The *Environmental Planning and Assessment (Amendment) Regulation 1998* has been repealed. However, the clause in question, being clause 78A-1, identified a prescribed condition which required all building work to be carried out in accordance with the Building Code of Australia. Condition C1 of the Stage 2 consent also requires compliance with the BCA, and as such, it is recommended that the condition be deleted to avoid unnecessary duplication.

- Amend Condition D6 to reference to an amended plan. Condition D6 currently reads as follows:

The following trees identified on Drawing No PB-DA-01, dated 01-10-98 are to be retained, Nos 9, 29, 30, 38, 41 and 44.

Comment: A newer version of this plan, being PB-DA-01-1, dated 1 August 2012, was endorsed in the previous modification (N0428/98/S96/1). The tree locations and identification remain the same. To avoid reference to a superseded plan, it is recommended that the condition be amended to reference the amended plan.

- Delete Condition D10, which reads as follows:

Any development of Lot 1, 4 and 5 is to comply with the requirements of Council's Sand Point

Locality Plan/Development Control Plan No LP2, Development Control Plan No 2 – Carparking and Development Control Plan No E3 - Driveways and Internal Roadways.

Comment: The referenced policies have been repealed. Such matters would be relevant matters of consideration in any future development application relating to the sites. As such, it is recommended that the condition be deleted.

- Delete Condition D11, which reads as follows:

Any development of Lot 3 for the purposes of “Shop-Top Housing” is to comply with the requirements of Council’s Development Control Plan No R4 – Shop-Top Housing, Council’s Sand Point Locality Plan/Development Control Plan No LP2, Development Control Plan No 2 – Carparking and Development Control Plan No E3 - Driveways and Internal Roadways.

Comment: The referenced policies have been repealed. Such matters would be relevant matters of consideration in any future development application relating to the sites. As such, it is recommended that the condition be deleted.

- Delete Condition J37, which reads as follows:

A Restriction on Use of Land is to be created, burdening Lots 1, 4 and 5, the terms of which restrict future buildings within those lots to the building envelopes shown on the approved plans. Full details in this regard are to be submitted to Council, prior to release of the Subdivision Certificate.

Comment: Condition J37 was imposed as part of the original development consent, with quite specific building footprints shown on the approved plans to align with the originally approved configuration of the resultant allotments. However, the approved configuration of the lots was altered pursuant to N0482/98/S96/1, such that the approved footprints no longer align with the reconfigured boundaries. Amended building footprints were not proposed as part of the modification and this condition was not removed, resulting in a inconsistency in the modified consent. The applicant now seeks to remove this condition to correct this inconsistency.

Upon review of assessment report produced as part of the original consent, there appears to be no specific reasoning behind the imposition of restricted building footprints. Whilst there are some constraints on the site (large rock outcrops and significant canopy trees), the lots remain sufficiently sized to accommodate a dwelling house without undue impacts upon these natural features. Furthermore, noting the E4 zoning of the residential allotments, any future dwelling house would be the subject of a development application to Council, the impacts of which can be assessed against Council's policies. As such, the request to remove the inconsistent building footprints is supported.

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. Mod2019/0335 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. Delete Stage 1 Condition C1.

B. Delete Stage 1 Condition D2.

C. Delete Stage 1 Condition D3.

D. Delete Stage 2 Condition C2.

E. Amend 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.*

F. Delete Stage 2 Condition D10.

G. Delete Stage 2 Condition D11.

H. Delete Stage 2 Condition J37.

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

Signed



Rebecca Englund, Principal Planner

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



Matthew Edmonds, Manager Development Assessments