

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

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| Application Number: | Mod2019/0072 |
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| Responsible Officer: | Georgia Quinn |
| Land to be developed (Address): | Lot 2 DP 12074, 703 Barrenjoey Road AVALON BEACH NSW 2107 Lot 1 DP 12074, 701 Barrenjoey Road AVALON BEACH NSW 2107 |
| Proposed Development: | Modification of Development Consent N0516/17 granted for Construction of a four 4 unit Seniors Living development with basement car parking landscaping and strata subdivision |
| Zoning: | R2 Low Density Residential R2 Low Density Residential SP2 Infrastructure SP2 Infrastructure |
| Development Permissible: | Yes - Zone R2 Low Density Residential Yes - Zone SP2 Infrastructure |
| Existing Use Rights: | No |
| Consent Authority: | Northern Beaches Council |
| Land and Environment Court Action: | No |
| Owner: | Aladdin (Aus) Pty Ltd |
| Applicant: | Adam Alamein |

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| Application lodged: | 26/02/2019 |
| Integrated Development: | No |
| Designated Development: | No |
| State Reporting Category: | Residential - Seniors Living |
| Notified: | Not Notified |
| Advertised: | Not Advertised |
| Submissions Received: | 0 |
| Recommendation: | Refusal |

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 21 Development Control Plan - C1.20 Undergrounding of Utility Services

SITE DESCRIPTION

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| Property Description: | <p>Lot 2 DP 12074 , 703 Barrenjoey Road AVALON BEACH NSW 2107</p> <p>Lot 1 DP 12074 , 701 Barrenjoey Road AVALON BEACH NSW 2107</p> |
| Detailed Site Description: | <p>The subject site consists of two (2) allotments located on the western side of Barrenjoey Road and the northeastern side of Kevin Avenue.</p> <p>The site is irregular in shape with a primary frontage of 45.8m along Barrenjoey Road and a secondary frontage of 57.6m along Kevin Avenue. The third boundary, running perpendicular to Barrenjoey Road is 41.5m. The site has a total surveyed area of 1069m².</p> <p>The site is located within the R2 Low Density Residential zone, while the eastern boundary adjoins an SP2 Infrastructure (Classified Road; Barrenjoey Road) zone. The site currently contains no built structures.</p> <p>The site is moderately sloped with a cross fall from west to east (ie. rear to front) of approximately 5.3 metres.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is highly diversified; areas to the east, north, west and southwest predominantly contain residential development, while areas to the southeast primarily contain public reserves and vegetated areas. Other surrounding SP2 zones also contain a church/school, a day-care centre and an ambulance base.</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 history:

Complying Development Certificate No. CDC0084/17

This CDC for the demolition of existing structures on 701 Barrenjoey Road was approved 31 May 2017.

Complying Development Certificate No. CDC0089/17

This CDC for the demolition of existing structures on 703 Barrenjoey Road was approved 31 May 2017.

Development Application N0516/17.

This development application for the construction of a four (4) unit Seniors Living development with basement car parking, landscaping and strata subdivision was approved under delegation on 6 July 2018.

PROPOSED DEVELOPMENT IN DETAIL

This application seeks modification to development consent N0516/17.

Specifically, the application proposes to amend Condition B13 which says:

"All utility services including overhead power supply and communications cables located in the adjacent road verge and those to service the development are to be placed and/or relocated underground for the total frontage of the development site to any public road at the full cost to the developer".

to read as follows:

"All utility services including power supply and communication cables specifically to service the development and not being a part of the public infrastructure are to be placed and/or relocated underground within the boundaries of the site".

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 N0516/17, in full, with amendments detailed and assessed as follows:

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

| 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 N0516/17 |
| (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 | No submissions were received in relation to this |

| Section 4.55(1A) - Other Modifications | Comments |
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| concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be. | 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)(iiia) – 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 Structures. This matter has been addressed via a condition in the original consent.</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> |

| Section 4.15 'Matters for Consideration' | Comments |
|---|---|
| | <p>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p>Clause 98 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> <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> |
| <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> | <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> |
| <p>Section 4.15 (1) (c) – the suitability of the site for the development</p> | <p>The site is considered suitable for the proposed development.</p> |
| <p>Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs</p> | <p>See discussion on “Notification & Submissions Received” in this report.</p> |
| <p>Section 4.15 (1) (e) – the public interest</p> | <p>No matters have arisen in this assessment that would justify the refusal of the application in the public interest.</p> |

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application was not notified.

REFERRALS

| Internal Referral Body | Comments |
|--------------------------------|---|
| NECC (Development Engineering) | No Development Engineering objection is raised to the requested change to condition B13 with no conditions. |

| External Referral Body | Comments |
|------------------------|--|
| Ausgrid: (SEPP Infra.) | 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. |

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 (Housing for Seniors or People with a Disability) 2004

This modification application does not propose any additional physical works, therefore it is considered the initial assessment of the SEPP (Housing for Seniors or People with a Disability) 2004 detailed within the assessment report of development application N0516/17 is sufficient and no further assessment of this matter is required as a result.

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.

Pittwater Local Environmental Plan 2014

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| Is the development permissible? | Zone R2 : Yes Zone SP2: 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 R2 : Yes Zone SP2: Yes |

Pittwater 21 Development Control Plan

Compliance Assessment

| Clause | Compliance with Requirements | Consistency Aims/Objectives |
|---|------------------------------|-----------------------------|
| B8.5 Construction and Demolition - Works in the Public Domain | Yes | Yes |
| C1.20 Undergrounding of Utility Services | No | No |

Detailed Assessment

C1.20 Undergrounding of Utility Services

The modification application seeks to amend Condition B13 which requires the undergrounding of new and existing overhead infrastructure in accordance with the provisions of this development control.

The application has not demonstrated consistency with the variations provisions of this development control, noting that the overhead infrastructure in question does not carry 16,000 volts or higher, nor is the span fronting the site considered a short length. Furthermore, the application has not been supported by advice from an energy provider to confirm that there is a technical impracticality that would prevent the works from being undertaken.

A letter was sent to the applicant requesting further information in relation to the technical inability and or constraints to underground the overhead wires. The letter provided the applicant with a reasonable time frame to obtain technical advice, however, no such information was provided to Council.

Having regard to the above, the proposal to amend Condition B13 is not supported and consequently, utility wiring shall be appropriately undergrounded in accordance with the development consent (N0516/17).

Subsequently, the above non-compliance has formed the reason for refusal.

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.

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, in this regard the application is not considered to be acceptable and is recommended for refusal.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Inconsistent 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 does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council , as the consent authority REFUSE Modification Application No. Mod2019/0072 for Modification of Development Consent N0516/17 granted for Construction of a four 4 unit Seniors Living development with basement car parking landscaping and strata subdivision on land at Lot 2 DP 12074,703 Barrenjoey Road, AVALON BEACH, Lot 1 DP 12074,701 Barrenjoey Road, AVALON BEACH, subject to the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C1.20 Undergrounding of Utility Services of the Pittwater 21 Development Control Plan, in that the applicant has not demonstrated compliance with the controls or the variations of this clause.

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

Signed



Georgia Quinn, Planner

The application is determined on 12/06/2019, under the delegated authority of:



Daniel Milliken, Acting Development Assessment Manager