

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2018/0003
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Responsible Officer:	Angela Manahan
Land to be developed (Address):	Lot 119 DP 13152, 1 Elanora Road ELANORA HEIGHTS NSW 2101
Proposed Development:	Modification of Development Consent N0077/13 granted for the subdivision of one lot into two, demolition, construction of driveway and carparking structures
Zoning:	E4 Environmental Living SP2 Infrastructure
Development Permissible:	Yes - Zone SP2 Infrastructure Yes - Zone E4 Environmental Living
Existing Use Rights:	
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Barray Civil Pty Ltd
Applicant:	Barray Civil Pty Ltd

Application lodged:	03/01/2018
Integrated Development:	No
Concurrence Required:	No
State Reporting Category:	Subdivision only
Notified:	15/01/2018 to 29/01/2018
Advertised:	Not Advertised
Submissions Received:	0
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 SP2 Infrastructure

Pittwater Local Environmental Plan 2014 - 5.1 Relevant acquisition authority

Pittwater 21 Development Control Plan - 2014 - A1.7 Considerations before consent is granted

SITE DESCRIPTION

Property Description:	Lot 119 DP 13152 , 1 Elanora Road ELANORA HEIGHTS NSW 2101
Detailed Site Description:	The subject site has a legal description of Lot 119 DP 13152, commonly known as No.1 Elanora Road, Elanora Heights. The subject site has a frontage of 28.075 metres to Elanora Road. The site is irregular in shape and 1877sqm in area. The front portion of the site has a gentle slope however the rear portion is steeply sloping. The site currently contains a single storey detached residential dwelling. Works in accordance with development consent N0077/13, being the construction of a driveway, turning area and off-street parking, have been completed on site. The property is nominated as land slip and bush fire prone land.

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:

12 June 2013

Development Application N0077/13 for the subdivision of one lot into two lots at the subject site was approved by Council.

3 January 2018

Modification Application Mod2018/0003 was lodged with Council.

PROPOSED DEVELOPMENT IN DETAIL

Modification of Development Consent N0077/13 which sought consent for the subdivision of one lot into two.

The Applicant seeks to modify the consent in the following way:

Modify condition F16, which references the original approved stamped plan, to reflect the as-built structures and Construction Certificate drawings in order to satisfy the condition for the release of the subdivision certificate.

Condition F16 reads as follows:

The structures and areas of hard surface shown to be removed on the approved subdivision plan Drawing No. 957, proposed subdivision revD.dwg, prepared by CMS Surveyors Pty Ltd dated 4/2/05 shall be returned to soft landscaping prior to the issue of the subdivision certificate.

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 N0077/13, in full, with amendments detailed and assessed as follows:

Modification of condition F16, which references the original approved stamped plan, to reflect the as-built structures and Construction Certificate drawings in order to satisfy the condition for the release of the subdivision certificate.

The relevant matters for consideration under Section 96(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 96(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 N0077/13. The relocation of the parking area does not result in any net loss of landscaping on site, and it is considered that the intent of condition F16 is still achieved.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require,	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 2011 and Pittwater Development

Section 96(1A) - Other Modifications	Comments
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	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 79C Assessment

In accordance with Section 96(3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 96 the consent authority must take into consideration such of the matters referred to in section 79C(1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 79C of the Environmental Planning and Assessment Act, 1979, are:

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 79C (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 79C (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 79C (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. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000. No Additional information was requested.</p>

Section 79C 'Matters for Consideration'	Comments
	<p>Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed in the original consent.</p> <p>Clauses 93 and/or 94 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>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>
Section 79C (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	(i) The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater Development Control Plan section in this report. (ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 79C (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Public Exhibition” in this report.
Section 79C (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

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.

MEDIATION

REFERRALS

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	

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)

Nil

Pittwater Local Environmental Plan 2014

Is the development permissible?	Zone SP2: Yes Zone E4 : Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	
zone objectives of the LEP?	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.6 Subdivision - consent requirements	Yes
5.1 Relevant acquisition authority	N/A
5.1A Development on land intended to be acquired for public purpose	N/A

Detailed Assessment

Zone SP2 Infrastructure

The modification application seeks consent to modify a condition of consent in relation to the replacement of the existing hard surface areas on site with landscaping. There are no works proposed within the SP2 zone.

5.1 Relevant acquisition authority

No works are proposed on the SP2 zoned land. The modification application relates to the wording of condition F16 only, which relates to hard surface areas on the E4 zoned portion of the land. As such referral to RMS was not considered necessary in this instance.

Pittwater 21 Development Control Plan - 2014

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes

Detailed Assessment

A1.7 Considerations before consent is granted

As part of the subdivision application, the provision of vehicle access and off-street parking to both allotments was approved by Council. The original approved plans proposed a double hard stand space on Lot 1 located to the north (rear) of the existing dwelling.

The approved carparking arrangement was amended as part of the Construction Certificate and the amendment was endorsed by the Principal Certifying Authority. The Applicant advised that the Private Certifier did not require a section 96 application to modify the original consent for the changes made. The Construction Certificate drawings amended the off-street parking for Lot 1 to the south of the existing dwelling (where the existing hard stand area was located).

Condition F16 of development consent N0077/13 requires the removal of hard surface areas to be replaced with landscaping, and directly references the approved plan (Drawing No. 957, prepared by CMS Surveyors). Due to the amendments that occurred between the issue of the approved stamped drawings and the issue of the Construction Certificate, the development can no longer satisfy condition F16 as one of the hard surface areas identified in the original drawing which was to be replaced with landscaping is where the amended hard stand space is located. As such the Applicant seeks consent to amend condition F16 in view of the endorsed Construction Certificate drawing.

Prior to the subdivision application, the area proposed to be Lot 1 contained a large amount of hard surface concrete area, with only a small grass area located to the rear of the existing dwelling. The rear of the whole site was heavily vegetated. The imposition of condition F16 was to increase the landscaped area on proposed Lot 1 in order to achieve consistency with the maximum site coverage requirements for the site. Based on the original approved plans, condition F16 required approximately 193m² of hard surface area to be replaced. With the amended parking arrangement, the replacement of hard surface to landscaping is approximately 196m². As such it is considered that the intent of condition F16 is achieved and the amendment to the condition is supported.

It is noted that the amendments to the carparking were endorsed by the Private Certifier and in this instance the Applicant was advised by the PCA that no modification application was required for the

amendments. Notwithstanding the above, for the purpose of the assessment of the subject modification application consideration has been given to the amended carparking and whether it is consistent with the relevant planning controls. The parking area located to the front of the dwelling is located between 2.64m and 7.6m from the front boundary and as such would technically not comply with the minimum front building line requirement. However, the proposed parking would be supported for the following reasons:

- The parking area is a hard stand area located at natural ground level, and as such is not dominant within the existing streetscape and shall not attribute to excessive bulk and scale of the development.
- Furthermore, there is existing landscaping to the south and west of the parking area and significant landscaping within the road reserve area which shall ensure the proposal is screened as viewed from the street.
- The proposed parking area shall replace the existing hard stand parking area on site and is not considered to result in any unreasonable impacts upon the adjoining properties, or the natural or built environment.

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.

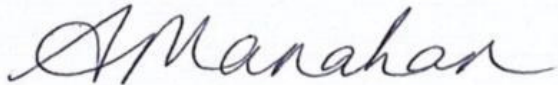
RECOMMENDATION

THAT Council as the consent authority grant approval Modification Application No. Mod2018/0003 for Modification of Development Consent N0077/13 granted for the subdivision of one lot into two, demolition, construction of driveway and carparking structures on land at Lot 119 DP 13152,1 Elanora Road, ELANORA HEIGHTS, subject to the conditions printed below:

Condition F16. The existing hard surface areas, as identified on plan Drawing No. 957 proposed subdivision revD.dwg prepared by CMS Surveyors Pty Ltd dated 4/2/05, are to be removed and replaced with landscaping in accordance with the as-built drawing 17817-1C, prepared by Taylor Consulting, dated May 2017.

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

Signed




Angela Manahan, Planner

The application is determined under the delegated authority of:



Matthew Edmonds, Manager Development Assessments


















ATTACHMENT A

Notification Plan	Title	Date
 2018/035538	Plan - Notification	10/01/2018

ATTACHMENT B

No notification map.

ATTACHMENT C

Reference Number	Document	Date
 MOD2018/0003	1 Elanora Road ELANORA HEIGHTS NSW 2101 - Section 96 Modifications - Section 96 (1a) Minor Environmental Impact	03/01/2018
 2018/002870	DA Acknowledgement Letter - Barray Civil Pty Ltd	03/01/2018
 2018/019906	ASIC Company Extract	05/01/2018
 2018/019910	Plans - External	05/01/2018
 2018/019911	Plans - Master Set	05/01/2018
 2018/019913	Report - Statement of Modification	05/01/2018
 2018/019909	Emails - S96 Advice	05/01/2018
 2018/019907	DA Checklist	08/01/2018
 2018/019908	Development Application Form	08/01/2018
 2018/019905	Applicant Details	08/01/2018
 2018/019914	Revised Owner's Consent	08/01/2018
 2018/035250	File Note	10/01/2018
 2018/035538	Plan - Notification	10/01/2018
 2018/035535	Fee Form	10/01/2018
 2018/041684	DA Acknowledgement Letter (not integrated) - Barray Civil Pty Ltd	10/01/2018
 2018/041703	Notification Letter - Mod	10/01/2018
 2018/041705	Referral - External - Ausgrid: (SEPP Infra)	10/01/2018