

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2018/0279
<b>Responsible Officer:</b>	Nick Armstrong
<b>Land to be developed (Address):</b>	Lot 124 DP 13152, 98 Wakehurst Parkway ELANORA HEIGHTS NSW 2101
<b>Proposed Development:</b>	Modification of Development Consent N0367/12 granted for the subdivision of one allotment into two, construction of a new dwelling on Lot 2 and extension of the existing driveway to Lot 2
<b>Zoning:</b>	E4 Environmental Living SP2 Infrastructure
<b>Development Permissible:</b>	Yes - Zone SP2 Infrastructure Yes - Zone E4 Environmental Living
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Marc Francis Anthony Bellomo Samantha Lorriane Bellomo Giovanni Bellomo Taylor Katherine Bellomo
<b>Applicant:</b>	Marc Francis Anthony Bellomo
<b>Application lodged:</b>	05/06/2018
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Subdivision only
<b>Notified:</b>	Not Notified
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Recommendation:</b>	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 21 Development Control Plan - 2014 - B2.2 Subdivision - Low Density Residential Areas

### SITE DESCRIPTION

<b>Property Description:</b>	Lot 124 DP 13152 , 98 Wakehurst Parkway ELANORA HEIGHTS NSW 2101
<b>Detailed Site Description:</b>	The site is known as 98 Wakehurst Parkway, Elanora Heights (Lot 124 DP13152). The site is a narrow rectangular shape with a total area of 2264m <sup>2</sup> and a frontage of 15.255m. The site slopes steeply at the rear and reduces to moderate as it falls towards Wakehurst Parkway. Towards the rear of the site is a sandstone cliff face and beyond the site is heavily vegetated. The site is currently occupied by a single storey dwelling with driveway access from Wakehurst Parkway and a recently constructed single dwelling which formed part of the consent under N0367/12. The adjoining property to the west has recently been subdivided into two allotments however, no construction works have commenced on site. Other adjoining sites consist of one and two storey dwellings. The site is identified as being slip affected and located in a bushfire prone area.

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:

16/04/2013

Development Application N0367/12 for the subdivision of the existing lot into two (2) allotments and the construction of a new single dwelling was granted consent.

02/05/2018

Subdivision Certificate SC2018/0037 for the creation of two (2) allotments from the existing single lot was lodged.

## PROPOSED DEVELOPMENT IN DETAIL

The modification application seeks the following changes to the approved subdivision:

- Deletion of condition E3 relating to the creation of an inter-allotment drainage easement prior to the lodgement of the Occupation Certificate; and
- Alteration to the wording of condition F12 regarding the 9(d) zoning (currently SP2 zone under PLEP 2014).

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 N0367/12, 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	<b>Yes</b> 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 N0367/12.
(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&amp;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&amp;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&amp;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.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;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&amp;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&amp;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&amp;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) <b>Environmental Impact</b> 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.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> 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 was not notified.

## MEDIATION

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

## 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)

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?	Yes
zone objectives of the LEP?	Zone SP2: Yes Zone E4 : Yes

### Principal Development Standards

No changes to approved lot size or building height as granted consent under N0367/12.

### Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
2.6 Subdivision - consent requirements	Yes
4.1 Minimum subdivision lot size	Yes
5.1 Relevant acquisition authority	Yes
5.1A Development on land intended to be acquired for public purpose	Yes
5.10 Heritage conservation	Yes

### Pittwater 21 Development Control Plan - 2014

### Built Form Controls

No changes to any P21 DCP controls.

### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
A4.5 Elanora Heights Locality	Yes	Yes
B2.2 Subdivision - Low Density Residential Areas	Yes	Yes

#### Detailed Assessment

### **B2.2 Subdivision - Low Density Residential Areas**

The modification application seeks to delete and modify conditions E3 and F12 of the previous development consent (N0367/12).

Condition E3 currently reads:

*An inter-allotment easement to drain water, under Section 88B of the Act is required to be created on the title of Lot 1 to carry stormwater discharged from the upstream Lot 2 to the public drainage system in favour of lot the upstream Lot 2.*

However, this condition cannot be satisfied without the prior lodgement and certification of the subdivision certificate as the Lots referenced within the condition have yet to be created. This condition therefore, should be moved to 'section F' - Matters to be satisfied prior to the issue of the Subdivision Certificate, to better reflect the intention of the condition.

Condition F12 currently reads:

*The area of the site identified as 9(d) zoning is to be a separate lot on the plan of subdivision to be submitted with the subdivision certificate application.*

The applicant has received updated correspondence from the RMS, dated 31/05/2018 which provides the following comment:

*RMS would raise no objection to the alteration of the above condition to "The area required for road widening should be identified on any plan of subdivision."*

Therefore the condition should be amended to reflect this change in addition to the zoning referenced being SP2 rather than 9(d) in accordance with PLEP 2014.

### **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
- Inconsistent 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. Mod2018/0279 for Modification of Development Consent N0367/12 granted for the subdivision of one allotment into two, construction of a new dwelling on Lot 2 and extension of the existing driveway to Lot 2 on land at Lot 124 DP 13152,98 Wakehurst Parkway, ELANORA HEIGHTS, subject to the conditions printed below:

#### **A. Modify Condition F12 to read as follows:**

The area of the site identified as SP2 zoning is to be identified on any plan of subdivision.

#### **B. Delete Condition E3**

**C. Add Condition F14 to read as follows:**

An inter-allotment easement to drain water, under Section 88B of the Act is required to be created on the title of Lot 1 to carry stormwater discharged from the upstream Lot to the public drainage system in favour of the upstream Lot 2.

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

**Signed**



**Nick Armstrong, Planner**

The application is determined under the delegated authority of:



**Matthew Edmonds, Manager Development Assessments**












## **ATTACHMENT A**

No notification plan recorded.

## **ATTACHMENT B**

No notification map.

## ATTACHMENT C

Reference Number	Document	Date
 2018/343895	Report - Notice of Determination (N0367/12)	25/09/2016
 2018/343897	Report - RMS Letter (31 May 2018)	03/06/2018
 2018/343894	Plans - Subdivision (100 Wakehurst Parkway)	03/06/2018
 2018/343896	Report - RMS Letter (1 March 2013)	04/06/2018
 2018/343899	Report - Statement of Modification (Condition F12)	05/06/2018
 2018/343898	Report - Statement of Modification (Condition E3)	05/06/2018
 MOD2018/0279	98 Wakehurst Parkway ELANORA HEIGHTS NSW 2101 - Section 96 Modifications - Section 96 (1a) Minor Environmental Impact	05/06/2018
 2018/343200	DA Acknowledgement Letter - Marc Francis Anthony Bellomo	05/06/2018
 2018/343891	Applicant Details	05/06/2018
 2018/343892	Development Application Form	05/06/2018
 2018/343893	Fee Form	05/06/2018