



19 December 2017

The General Manager
Northern Beaches Council
Village Park, 1 Park Street,
Mona Vale NSW 2103

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SYDNEY NSW 2000**

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Dear Sir/Madam,

SECTION 96AA APPLICATION TO MODIFY DEVELOPMENT CONSENT NO. N0182/13 - 29-31 WARRIEWOOD ROAD, WARRIEWOOD

1. INTRODUCTION

This submission has been prepared by Urbis on behalf of Colonial Credit Pty Ltd to accompany an application under Section 96AA of the *Environmental Planning and Assessment Act 1979* (EP&A Act) to modify Development Consent No. N0182/13 relevant to the site at 29-31 Warriewood Road, Warriewood.

This letter includes the following components:

- a description of the site and its surrounds;
- a detailed description of the proposed modifications;
- an assessment of the proposal under section 96AA of the EP&A Act;
- an assessment of the proposal according to the provisions of section 79C of the EP&A Act; and
- a discussion of the key planning considerations and impacts of the proposal.

The subdivision works on site was approved by the NSW Land and Environment Court (Case No. 10332 of 2014) on 23 October 2014 for the "40 lot subdivision of 2 existing lots. Demolition of existing structures and dwellings and construction of associated infrastructure in three stages".

E&P Comelli Pty Ltd seek to split Stage 2 into two separate stages (Stage 2a and Stage 2b) to provide more flexibility with the sequencing of the proposed civil works. This application will ensure a more efficient and flexible development of the overall site and would allow lots to be developed with demand.

2. SUBJECT SITE AND SURROUNDS

- **Address:** 29-31 Warriewood Road, Warriewood
- **Legal description:** Lot 30 and Lot 31 Section C Deposited Plan 5464; and Lot 31 Section C Deposited Plan 5464

Figure 1 – Site Location



Source: Six Maps

Surrounding development north and east of the site consists of low density residential development. South of the site is Macpherson Street and several vacant lots. To the west of the subject site is another development site and an Anglican Retirement Village (ARV) development known as 'Warriewood Brook'.

3. APPROVED DEVELOPMENT

The subdivision works on site was approved by the NSW Land and Environment Court (Case No. 10332 of 2014) on 23 October 2014 for the "40 lot subdivision of 2 existing lots. Demolition of existing structures and dwellings and construction of associated infrastructure in three stages".

The development was approved to be staged in the following manner:

- **Stage 1** – excavation and demolition works, site works and services in part or whole, subdivision to create 11 Torrens Title residential lots, construction of temporary road 6.5m wide on proposed Lot 7 and two residue lots (Lots 12 and 13), with Lot 13 being the area 3,308m² (measured 25m from the centreline of Narrabeen Creek).



- **Stage 2** – Construction of temporary road 6.5m wide, internal access streets and section of Lorikeet Grove, water management facilities, drainage and cycleway, and subdivision of residue lot (Lot 12) to create 29 residential lots and 1 common lot under Community Title and the dedication of Lorikeet Grove section and Narrabeen Creek corridor to Pittwater Council.
- **Stage 3** – Removal of temporary turning road 6.5m wide on Lots 7 and 25.

4. PROPOSED MODIFICATION

The proposed amendments required to Development Consent No. N0182/13 are outlined in the following table:

Table 1 – Proposed Modified Conditions

Condition Reference	Original / Modified Condition	Comment
Condition B1	<ul style="list-style-type: none"> • Stage 2 – Construction of temporary road 6.5m wide, internal access streets and section of Lorikeet Grove, water management facilities, drainage and cycleway, and subdivision of residue lot (Lot 12) to create 29 residential lots and 1 common lot under Community Title and the dedication of Lorikeet Grove section and Narrabeen Creek corridor to Pittwater Council. • Stage 3 – Removal of the temporary road 6.5m wide on lots 7 and 25. • Stage 2a - Construction of temporary road 6.5m wide, internal access streets and section of Lorikeet Grove (on proposed lot 16), water management facilities, drainage and cycleway, and subdivision of residue lot (Lot 12) to create 29 21 residential lots, 1 residue lot, and 1 common lot under Community Title, and the dedication of Lorikeet Grove section and Narrabeen Creek corridor to Pittwater Council. • Stage 2b - Subdivision of residue lot to create 8 residential lots under Community Title, • Stage 3 – Removal of the temporary road 6.5m wide on lots 7 and 25 16, and of the temporary turning bay for service vehicles. 	
Condition B21	<p><i>B21. The temporary road on proposed Lot 7 (in Stage 1) and Lot 25¹⁶ (in Stage 2a) connecting the internal access streets and section of Lorikeet Grove with Warriewood Road is to remain in</i></p>	Amended to be consistent with proposed Staging Modification.



Condition Reference	Original / Modified Condition	Comment
	<i>place until such time as Lorikeet Grove extension is constructed to directly connect to Warriewood Road or the public road network.</i>	
Condition E4	<i>The dedication of 3,308m2 of Narrabeen Creekline corridor (measured 25m from the centreline of Narrabeen Creek) is to be effected prior to or through the registration of the Subdivision Plan the subject of the Subdivision Certificate for Stage 2a. All structures and introduced/contaminated fill material within the creekline corridor land is to be removed prior to the creekline corridor land being dedicated to Council.</i>	Amended to be consistent with proposed Staging Modification.
Condition E5	<i>Stage 2a of this consent relates to the subdivision of the residue lot (Lot 12) to create 29 residential lots and 1 common lot under Community Title. The applicant is to submit a Neighbourhood Development Contract and Community Management Statement which incorporates all of the statutory requirements of Schedule 2 of the Community Land Development Act, 1989 and is to specifically address the following:</i>	Amended to be consistent with proposed Staging Modification.

4.1. REASON FOR MODIFICATION

- The proposed modification will ensure an increased flexibility and efficiency in the overall development of the site.
- The dividing of Stage 2 will ensure lots are developed when demand permits, and enables the registration of 8 remaining lots, alternatively these lots ~~could be consolidated via separate application, or consolidated as a part of an apartment approval.~~ *become*
- The modification will also ensure a decrease in the overall impact on the immediate area as a result of the staged development.

5. SECTION 96AA ASSESSMENT

The appropriate means of administering this application is under Section 96AA of the EP&A Act. The relevant part states the following:



96AA Modification by consent authorities of consents granted by the Court

(1) A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the Court and subject to and in accordance with the regulations, modify the development consent if:

(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and

(b) it has notified the application in accordance with:

(i) the regulations, if the regulations so require, and

(ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and

(c) it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and

(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.

(1A) In determining an application for modification of a consent under this section, 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.

5.1. SUBSTANTIALLY THE SAME DEVELOPMENT

The modified proposal remains substantially the same as approved. The proposed modifications will not change the land use, intensity of the site's use nor do the modifications alter the nature of the development.

The modifications simply relate to splitting Stage 2 into two separate stages (Stage 2a and Stage 2b) to provide more flexibility with the sequencing of the civil works and lot registration.

Pending approval, Stages 2a and 2b combined will yield the same 29 housing lots as have already been approved at Stage 2.

As such it is substantially the same development as approved.

Section 96AA of the Act stipulates that consideration to matters referred to in section 79C (1) should also be undertaken. An assessment of the proposed modifications against section 79C (1) has been undertaken in the following section of this letter.

6. SECTION 79C ASSESSMENT

The following assessment is structured in accordance with the relevant matters for consideration identified at section 79C(1) of the EP&A Act.



6.1. ENVIRONMENTAL PLANNING INSTRUMENTS

Pittwater Local Environmental Plan 2014 (the LEP) is the principal environmental planning instrument that applies to the site. The proposed modifications do not result in any non-compliances with the key development standards in the LEP.

The development as modified remains consistent with the objectives of the R3 zone.

6.2. DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS

There are no draft environmental planning instruments relevant to the proposed modification.

6.3. DEVELOPMENT CONTROL PLAN

The proposed modifications do not result in any non-compliances with the key development standards in the DCP.

6.4. LIKELY IMPACTS OF THE DEVELOPMENT

The proposed modification only relates to the staging of works and is considered to have a minor impact on the site or surrounding area. It is consistent with the previously approved scheme.

6.4.1. Effect of Proposed Staging on the Subdivision

When Stage 1 and Stage 2a are registered - all services will have been provided to Stage 1 and Stage 2a. Access to Stage 2a will be achieved via a temporary roadway through lots 7 and 16. Stage 2b will be fenced off from access *(excepting the temporary turning bay for service vehicles)*.

If the RFB does not proceed – then Stage 2b will be completed and registered as 8 community lots.

6.5. SUITABILITY OF THE SITE

The subject site is considered to be suitable to a development of this nature, which does not change having regard to the modification sought. The proposed modification is considered to result in a development that is substantially the same as that which was originally approved. Therefore, the overall suitability of the site for the proposed scheme is considered to be satisfactory in this respect.

6.6. PUBLIC SUBMISSIONS AND PUBLIC INTEREST

Council have confirmed that given the minor nature of the modification public notification is not required.

The proposal satisfies the relevant zone objectives and is consistent with the previously approved subdivision, therefore is within the public interest.

7. CONCLUSION

This submission has been prepared in support of a section 96AA application and demonstrates that:

- The proposed modification to Condition B1 makes no material change to the approved development.
- The proposed modification is simply a rewording of the condition to split Stage 2 into two separate stages (Stage 2a and Stage 2b) to provide more flexibility with the sequencing of the proposed civil works.



- Overall, the modification:
 - retains all of the fundamental components of the approved subdivision;
 - will have no additional environmental impacts on the surrounding area; and
 - will continue to meet the objectives of all relevant planning controls.
- As demonstrated within this submission, the proposed modification is considered to be satisfactory under section 79C of the EP&A Act, and as such it is recommended that approval be granted to the proposal as modified.

We trust the above and enclosed information is satisfactory for Council to consider this application, however should you have any queries regarding this matter please contact the undersigned on 8233 7631.

Yours sincerely,

A handwritten signature in black ink, appearing to read "R Macindoe".

Ryan Macindoe
Senior Consultant