

Strategic Planning Referral Response

Application Number:	Mod2023/0201
Proposed Development:	Modification of Development Consent N0440/15 granted for the subdivision of land and the construction of a residential development incorporating 81 dwellings and associated civil works and landscaping.
Date:	22/05/2023
To:	Maxwell Duncan
Land to be developed (Address):	Lot 1 DP 5055 , 8 Forest Road WARRIEWOOD NSW 2102

Officer comments

INTRODUCTION

On 12 May 2023, Strategic and Place Planning received a referral request for application (Mod2023/0201) seeking to modify Development Consent N0440/15 that was granted for the subdivision of land and the construction of a residential development incorporating 81 dwellings and associated civil works and landscaping.

SUBJECT SITE

The subject site comprises 8 Forest Road Warriewood (Lot 1 DP 5055). The subject site is regular in shape and has a boundary on Forest Road, Boundary Street and the creek line corridor. The subject site is zoned R3 Medium Density Residential and RU2 Rural Landscape under the Pittwater LEP 2014.

Chronology:

On 3 May 2017, Land and Environment Court issued a consent on N0440/15 for the construction of a residential development, comprising 81 dwellings at 8 Forest Road, Warriewood. Condition 9 of the consent required a payment of monetary contribution of \$4,719,660.63 and dedication of 5,895m² of creek line land prior to the issue of any Construction Certificate or Subdivision Certificate. At the time of determination, the Warriewood Valley Section 94 Contributions Plan (Plan No 15) applied.

On 9 April 2018 Council modified consent N0440/15 as the development is to be completed in stages, namely:

Stage 1A:

- (a) All works within the Jubilee Road public road reserve
- (b) All rehabilitation works, stormwater management infrastructure and landscaping within the inner creekline corridor to be dedicated to Council,
- (c) The temporary construction of the 8m wide driveway access and the Fire Access Road in a pervious material,
- (d) The establishment of all necessary APZs,
- (e) The provision of all services, including water, sewer, electricity, communications and stormwater, to Lots 2, 3 and 4,
- (f) The construction of the garage on Lot 3 or the construction of hardstand parking area in the location of the proposed garage,
- (g) Necessary fire protection upgrades to the existing dwelling on Lot 3, and
- (h) The erection of site protection fencing and sedimentation management measures around the perimeter of Lot 2.

Stage 1B:

- (a) The completion of all outstanding works with the exception of the works outlined to occur in Stage 2,

below.

- (b) A temporary bollard is to be placed at the entrance (eastern end) of the 5.5m wide private access road to restrict vehicular access until Stage 2 is completed, and
- (c) Partial Strata subdivision limited to the Stage 1B works.

Stage 2:

- (a) The construction of Buildings C and D, and the landscaping around the perimeter of Buildings C and D in the area marked on the Approved Staging Plans,
- (b) The construction of the associated basement below Buildings C and D, as shown on the Approved Staging Plans,
- (c) "Stage 2" water management infrastructure, as nominated in the Stage 1 Stormwater Drainage Plan referenced in this consent.
- (d) The temporary bollard at the entrance (eastern end) of the 5.5m wide private access road is to be removed, and
- (e) Partial Strata Subdivision limited to the Stage 2 works.

As a result of the development being staged, Condition 9 was changed to read as follows:

A monetary contribution of \$4,724,933.82 (subject to (a) below) and dedication of 5,796 square metres of creek line land is to be made to Council for the provision of public infrastructure and services pursuant to Section 94 of the Environmental Planning and Assessment Act 1979.

1. The monetary contribution will be adjusted at the time of payment in accordance with the latest Consumer Price Index as published quarterly by the Australian Bureau of Statistics as outlined in Council's Warriewood Valley Section 94 Contributions Plan (Amendment 16 Revision 2). The monetary contribution is to be paid prior to issue of the first Construction Certificate.

2. The Applicant is required to dedicate to Northern Beaches Council a total of 5,796 square metres of land for the provision of multi-functional creek line corridor facilities, identified as Lot 1 on the Plan of Subdivision titled 'Proposed Subdivision of Lot 1 DP 5055', Sheet No.1 of 1, reference 15/99, prepared by Pulver Cooper & Blackley, dated 21 March 2018 (by Council). The dedication is to take place by way of Torrens Title subdivision following the completion of Stage 1A works. Evidence that the Deposited Plan has been registered with NSW Land and Property Information shall be provided to Council prior to the issue of any Occupation Certificate for the dwellings.

3. The Applicant may negotiate with Council for the direct provision of facilities and services in lieu of the monetary contribution above (or any portion of that contribution) through a Material Public Benefit offer to Council in accordance with the Warriewood Valley Section 94 Contributions Plan (Amendment 16 Revision 2). Any Material Public Benefit agreement between the Applicant and Council must be finalised, formally signed and in place prior to payment of the monetary contribution being made. The Warriewood Valley Section 94 Contributions Plan (Plan No.15) may be inspected at Northern Beaches Council's Mona Vale Office, 1 Park Street Mona Vale or Council's website <http://www.northernbeaches.nsw.gov.au/>

On 2 March 2022, Council modified the consent (Mod2021/0816) removing the staging of works. Condition 9 now reads as follows:

The applicant must pay a total development contribution to Council equivalent to \$5,034,382.26 in accordance with the Warriewood Valley Contributions Plan (as amended). This contribution is comprised of:

- a) A monetary contribution of \$4,724,933.82 and*

b) Dedication of 5,796sqm of creekline corridor land, shown as Lot 1 on plan titled 'Proposed Subdivision of Lot 1 DP 5055', Sheet No.1 of 1, reference 15/99, prepared by Pulver Cooper & Blackley, dated 21 March 2018 (by Council).

The monetary contribution must be paid prior to the issue of any Construction Certificate or Subdivision Certificate, whichever occurs first. The monetary contribution includes a \$309,448.44 discount for the dedication of creekline corridor land. The monetary contribution will be adjusted at the time the payment is made, in accordance with the provisions of the Warriewood Valley Contributions Plan (as amended).

The dedication of creekline corridor land is to occur by way of subdivision and must NOT occur until all approved works within this land have been completed. The dedication must occur prior to the release of any Occupation Certificate.

The Applicant may negotiate with Council for the direct provision of other facilities and services, and/or the dedication of land (other than land identified above) in lieu of the monetary contribution above (or any portion of that monetary contribution) or the deferral of payments through a Material Public Benefit Agreement between Council and the Applicant in accordance with the Warriewood Valley Development Contributions Plan (as amended). The agreement for Material Public Benefit between the Applicant and Council must be finalised, formally signed and in place prior to the payment of the monetary contribution.

A copy of the development contributions plan is available for inspection at 725 Pittwater Road, Dee Why or on Council's website.

On 14 April 2022, the development contribution was paid to and receipted by Council, for the adjusted amount of \$5,162,191.85.

On 19 April 2022, Metropolitan building approvals issued a Construction Certificate for works under consent N0440/15 as modified and works commenced on site.

There is a legal precedent (*Ku-ring-gai Council v Buyozo Pty Ltd [2021] NSWCA177*) that restricts Council changing the contribution condition when:

- a) the development contribution has been paid to Council in full, and
- b) construction has formally commenced on site.

Accordingly, the obligation to pay development contributions generated by the approved development on this site is complete.

RECOMMENDATION

A. This application to modify consent N0440/15 does not result in changes to Condition 9 in regard to the development contribution payable to Council.

B. This modification application is supported without conditions.

The proposal is therefore supported.

Note: Should you have any concerns with the referral comments above, please discuss these with the Responsible Officer.

Strategic Planning Conditions:

Nil.