

## SYDNEY NORTH PLANNING PANEL COUNCIL ASSESSMENT REPORT

<b>Panel Reference</b>	PPSSNH-282
<b>DA Number</b>	Mod2021/0816
<b>LGA</b>	Northern Beaches
<b>Proposed Development</b>	Modification of Development Consent N0440/15 granted for the construction of a residential development, comprising 81 dwellings
<b>Street Address</b>	Lot 1 DP 5055, 8 Forest Road WARRIEWOOD NSW 2102
<b>Applicant/Owner</b>	8 Forest Road Pty Ltd 8 Forest Road Pty Ltd
<b>Date of DA lodgement</b>	18/11/2021
<b>Number of Submissions</b>	20
<b>Recommendation</b>	Approval
<b>Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011)</b>	General development over \$30 million (CIV \$38,585,744.00)
<b>List all documents submitted with this report for the Panel's consideration</b>	Applicant's Statement of Environmental Effects (08 October 2021, by Boston Blyth Fleming Town Planners)
<b>Clause 4.6 requests</b>	N/A
<b>Summary of key submissions</b>	N/A
<b>Report prepared by</b>	Adam Mitchell, Principal Planner
<b>Responsible Officer</b>	Adam Mitchell, Principal Planner
<b>Report date</b>	08 February 2022

### Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report? **YES**

### Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report? e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP **YES**

### Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report? **N/A**

### Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)? Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions **NO**

## Conditions

Have draft conditions been provided to the applicant for comment? Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

**YES**

## EXECUTIVE SUMMARY

This Section 4.56 Modification Application is referred to the Sydney North Planning Panel for determination as a modification to a regionally significant development pursuant to the Schedule 7 Clause 2 of the State Environmental Planning Policy (State and Regional Development) 2011.

The subject application is subsequent to the approved Development Consent N0440/15 granted by the Land and Environment Court for subdivision and the construction of 81 dwellings with associated landscaping and civil works. In June 2018 the consent was modified (MOD2018/0019) to introduce a staged construction for the development, which is understood to have been required for commercial and financial reasons.

This subject application effectively seeks to reverse the decision of MOD2018/0019 by way of removing all staging elements and reverting a number of modified conditions back to the original court conditions. A number of other conditions are also sought to be modified to allow multiple Construction Certificates and Occupation Certificates to be issued on the site, rather than in the singular as is required by the existing consent.

The public exhibition of this application has attracted unique submissions from 20 households within the local area. The concerns expressed in those submissions largely revolve around the concept of building on this land entirely, rather than referring to specific aspects of this modification application. Those submissions are concerned about the approved density and subsequent impacts to the existing provision of infrastructure, as well any tree removal and associated habitat removal caused by the approved development.

This report asserts that the submissions received are all genuine concerns of local residents, however those concerns fall outside the scope of consideration and are ultra vires to Council's assessment for a modification to an approved development.

This Assessment Report concludes with a recommendation that the Sydney North Planning Panel **APPROVES** the request to modify Development Consent N0440/15 in the ways described in the recommendations of this report.

## PROPOSED DEVELOPMENT IN DETAIL

This Modification Application is submitted to Northern Beaches Council pursuant to Section 4.56 of the Environmental Planning and Assessment Act 1979. Whilst the parent Development Consent N0440/15 was determined by the Land and Environment Court of NSW (**LEC**) and not the Sydney North Planning Panel (**SNPP**) (formally the Joint Regional Planning Panel), the application is mandated to go to the SNPP for determination.

This application seeks to modify the current Development Consent by way of removing staged construction requirements and modifying the wording of several conditions to permit a more flexible construction and occupation period by allowing more than one Construction Certificate and Occupation

Certificate to be issued.

The consent, granted under N0440/15, allows for subdivision works and the construction of 81 dwellings. That consent did not include staging but referred to Construction Certificates and Occupation Certificates in the singular (i.e., only one of each certificate can be issued).

That consent was modified by application MOD2018/0019 which introduced a staged construction process to the whole development. The submission of that application was voluntary and understood to have been made to allow for the incremental release of funds.

The specific conditions to be modified by this application are detailed within the Environmental Planning and Assessment Act 1979 section of this report. The amendments sought are, in summary:

- Deletion of the staging.
- Issuing of multiple Construction Certificates and Occupation Certificates.

In assessing the proposal, two (2) additional conditions were required to be imposed which involve:

- Development Contributions (Condition No. C9).
- Aboriginal Heritage (Condition No. A1C).

The scope of change sought under this application does not include any physical changes to the approved building, roadway, landscaping or public domain. The modifications do not alter the approved density of the site. Upon the completion of the development as a whole, the matters relevant to this modification application are non-discernible from the already approved scheme.

## **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**

There are no assessment issues.

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 1 DP 5055, 8 Forest Road WARRIEWOOD NSW 2102
<b>Detailed Site Description:</b>	<p>The Site is legally described as Lot 1 in Deposited Plan 5055, and is commonly referred to as 8 Forest Road, Warriewood. Narrabeen Creek runs along the northern boundary of the Site, creating a slightly irregular rectangular shaped allotment, with a total area of 5.678 Hectares.</p> <p>The Site is subject to split zoning; with 2.855 Hectares zoned R3 Medium Density (R3) and the remaining 2.823 Hectares zoned RU2 Rural Landscape (RU2), as shown on the Zoning Map of PLEP 2014. The division between the zones is irregular, dissecting the 324.48m long western side boundary at a distance of approximately 231m from the south-western corner of the Site and the 275.20m long eastern boundary at a distance of approximately 70m from the south-eastern corner of the site. The zone boundary is consistent with the boundary of the Warriewood Valley Release Area, and the R3 zoned portion of the site forms part of Sector 501 of the Warriewood Valley Release Area, as shown on the Warriewood Valley Release Area Map of PLEP 2014. The portion of the Site zoned RU2 is not within the Warriewood Valley Release Area. The R3 zoned portion of the site previously contained multiple outbuildings and dilapidated glass houses, which have since been demolished under a separate CDC. An existing dwelling straddles the zone and Land Release boundary, but is primarily situated on R3 zoned land. The RU2 zoned portion of the site is heavily landscaped and free of development.</p> <p>Access is currently gained at the north-eastern corner of the Site, via a roadway that was constructed within the Jubilee Road public road reserve by the owners of the adjoining Community Title residential estate to the east (previously known as 6 Forest Road). With the exception of this one existing residential estate to the east and a portion of RU2 zoned land to the north, Jubilee Avenue is characterised by industrial and business park development, including warehouses, offices, wholesalers, and a number of childcare centres.</p> <p>An unmade public road reserve (Boundary Street) adjoins the western side property boundary, with large vegetated parcels of C2 Environmental Conservation (C2) zoned land to the west and south-west. Mater Maria Catholic School is situated to the south, separated from the Site by an unmade public road reserve (Forest Road). 4 Forest Road, an undeveloped R3 zoned allotment, adjoins the south-eastern portion of the Site, forming the remainder of Sector 501 of the Warriewood Valley Release Area, as</p>

shown on the Warriewood Valley Release Area Map of PLEP 2014. The remainder of properties along Forest Road comprise medium density residential development.

Map:



## SITE HISTORY

- **Development Application N0440/15** for the subdivision of land into four (4) lots and construction of a residential development incorporating 81 dwellings and associated civil works and landscaping. Approved by the Land and Environment Court of NSW on 03 May 2017.

That application included the retention of the existing Oaklands dwelling and construction of 14 townhouses and 66 apartments across four (4) residential flat buildings, over basement car parking for 190 vehicles. The consent also requires the dedicated of half a hectare of creekline corridor to be dedicated to Council.

- **Modification Application N0440/15/S96/1** to modify the approved development consent. Approved by Council on 09 April 2018.
- **Modification Application MOD2018/0019** to modify the approved development consent by way of providing a staged construction of the approved development, and the release of the Torrens Title subdivision prior to the finalisation and Strata Subdivision of individual dwellings. The application also included physical works, however they were removed during the course of the assessment and did not form part of the approval as modified.

The application was approved on 10 June 2018 and of note, as detailed later in this report, introduced Condition nos. 1A, B72, B73, B74, B75, C9, E18, E19, F4 and F5 to the overall consent, whilst deleting Condition nos. F1, F2 and F3.

- **Modification Application MOD2018/0566** to modify the design of the 14 approved townhouses by deleting the third floor loft space from each dwelling and modifying the roof. Approved by Council on 13 December 2018.

## 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 N0040/15, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.56 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.56- Other Modifications	Comments
(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 consent authority and subject to and in accordance with the regulations, modify the 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 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 N0440/15. The finished product does not change commensurate to the approved development consequent of this modification.
(b) 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, and the Northern Beaches Community Participation Plan.
(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	Written notices of this application have been sent to the last address known to Council of the objectors or other persons who made a submission in respect of N0440/15.

Section 4.56- Other Modifications	Comments
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.	See discussion on “Notification & Submissions Received” in this report.

### Section 4.15 Assessment

In accordance with Section 4.56 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&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 documentation was submitted with the original application.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</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 matter has been addressed via a condition in</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>the original consent.</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 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 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 Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 143A</u> 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 matter has been addressed via a condition in the original consent.</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) 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) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) 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 &amp; 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. Whilst it is acknowledged that a number of submissions from nearby residents have been received objecting to this application, the content of their submissions is objecting to the approved premise of the development application and therefore the weight being given to the concerns raised can only be limited.</p>

## PROPOSED MODIFICATIONS TO CONDITIONS

The application seeks to amend current conditions of consent by way of deletion, reinstatement and rewording as follows below. Note that the italicised text in parentheses proceeding each dot point indicates where the condition originated from.



#### Deletion of the following conditions

- 1A (Amended by MOD2018/0019)
- B72 (Added by MOD2018/0019)
- B73 (Added by MOD2018/0019)
- B74 (Added by MOD2018/0019)
- B75 (Added by MOD2018/0019)
- F4 (Added by MOD2018/0019)

#### Reinstatement of the following original Court imposed conditions of N0440/15

- F1 (Deleted by MOD2018/0019)
- F2 (Deleted by MOD2018/0019)
- F3 (Deleted by MOD2018/0019)

#### Modification of the following conditions

**Note:** the key change is the inclusion of the word 'relevant' as indicated in bold below:

- Modification to the heading at Section C to read "*Conditions to be satisfied prior to the issue of the **relevant** Construction Certificate*" (modified boldened)
- Modification of Condition nos. C4, C6, C7, C8, C10, C15, C17, C18, C19, C20, C21 and C22 to refer to "*the **relevant** Construction Certificate*"
- Modification at the heading at Section E to read "*Conditions that must be complied with prior to the issue of the **relevant** Occupation Certificate*"
- Modification of Condition nos. E1, E2, E3, E4, E5, E6, E9 and E13 to refer to "*prior to the issue of the **relevant** Occupation Certificate*"

### **SUMMARY TO MODIFICATIONS TO CONDITIONS SOUGHT**

This Section 4.56 Modification Application seeks, in essence, to delete what was approved under MOD2018/0019 and revert back to the original development consent granted by the Land and Environment Court, whilst modifying the relevant conditions pertaining to Construction Certificates and Occupation Certificates to enable multiples certificates to be issued at different times.

The conditions added, modified and deleted by MOD2018/0019 were done so to allow the staging of construction. There is no longer a need for the developer to follow the approved staging and thus that requirement is requested to be deleted, in effect reverting the majority of the consent back to how it was originally granted pursuant to N0440/15.

From the MOD2018/0019 consent, the only conditions that would remain if this application is to be approved are Condition nos. C9, E18, E19 and F5.

The magnitude of change sought under the cover of this application does not amount to any physical alteration to the approved built form, changes to the density of the development, traffic and access arrangements within the site or impacts to vegetation or wildlife. The nature of change sought under the cover of this application is best described as administrative.

### **EXISTING USE RIGHTS**

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The site is classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled *Planning for Bush Fire Protection 2006*. This application and the original application was referred to the NSW RFS for comments and recommendations, and conditions of consent were imposed in this regard. No objections were raised to the proposed modification, and the conditions remain relevant with regard to the proposed modifications.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 03/12/2021 to 24/01/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 20 submission/s from:

Name:	Address:
Mr Thomas James Reid	9 / 28 Darley Street East MONA VALE NSW 2103
Ms Elizabeth Ann Vincent	31 Angophora Circuit WARRIEWOOD NSW 2102
Sue Jenkins	Address Unknown
Jarrold Castaing	694 Barrenjoey Road AVALON BEACH NSW 2107
Lucinda Castaing	2 / 12 Turimetta Street MONA VALE NSW 2103
Mr Damian James Malone	2 Hill View Crescent WARRIEWOOD NSW 2102
Mr Robert John Keene Miller	6 / 10 Ponderosa Parade WARRIEWOOD NSW 2102
Mr Luke Daniel Jusic	15 Bert Close WARRIEWOOD NSW 2102
Brad Williams	Address Unknown
Mrs Cristina Cathy Cestaro	23 / 237 Macpherson Street WARRIEWOOD NSW 2102
Mr Larry Walter Duke	129 Garden Street NORTH NARRABEEN NSW 2101
Steven Chapman	Address Unknown
Stefano Silvestri	Address Unknown
India Turner	6 Joseph Street AVALON BEACH NSW 2107
Oliver Collocott	5 Kalang Avenue KILLARA NSW 2071
Ms Zara Kathryn Bennett	213 Macpherson Street WARRIEWOOD NSW 2102
Mr Christopher John Muir	1 Hill View Crescent WARRIEWOOD NSW 2102
Miss Bonnie Macqueen	55 / 79 - 91 Macpherson Street WARRIEWOOD NSW 2102
Mr Matthew James Treble	PO Box 1631 WARRIEWOOD SHOPPING SQUARE NSW 2102
Mr Stephen John Erichsen	Po Box 1261 MONA VALE NSW 1660

The exhibition of the Section 4.56 Modification Application has attracted 20 submissions, all opposing the development. A number of submissions stated that it was unclear what was being sought in this application and, generally, the submissions all objected to the principles of the development as a whole.

The redevelopment of the property has been approved. This application does not alter the density, traffic arrangements or built form outcome of the site, nor is it appropriate under this mechanism to seek to change an approved development in the manner suggested by residents in their objections.

Notwithstanding the above, each submission has been considered in the assessment of the application. The matters raised in the submissions received include:

- **Overdevelopment and density**
- **Inadequate available infrastructure (parking, road networks and sewer)**
- **Increased bushfire risk**
- **Tree loss and impacts to wildlife**
- **Determination request**

The matters raised within the submissions are addressed as follows:

- **Overdevelopment and density**

Comment

Submissions received state that, due to the existing population of Warriewood Valley and the availability of infrastructure (roads, parking and open space) no further development should be permitted.

The density of development has been approved and is not sought to be modified as a part of this application, and therefore this matter does not hold determinative weight.

- **Inadequate available infrastructure**

Comment

Submissions received state that the immediate and local road network is congested, particularly during the peak hours of the adjacent Mater Maria Catholic College. The submissions also state that there is a lack of available car parking, and that street parking is frequently occupied by boats and caravans which rarely move. Suggestions for timed parking restrictions on the road network have been requested.

The density of the development has been approved and is not sought to be modified as a part of this application, and it is therefore reasonably considered that the rate of car ownership deemed acceptable in the parent application remains relevant. Similarly, capacity of other infrastructure like sewers is not subject to change resultant of this proposed modification.

The suggestion to modify parking restrictions to limit parking to a maximum period of 12 hours is not relevant to this application, but may be raised by the relevant objectors to Council's Traffic department for formal consideration.

- **Increased bushfire risk**

Comment

Concern is raised in submissions received that the properties on the development site would be at risk of bushfires, and could prejudice the ability of existing properties to evacuate in a timely manner if a bushfire event was to occur.

The density of development and road network has been approved and is not sought to be

modified as a part of this application, and therefore this matter does not hold determinative weight.

- **Tree loss and impacts to wildlife**

Comment

Concern is raised in submissions received that the development will result in the loss of trees and thus wildlife, and could introduce pests (cats, rats etc) into the local ecosystem.

The modification does not seek to remove any trees or modify the approved landscape plan.

- **Determination request**

Comment

A submission received requests that the application be determined by an independent panel. The application is to be determined by the Sydney North Planning Panel pursuant to the State Environmental Planning Policy (State and Regional Development) 2011.

## REFERRALS

Internal Referral Body	Comments
Strategic and Place Planning(Development Contributions)	<p><b><i>Supported, with conditions</i></b></p> <p><i>N0440/15 was approved by the Land and Environment Court on 3 May 2017 for the subdivision of land and the construction of a residential development incorporating 81 dwellings and associated civil works and landscaping. This application has been subsequently modified on a number of occasions.</i></p> <p><i>The current modification application proposes amendments to several conditions to remove the formal staging of works and approved under past modification applications.</i></p> <p><i>Condition C9 requires the payment of a monetary contribution and the dedication of creek corridor land to Council pursuant to the Warriewood Valley Contributions Plan. This condition has been modified since the original approval to reference the approved staging and changes to the area of creek land to be dedicated.</i></p> <p><i>The applicant has not proposed to modify condition C9 as part of this modification application. However, condition C9 is required to be amended to remove the reference to staging and reflect the appropriate timing for payment of monetary contributions and dedication of creek land.</i></p> <p><i>The full monetary contribution is required to be paid prior to the issue of any construction certificate or subdivision certificate, whichever occurs first. The application includes works within the creek corridor. These works must be complete prior to the dedication of creek land to</i></p>

Internal Referral Body	Comments
	<p><i>Council. Creek dedication will occur through the registration of a subdivision certificate and must occur prior to the issue of any occupation certificate.</i></p> <p><i>The modification application can only be supported if condition C9 is modified. An amended condition of consent has been provided.</i></p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p><b>Supported, no conditions</b></p> <p>The Section 4.55 application was referred to Ausgrid who raised no objections to the development and recommended no additional conditions.</p>
Ausgrid: (Substation)	<p><b>Supported, no conditions</b></p> <p>The Section 4.55 application was referred to Ausgrid who raised no objections to the development and recommended no additional conditions.</p>
NSW Rural Fire Service – local branch (s4.14 EPAA)	<p><b>Supported, no conditions</b></p> <p><i>I refer to your correspondence regarding the above proposal which was received by the NSW Rural Fire Service on 29/11/2021.</i></p> <p><i>This response is to be deemed a Bush Fire Safety Authority as required under section 100B of the Rural Fires Act 1997.</i></p> <p><i>The NSW Rural Fire Service has reviewed the provided information and raises no objections to the proposed modifications, subject to compliance with the previous Bush Fire Safety Authority dated 19 February 2018.</i></p>
Aboriginal Heritage Office	<p><b>Supported, with conditions</b></p> <p>An Aboriginal Heritage Due Diligence Report was written by Futurepast – Heritage Consulting Pty Ltd in October 2015. The recommendations made in the report are:</p> <p><b>Recommendation 1</b></p> <p><i>All relevant staff and contractors should be made aware of their statutory obligations for heritage under NSW National Parks and Wildlife Act 1974 and the NSW Heritage Act 1977, which may be implemented as a heritage induction. Recognition should be made of the views and advice that has been provided by the project by the Metropolitan LALC that have been consulted with for the project.</i></p>

External Referral Body	Comments
	<p><b>Recommendation 2</b></p> <p><i>As advised by the Metropolitan LALC representative must be on site to monitor the ground disturbing works related to the removal of refuse on site (in particular the various rubbish mounds scattered throughout the site). In addition, a Metropolitan LALC representative must be on site to monitor the clearance of 0.1ha of vegetation to the south for the fire access pathway. During all other times, a stop work protocol should be implemented as outlined in Recommendation 3.</i></p> <p><b>Recommendation 3</b></p> <p><i>In the unexpected circumstances that any Aboriginal objects are unearthed as a result of the proposed site works, it is recommended that activities should temporarily cease and the area be cordoned off. The Office of Environment and Heritage must be notified by ringing the Enviroline 131 555 to advise on the appropriate course of action to allow the MLALC to record and collect the identified item(s).</i></p> <p><b>Recommendation 4</b></p> <p><i>In the event that skeletal remains are uncovered, work must stop immediately in that area and the area be cordoned off. The client must contact the NSW Police and take no further action until written advice is provided by the Police. If the remains are determined to be of Aboriginal origin, Heritage NSW (formally the Office of Environment and Heritage) must be notified by ringing the Enviroline 131 555 and a Management Plan must be developed in consultation with the relevant Aboriginal stakeholders prior to recommencement of works.</i></p> <p><b>Recommendation 5</b></p> <p><i>If, during the course of development works, suspected historic heritage places or items are uncovered, work should cease in that area immediately. The Heritage Branch, Heritage NSW (formally the Office of Environment and Heritage) should be notified and works recommenced only when an approved management strategy developed and the relevant permits are in place.</i></p> <p><u>Planner Comment</u></p> <p>It is noted that the above referenced Aboriginal Heritage Due Diligence Report is not referenced within the original development consent, and it is assumed that this had been done in error. To rectify this error, a new condition A1C is recommended (in addition to the approved plans</p>

External Referral Body	Comments
	and documents under A1B) which requires the recommendations of the Report to be adhered to.
NSW Roads and Maritime Services (Traffic Generating Development)	<p><b>Supported, no conditions</b></p> <p><i>Reference is made to Council's referral dated 29 November 2021, regarding the abovementioned application which was referred to Transport for NSW (TfNSW) in accordance with clause 104 of State Environmental Planning Policy (Infrastructure) 2007.</i></p> <p><i>TfNSW has reviewed the submitted modification and raises no objection to the application as it is unlikely to have a significant impact onto the classified road network.</i></p>

### 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 (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 who raised no objections to the modifications.

### Pittwater Local Environmental Plan 2014

Is the development permissible?	Zone RU2: Yes
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	Zone R3 : 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 RU2: Yes Zone R3 : Yes

#### Principal Development Standards

The application does not seek consent for any physical works and therefore no further assessment against the applicable Principal Development Standards is necessitated.

#### Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
6.1 Warriewood Valley Release Area	Yes

### **Pittwater 21 Development Control Plan**

#### Built Form Controls

The application does not seek consent for any physical works and therefore no further assessment against the applicable Built Form Controls is necessitated.

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.14 Warriewood Locality	Yes	Yes
A4.16 Warriewood Valley Locality	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
C6.1 Integrated Water Cycle Management	Yes	Yes
C6.2 Natural Environment and Landscaping Principles	Yes	Yes
C6.3 Ecologically Sustainable Development, Safety and Social Inclusion	Yes	Yes
C6.5 Utilities, Services and Infrastructure Provision	Yes	Yes
C6.6 Interface to Warriewood Wetlands or non-residential and commercial/industrial development	Yes	Yes

### **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

The proposal will not significantly affect 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, 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

The assessment of this Section 4.56 Modification Application has found that the changes sought to the consent result in no alterations to the approved built form or 'final product' to be delivered on site, and rather the changes are more administrative in facilitating flexibility in the construction process.

The removal of staging requirements reverts the consent to be consistent with the original court consent. The modification of conditions from referring to Construction Certificates and Occupation Certificates in the singular to a plural form is representative of current building trends and is sought to allow buildings to be occupied as they are finished, rather than sitting empty and waiting for the development as a whole to be finished.

The concerns raised in the communities submissions do not raise any matters that warrant the refusal of the application.

This report asserts that the modifications sought are satisfactory and concludes with a recommendation that the Sydney North Planning Panel, as the consent authority, grant **APPROVAL** to the Section 4.56 Modification Application.

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

## RECOMMENDATION

THAT Sydney North Planning Panel as the consent authority grant approval to Modification Application No. Mod2021/0816 for Modification of Development Consent N0440/15 granted for the construction of a residential development, comprising 81 dwellings on land at Lot 1 DP 5055,8 Forest Road,

WARRIEWOOD, subject to the conditions outlined in Attachment 1.

## ATTACHMENT 1

**A. Delete Condition no. A1.**

**B. Add Condition no. A1C to read as follows:**

The development must be carried out in accordance with the recommendations of the report Aboriginal Heritage Due Diligence by Futurepast Heritage Consulting Pty Ltd dated October 2015 (except as amended by any other condition of consent).

Reason: Protection of Aboriginal heritage.

**C. Delete Condition no. B72.**

**D. Delete Condition no. B73.**

**E. Delete Condition no. B74.**

**F. Delete Condition no. B75.**

**G. Modify Condition no. C4 to read as follows:**

Construction works approved by this consent must not commence until:

**The relevant** Construction Certificate has been issued by a Principal Certifying Authority

A Principal Certifying Authority has been appointed and Council has been notified in writing of the appointment, and c. At least 2 days' notice, in writing has been given to Council of the intention to commence work.

**H. Modify Condition no. C6 to read as follows:**

An Erosion and Sediment Management Plan is to be submitted prior to the issue of **the relevant** Construction Certificate. Control over discharge of stormwater and containment of run-off and pollutants leaving the site/premises shall be undertaken through the installation of erosion control devices such as catch drains, diversion drains, energy dissipaters, level spreaders and sediment control devices such as hay bale barriers, filter fences, filter dams and sedimentation basins. Such plan is to be accompanied by a certification from an appropriately qualified person, that the plans/ details have been designed in accordance with the requirements of Managing Urban Stormwater.' Soils and Construction (Landcom 2004). The plan is also to include specific details required to remove fine sediment and clay from vehicles leaving the site so as to maintain public roads in a clean condition.

**I. Modify Condition no. C7 to read as follows:**

Engineering plans and specifications for the construction of all roads, drainage and other civil engineering works required by this consent within all Community Title roads or driveways are to be certified by a suitably qualified and experienced Civil Engineer who is listed on the National Engineers Register (NER) maintained by Engineers Australia prior to the issue of **the relevant** Construction Certificate.

**J. Modify Condition no. C8 to read as follows:**

A satisfactory Construction Traffic Management Plan (CTMP) prepared by a suitably qualified traffic consultant is to be submitted prior to the issue of **the relevant** Construction Certificate. The CTMP is to detail:

- a) Quantity of material to be transported,
- b) Proposed truck movements per day,
- c) Proposed hours of operation, and
- d) Proposed traffic routes, noting that 3 tonne load limits apply to some roads within the local government area.
- e) Location of on/off site parking for workers associated with construction for the whole period of construction.

**K. Modify Condition no. C9 to read 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.

Reason: To provide for contributions in accordance with the Contribution Plan that enables the provision of local infrastructure and services commensurate with the increased demand resulting from development in the Warriewood Valley Release Area.

**L. Modify Condition no. C10 to read as follows:**

A suitably qualified professional is to provide certification that the **relevant** Construction Certificate detail is consistent with the relevant provisions of the General Terms of Approval, issued by the NSW Office of Water, as referenced in this consent.

**M. Modify Condition no. C15 to read as follows:**

Plans and details demonstrating that the commitments identified in the BASIX Certificate that apply to the **relevant** Construction Certificate or complying development plans and specifications are fulfilled.

**N. Modify Condition no. C17 to read as follows:**

The applicant is to consult with Sydney Water to establish whether there are any Section 73 Compliance Certificate requirements for this proposal, under the provisions of the Sydney Water Act, 1994. A copy of any Notice of Requirements letter which may be issued by Sydney Water, is to be provided to the Private Certifying Authority with the **relevant** Construction Certificate application.

Application must be made through an authorised Water Servicing Coordinator. Please refer to the Building Developing and Plumbing section of the web site [www.sydneywater.com.au](http://www.sydneywater.com.au) then refer to 'Water Servicing Coordinator' under "Developing Your Land" or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built

and charges to be paid. Please make early contact with the Coordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

**O. Modify Condition no. C18 to read as follows:**

Structural Engineering details relating to the approved development are to be submitted to the Accredited Certifier or Council prior to release of the **relevant** Construction Certificate. Each plan/sheet is to be signed by a qualified practising Structural Engineer who is registered on the National Engineers Register (NER) maintained by Engineers Australia and has appropriate experience and competence in the related field.

**P. Modify Condition no. C19 to read as follows:**

Prior to the issue of the **relevant** Construction Certificate the development should be re-assessed using flood modelling that was established as part of the Flood Study (Martens & Associates, 2017, Version 5 or as updated) to demonstrate that no lots are flood affected in the 100 year average recurrence interval flood event plus 30% increase in rainfall intensity (for climate change). The flood modelling should also demonstrate no impact on flood levels on other properties in accordance with the requirements of Councils DCP.

**Q. Modify Condition no. C20 to read as follows:**

Civil engineering detailed design for the proposed works are to be submitted to the Accredited Certifier or Council with the **relevant** Construction Certificate application. Each plan/sheet is to be signed by a qualified practising Civil Engineer who is registered on the National Engineers Register (NER) maintained by Engineers Australia and has appropriate experience and competence in the related field. The design shall take regard of all of the requirements of the Water Management Specification (2001) and the Water Management Report (Martens & Associates, 2017, Version 4. or as updated).

**R. Modify Condition no. C21 to read as follows:**

Prior to the issue of **the relevant** Construction Certificate, an updated Water Management report shall be prepared in accordance with the requirements of the Water Management Specification (2001) and the conditions of this consent and include a completed checklist from the WA(MS (2001) to be signed by an engineer that is listed on the National Engineers Register maintained by Engineers Australia. The updated report shall be submitted to the Principal Certifying Authority.

**S. Modify Condition no. C22 to read as follows:**

Prior to issue of the **relevant** Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Principal

Certifying Authority.

**T. Modify Condition no. E1 to read as follows:**

**Prior to the issue of the relevant** Occupation Certificate application stating that the development complies with the Development Consent, the requirements of the Building Code of Australia and that a Construction Certificate has been issued must be obtained before the building is occupied or on completion of the construction work approved by this Development Consent.

**U. Modify Condition no. E2 to read as follows:**

A copy of the Section 73 Compliance Certificate issued under the provisions of the Sydney Water Act, 1994, is to be forwarded to Council or the Private Certifying Authority **prior to the issue of the relevant** Occupation Certificate.

**V. Modify Condition no. E3 to read as follows:**

All dwellings are to have approved hard-wired smoke alarms installed and maintained over the life of the development. All hard-wired smoke alarms are to be Australian Standard compliant and must be installed and certified by any appropriately qualified electrician prior to the issue of **the relevant** Occupation Certificate.

**W. Modify Condition no. E4 to read as follows:**

Prior to issue of the **relevant** Occupation Certificate. Form 3 of the Geotechnical Risk Management Policy (Appendix 5 of P21 DCP) is to be completed and submitted to the Principal Certifying Authority.

**X. Modify Condition no. E5 to read as follows:**

Damage to Council's assets adjacent or near to the site that has occurred as a result of this development, including road, kerb and gutter and drainage facilities, are to be repaired to Council's written satisfaction prior to the issue of **the relevant** Occupation Certificate. Restoration of all damaged public infrastructure caused as a result of the development to Council's satisfaction is to occur at the full cost to the developer. Council's written approval that all restorations have been completed satisfactorily must be obtained and provided to the accredited certifier with the Occupation Certificate application.

**Y. Modify Condition no. E6 to read as follows:**

All infrastructure works, including roads, drainage, landscaping and civil engineering works, required under this Consent are to be completed prior to the issue of the **relevant** Occupation Certificate.

**Z. Modify Condition no. E9 to read as follows:**

A qualified landscape architect is to certify that all landscaping works have been undertaken prior to the issuing of **the relevant** Occupation Certificate. The landscape architect is to confirm that all plants are arranged and spaced, so that they present as a grown completed landscape.

**AA. Modify Condition no. E13 to read as follows:**

A maintenance period is to apply to all civil engineering works to be dedicated to Council or which will require ongoing maintenance by Council. The maintenance period will apply for six (6) months after the issue of the **relevant** Occupation Certificate. In that period the applicant will be liable for any part of the works which fail to perform in the manner required by the relevant certifications, or would reasonably be expected under the design conditions. A security deposit of a value to be determined by Council is to be made to ensure rectification of any defects during the maintenance period.

**BB. Delete Condition no. F4.**

**CC. Reinstate Condition no. F1 from Development Consent N0440/15.**

**DD. Reinstate Condition no. F2 from Development Consent N0440/15.**

**EE. Reinstate Condition no. F3 from Development Consent N0440/15.**