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The General Manager
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Attention: Rebecca Englund

**SECTION 4.55(1A) – N0013/15 – TWO STAGED COMMUNITY TITLE SUBDIVISION
6 AND 6A ORCHARD STREET; 9 AND 13 FERN CREEK ROAD, WARRIEWOOD**

Dear Rebecca,

Reference is made to the abovementioned Development Consent (N0013/15) issued on 25 June 2015 for a two staged community title subdivision.

This Section 4.55(1A) Application is submitted to Northern Beaches Council (formally Pittwater Council), on behalf of Skycorp (the Applicant) in support of a modification to Development Consent N0013/15 (**Appendix 1**) as modified on 12 September 2016 (N0013/15/S96/3) and subsequently on 21 November 2016 (N0013/15/S96/3).

The application is made pursuant to Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act). The following supporting documentation has been provided as part of this application:

- Appendix 1: Pre-Lodgement Advice
- Appendix 2: Development Consent N0013/15
- Appendix 3: Modified Plan of Subdivision
- Appendix 4: Modified Civil Plan
- Appendix 5: Stormwater Management Letter
- Appendix 6: Arboricultural Report
- Appendix 7: Landscape Letter
- Appendix 8: Modified Landscape Plan
- Appendix 9: Frasers Property Owners Consent

1. INTRODUCTION

The modification sought to N0013/15 involves the relocation to the approved drainage easement through 9 Fern Creek Road (Lot 5 DP 736961) to 13 Fern Creek Road (Lot 13 DP 1092788). This modification has been proposed as a result of a land ownership swap of the two sites by Frasers Property and the Northern Beaches Council and Council's plan to develop part of 9 Fern Creek Road as a recreational park. Council's preference is to relocate the stormwater easement so that the pipe does not compromise the design of the park or make the future recreational development cost prohibitive.

Planning Proposal PP0002/16 has recently been granted Gateway Determination for the rezoning of 9, 11, 12 and 13 Fern Creek Road, Warriewood which sought to amend the *Pittwater Local Environmental Plan 2014* (PLEP 2014) to enable the creation of the southern portion of the planned Central Local Park. A secondary objective is to enable the development of the remaining land in an orderly and economic manner for housing.

A Gateway Determination was granted in July 2017 to proceed with the planning proposal subject to conditions, including the provision of additional information. Subsequent to this rezoning, Frasers Property (owner of 13 Fern Creek Road) and Northern Beaches Council (owner of 9 Fern Creek Road) have agreed to a land swap to enable the future development of this land.

Given Council will no longer be the owner of 9 Fern Creek Road which is subject to future development by Frasers Property, the approved drainage easement has been requested to be redirected through 13 Fern Creek Road. Owner's consent from Frasers Property for the relocation of the easement through 13 Fern Creek Road has been provided in **Appendix 9**.

Further to the redirection of the stormwater easement, consent is sought for the modification in relation to the required street tree sizes previously approved. Due to a number of the nominated street tree sizes not being able to be locally sourced, consent is sought to reduce the required tree sizes which may be sourced locally.

2. PRE-LODGEEMENT MEETING NOTES

A Pre-Lodgement meeting was held with Council on 3 May 2018 to discuss the proposal. Subsequently, Pre-Lodgement Advice was issued by Council and is provided in **Appendix 1**. The advice provided by Council concludes that *the proposal appears to be acceptable and may be supported, subject to confirmation of the potential impact upon any significant vegetation and further refinement of the design of the outlet*. All matters raised in the Pre-Lodgement Advice have been addressed in the ensuing sections of this statement and the supporting documentation attached.

3. SUBJECT SITE

The site subject to Development Consent N0013/15 is located at 6 (highlighted in yellow in **Figure 1** below) and 6A Orchard Street; and 9 and 13 Fern Creek Road, Warriewood (legally defined as Lot C DP 367229; Lot 102 DP 1033854; Lot 5 DP 736961; and Lot 13 DP 1092788). This application seeks to modify the subject site to remove 9 Fern Creek Road and include 13 Fern Creek Road.



Figure 1. Subject Site (Source: Lands Property Information NSW, 2018)

4. PROPOSED CONSENT MODIFICATIONS

To facilitate the objectives of this application, the modifications sought N0013/15/S96/3 include the following:

Site Description:

At 6 and 6A Orchard Street, Warriewood (Lot C DP 367229 and Lot 102 DP 1033854) and ~~9 Fern Creek Road, Warriewood (Lot 5 DP 736961)~~ 13 Fern Creek Road, Warriewood (Lot 13 DP 1092788)

Plan Register:

In addition to those plans referenced in this section of the consent, included those added under previous modification applications, the consent is proposed to be further modified by the inclusion of the following plans:

- Amended Plan of Subdivision prepared by Total Surveying Solutions:
 - Plan No. 182505-1, Rev 1, dated 20 November 2018.
- Amended Landscape Plan prepared by Sym Studio:
 - ASC04.1-DD-100, issue K, dated 15 January 2019;
 - ASC04.1-DD-101, issue J, dated 9 January 2019;
 - ASC04.1-DD-102, issue J, dated 9 January 2019;
 - ASC04.1-DD-103, issue J, dated 9 January 2019;
 - ASC04.1-DD-104, Issue J, dated 9 January 2019;
 - ASC04.1-DD-901, Issue B, dated 12 April 2016;
 - ASC04.1-DD-902, Issue A, dated 12 April 2016;
 - ASC04.1-DD-903, Issue A, dated 12 April 2016;
 - ASC04.1-DD-904, Issue A, dated 12 April 2016.
- Civil Engineering Drawings prepared by Northrop:
 - Sheets C11.01 – C20.10, Job No. 130945, Rev G, dated 13 February 2018.

Condition B28:

28. Where there are inconsistencies between the subdivision layout shown in the plans referenced in N0013/15 and those included in N0013/15/S96/2, the subdivision layout as shown in the plans referenced in N0013/15/S96/~~2~~ 4 is to prevail.

Condition C6 (c)(iv):

The detailed design of all works associated with the Water Management System must provide for a complete system which meets the objectives and requirements of the Warriewood Valley Water Management Specification (February 2001) and in accordance with this consent. The Water Management System is to also include and provide for:

iv. The Stormwater Management System to include a failsafe design that safely manages flows for the 100 year ARI event and greater (including climate change impacts [being 30% increased rainfall intensities] and blockages with minimum 50% for on-grade pits and minimum 75% for sag pits) without impacting on existing and newly created properties. The stormwater drainage system is to cater for the site (which drains collected roof, road and surface water from the site) and also for flows from upstream catchments, stormwater amplifications on Orchard Street and through ~~9-13~~ Fern Creek Road, Warriewood, and the diversion of overland flows. The systems are to include combined piped and overland flow components and comply with relevant Australian Standards and contemporary engineering best practice.

Condition C10 (f)(i – iv) - Reference to Engineering Civil Drawings and Landscape Plans to be modified in accordance with new documentation.

Condition C10 (f)(vi):

iv. All street trees shall be installed ~~as a minimum 500 litre stock in accordance with the Warriewood Valley Landscape Masterplan and Design Guidelines~~ in accordance with the species and sizes specified in the approved Landscape Plans prepared by Sym Studio and be subject to pre-order of plant material. All trees to be grown by recognised nursery under Natspec growing guidelines. Street trees shall be centred within the landscape verges with understory planting as documented on the Landscape Plans and include hardwood timber tree guards. Street tree plantings to footpath should generally include underplantings of native grass and a strip of deco granite adjoining the kerb to enable opening of car doors..

Condition C11 – Reference to Engineering Civil Drawings and Landscape Plans to be modified in accordance with new documentation.

Condition C11 (b)(iv):

iv. All street trees shall be installed ~~as a minimum 500 litre stock in accordance with the Warriewood Valley Landscape Masterplan and Design Guidelines~~ in accordance with the species and sizes specified in the approved Landscape Plans prepared by Sym Studio and be subject to pre-order of plant material. All trees to be grown by recognised nursery under Natspec growing guidelines. Street trees shall be centred within the landscape verges with understory planting as documented on the Landscape Plans and include hardwood timber tree guards. Street tree plantings to footpath should generally include underplantings of native grass and a strip of deco granite adjoining the kerb to enable opening of car doors.

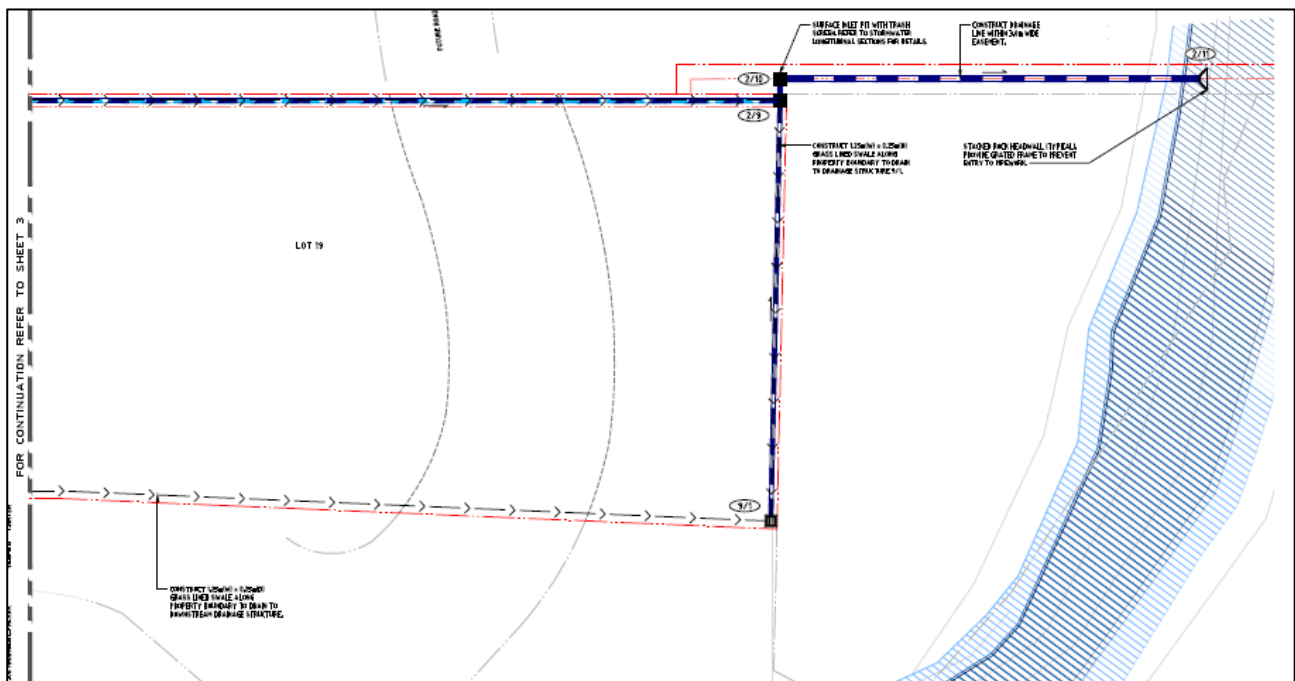


Figure 2. Approved CC Stormwater Drainage Plan (Source: Northrop)

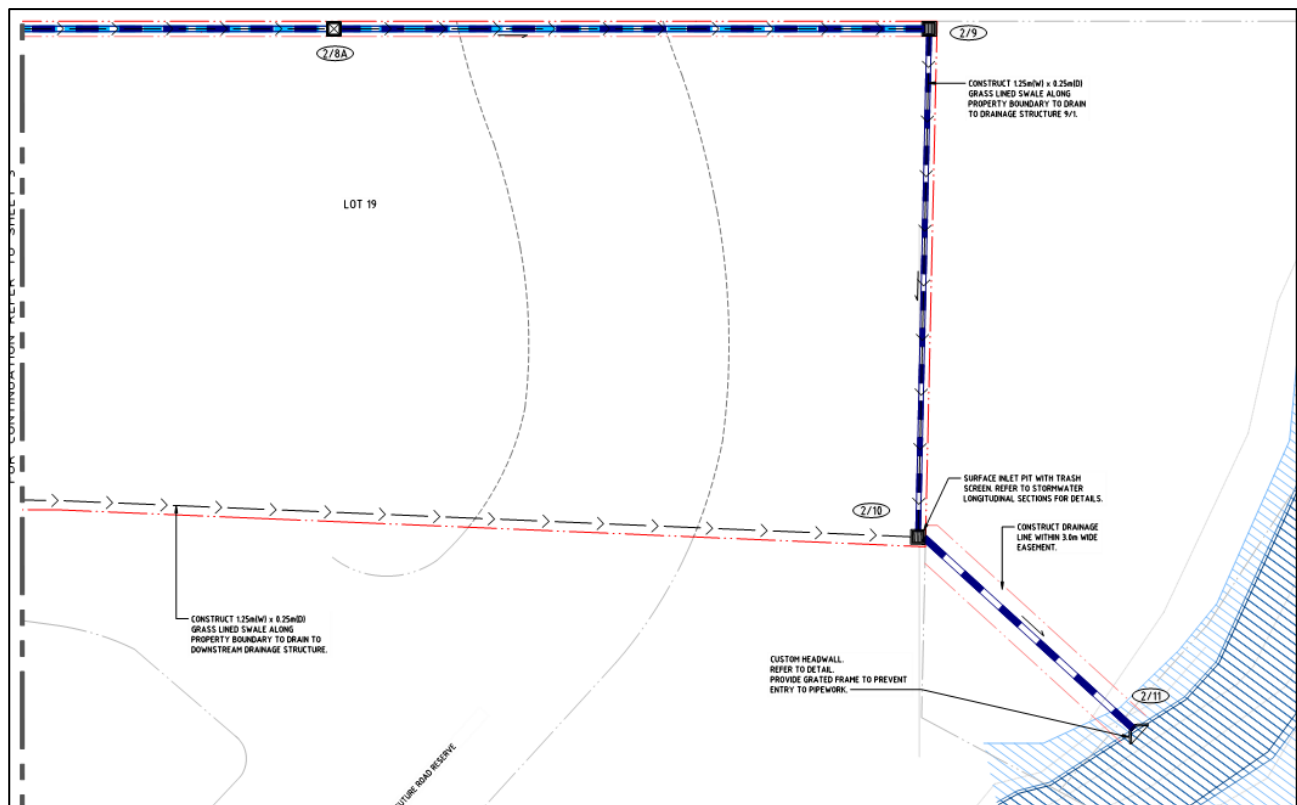


Figure 3. Proposed Stormwater Drainage Plan (Source: Northrop, 2018)

As per the modified Landscape Plan (**Appendix 8**), the Plant Schedule has been amended accordingly and nominated the following tree sizes:

- | | |
|--------------------------|---|
| ▪ Angophora costata: | 300L; Quantity 20-25: Flemmings Nursery |
| ▪ Eucalyptus robusta: | 100L; Quantity 15-25: Alpine Nursery |
| ▪ Tristaniopsis laurina: | 400L; Quantity 10-12: Alpine Nursery |

The Landscape Architect, Sym Studio, has provided a recommendation letter (**Appendix 7**) confirming that a number of nurseries have been contacted in an effort to source the required tree sizes and that none of these nurseries currently stock the tree sizes nominated under N0013/15.

As demonstrated above, the proposed modifications seek to allow some flexibility in relation to the street tree planting requirements. Whilst larger trees sizes will be pursued, where trees of this size cannot be sourced locally, it is considered unreasonable to impose such a requirement on the developer. Accordingly, the abovementioned modifications to N0013/15 are considered reasonable and will adequately facilitate appropriate street tree planting in accordance with the context of the locality.

5. PLANNING FRAMEWORK

Given the nature and scale of the proposed modification, the proposal is considered to satisfy the provisions of Section 4.55(1A) of the EP&A Act as the modified development would result in a substantially the same outcome as the development for which consent was originally granted.

The proposed modification would not adversely impact or alter the developer's obligations under the existing consent. Furthermore, the modification would not impact delivery of infrastructure or affect the approved yields and built form of the development.

The modification to development consent N0013/15 is therefore sought pursuant to Section 4.55(1A) of the EP&A Act. The following tests requires consideration under Section 4.55(1A) of the EP&A Act:

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) 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*
- 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 that requires the notification or advertising of applications for modification of a development consent, 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.*

Having regard to the above, the proposed modifications are considered to be substantially the same as the development approved under N0013/15 as it involves amendments solely to the drainage easement being redirected to Fern Creek, as well as changes to the street tree sizes, and will have no influence on the ultimate development outcome for the site including the subdivision layout and yield. Furthermore, the proposed modification would not result in any additional environmental impacts to that originally approved.

In light the above, the proposal is considered to satisfy the provisions and tests of Section 4.55(1A) of the EP&A Act.

5.1 Pittwater Local Environmental Plan 2014

5.1.1 Zoning and Permissibility

The subject land is part zoned R3 Medium Density Residential and RE1 Public Recreation under the provisions of the *Pittwater Local Environmental Plan 2014* (PLEP 2014).

The objectives of the R3 zone are:

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide for a limited range of other land uses of a low intensity and scale, compatible with surrounding land uses.*

The objectives of the RE1 zone are:

- *To enable land to be used for public open space or recreational purposes.*
- *To provide a range of recreational settings and activities and compatible land uses.*
- *To protect and enhance the natural environment for recreational purposes.*
- *To allow development that does not substantially diminish public use of, or access to, public open space resources.*
- *To provide passive and active public open space resources, and ancillary development, to meet the needs of the community.*

The proposed modification does not result in any of the above zones objectives being compromised. The development is capable of achieving these objectives to the same extent as the approved development under N0013/15.

The existing and proposed drainage easement is to traverse both the R3 and RE1 zones as illustrated in **Figure 4** below.

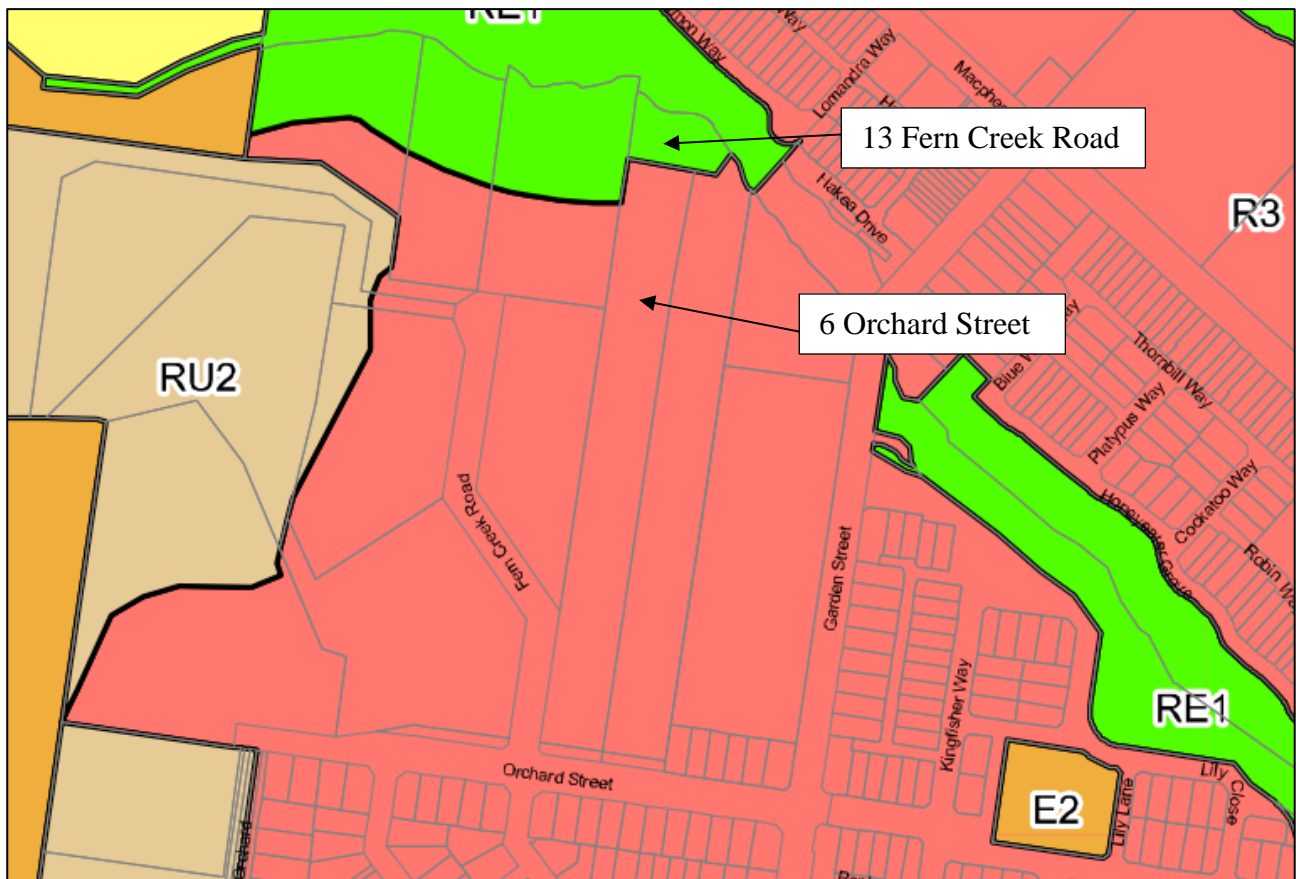


Figure 4. Zoning Map (Source: PLEP 2014)

The development standards and provisions within PLEP 2014 will not be contravened by the proposed modification. The nature and scale of the proposal does not warrant further consideration of the PLEP 2014.

5.1.2 Clause 7.6 Biodiversity

As illustrated in **Figure 5** below, 13 Fern Creek Road is partially identified as 'Biodiversity' land. Pursuant to Clause 7.6(3) of the PLEP 2014, it is acknowledged that the consent authority must consider the following prior to determining a development application:

(a) *whether the development is likely to have:*

- (i) *any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and*
- (ii) *any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and*
- (iii) *any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and*
- (iv) *any adverse impact on the habitat elements providing connectivity on the land, and*

(b) *any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

The proposal seeks to redirect the previously approved stormwater drainage easement from 9 Fern Creek Road 13 Fern Creek Road. In both scenarios, the easements traverse biodiversity land and are directed into the Fern Creek watercourse. It is important to note that the size and volume of the stormwater pipe remains unchanged as a result of the proposed modification. The proposed redirection of the stormwater pipe requires the removal of five (5) trees as identified in the Arboricultural Report in **Appendix 6**, and shown in the tree survey extract in **Figure 6**.

Whilst alternative routes for the easement were investigated, the proposed location was found to be the most suitable for the functionality of the easement. Furthermore, there are no other locations available within the site to further reduce tree removal. To compensate the loss of the trees and amenity the developer shall consider replacement planting within the site.

Whilst the proposed modification will result in some tree loss, there are no other identifiable impacts on the ecological value or significance of the land in question. Further, extensive investigations have been carried out to determine an outcome resulting in the least impact and appropriate measures shall be adopted to avoid further impact on other trees in the location as recommended in the Arboricultural Report.

The species of those trees to be removed as identified in the Arboricultural Report are not listed under Schedule 1 (Threatened species); Schedule 2 (Threatened ecological communities); or Schedule 6 (Protected plants) of the *Biodiversity Conservation Act 2016* (BC Act). Accordingly, no further ecological assessment of these trees is considered to be warranted.

In light of the above, it is considered reasonable to conclude that the consent authority may grant consent as the development as been design and sited to avoid significant adverse environmental impact and minimise further impact where required.



Figure 5. Biodiversity Map (Source: PLEP 2014)

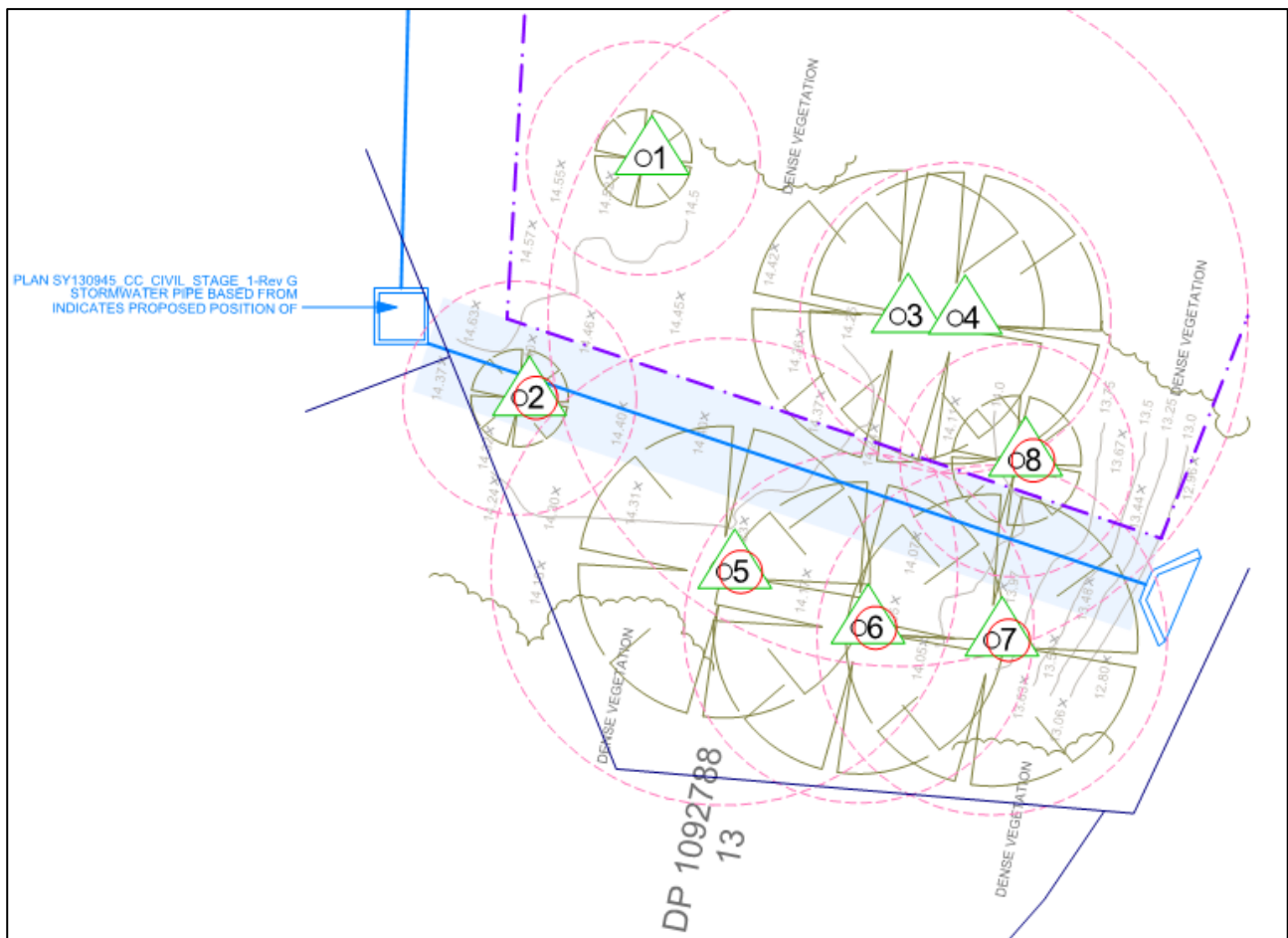


Figure 6. Tree Survey (Source: Naturally Trees, 2018)

5.2 Pittwater 21 Development Control Plan

The proposed modifications have been assessed against the relevant criteria of the Pittwater 21 Development Control Plan (P21DCP). Given the nature of these changes, the proposal is considered to continue to satisfy the controls and objectives of P21DCP and does not warrant further consideration of these provisions.

5.3 Warriewood Valley Release Area – Landscape Masterplan and Design Guidelines

It is acknowledged that the Landscape Masterplan and Design Guidelines for the Warriewood Valley Release Area requires street trees in these locations to be 500L. However, the street trees sizes available locally as proposed under this application are considered to be capable to satisfying the underlying objectives of the Landscape Masterplan of achieving a “Bushland in the Valley” through the provision of adequate scale (height and spread) street trees.

6. LIKELY IMPACTS OF DEVELOPMENT

The proposed modifications include minor changes to the approved subdivision stormwater services and street tree sizes. Given the nature and scale of the modifications, the likely impacts of the development and outcomes will remain consistent with those previously considered and approved under the original development application and subsequent modifications. Those matters which require further consideration are addressed in the ensuing sections.

6.1 Infrastructure and Servicing

As aforementioned, all essential services and infrastructure for the development site are to remain unchanged from the Community Title services arrangement previously approved. The modified stormwater drainage easement has been illustrated in the modified Plan of Subdivision (**Appendix 3**) for the servicing

of the site which will rely on community infrastructure previously approved and provided at a capacity to cater to all residential lots previously approved.

6.2 Stormwater and Erosion

The stormwater drainage outlet has been designed in accordance with the Warriewood Valley Water Management Specification. The outlet has been designed to direct flows downstream with a custom headwall with a natural appearance. Updated Civil Engineering Drawings have been provided in **Appendix 4** which have been progressed for construction purposes.

6.3 Flora and Fauna

The proposed location of the drainage easement requires the removal of five (5) trees. These trees have been surveyed and assessed by Naturally Trees Arboricultural Consulting as demonstrated in the Arboricultural Report in **Appendix 6**. The trees to be removed (identified as Trees 2, 5, 6, 7 and 8) have been assessed as having moderate to high significance and displaying good health and condition.

Alternative locations for the drainage easement through 13 Fern Creek Road have been investigated to reduce tree removal however, the proposed location of the easement was found to be the most suitable for the functionality of the easement. Furthermore, there are no other locations available within the site to further reduce tree removal. To compensate the loss of the trees and amenity the developer shall consider replacement planting within the site.

The Arboricultural Report also identified three (3) trees to be retained (identified as Trees 1, 3 and 4) which may potentially be affected through disturbance to the TPZs. However, Naturally Trees Arboricultural Consulting concludes that Trees 1 and 4 could be successfully retained without any adverse effects if the appropriate protective measures are properly implemented. Concern is raised in regard to Tree 3 due to the proposed excavation impeding 27% within the TPZ. The developer shall make every effort to retain this tree through the implementation of the appropriate measures.

Whilst it is acknowledged that the trees to be removed are of good health and condition, the removal of these trees are necessary to facilitate the approved subdivision and development of 6 and 6A Orchard Street.

7. CONCLUSION

The proposed modifications are considered minor in nature and thus remain compliant (where previously achieved) with the relevant standards and controls of the PLEP 2014 and P21 DCP.

The proposed modification results in an ultimate development outcome consistent with the scenario and outcomes as previously approved under N0013/15 and is therefore considered to remain suitable for the site and satisfies s4.55(1A) of the EP&A Act.

No submissions are apparent at the time of writing in accordance with the EP&A Act.

Based on the above, the modifications proposed to development consent N0013/15 are considered worthy of support by Northern Beaches Council.

Should you require additional information, please do not hesitate to contact the undersigned.

Yours Faithfully,



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