

14 November 2018

Our Reference: 1762

The General Manager
Northern Beaches Council
PO Box 82
Manly NSW 1655

Attention: Rebecca Englund – Acting Manager – Development Assessments
Peter Robinson – Executive Manager Development Assessments

Dear Sir,

Section 4.56 Application to modify consent N0182/13 for 40 lot subdivision of 2 existing lots, demolition of existing structures and dwellings and construction of associated infrastructure in three stages at 29 – 31 Warriewood Road, Warriewood (Lots 30 & 31 Section C DP 5464)

Please find enclosed an application for modification of consent pursuant to Section 4.56 of the *Environmental Planning and Assessment Act 1979*. This application is made on behalf of Colonial Credits Pty Ltd.

1. BACKGROUND

Consent N0182/13 for a 40-lot subdivision and associated infrastructure was granted by the NSW Land and Environment Court on 3 August 2015.

The development consent allows for the creation of Lot 13 being area of 3,308m² for the creekline corridor to be dedicated to Council.

Condition 19 of the consent requires a cash contribution payment of \$1,936,715.64 to be paid to the Council, prior to issue of the Subdivision Certificate - which was paid in full on the 1/09/18.

Subdivision Certificate applications for Stage 1 & 2 were lodged on the 10th and 25th of July 2018. Consequently, a modification of consent has been requested by council in relation to the area of Lot 13.

2. PROPOSED MODIFICATIONS

As part of the Subdivision Certificate assessment process, Lot 13 has been identified as having an area of 3,200m². The reason behind the reduction in lot area is due to a Boundary Redefinition Plan of Narrabeen Creek prepared by surveyors JB White (dated 31/07/2018). This plan redefines the former centreline of Narrabeen Creek within Lot 25 Section C DP 5464 for a distance of 285m, copy of the plan is enclosed in our modification application.

Lot 13 in the plan currently being assessed as per of the Subdivision Certificate, forms a common boundary with Lot 25 in the Plan of Redefinition in accordance with the requirements of the NSW Land Registry Service (LRS).

The Boundary Redefinition Plan re-establishes the centreline of Narrabeen Creek as depicted in DP 5464, before any unnatural modifications. The requirement to re-establish the original centreline of Narrabeen Creek is in accordance with the directions of the NSW LRS.



This plan in turn impacts the area of Lot 13, whilst not impacting by any structures (as required by Council).

This modification is intended to make minor amendments to the conditions of consent, pursuant to S 4.56 of the EP&A Act, as set out below:

B. Matters to be incorporated into the development and maintained over the life of the development

Condition B1.

B1. The development is 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)

This approval nominates the area of Lot 13 as 3,308m².

Comment - The area of Lot 13 to be amended to 3,200 m².

Amend wording of condition to:

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 **3,200m²** (measured 25m from the centreline of Narrabeen Creek)

C19. The following is to be made for the provision of the public infrastructure and services pursuant to S94 of the Environmental Planning and Assessment Act 1979:

- a) Payment of the total cash contribution of \$1,936,715.64. The cash component of the Developer Contribution is to be paid prior to the issue of the Subdivision Certificate or 1 September 2016 (whichever is the earlier to occur)*
- b) Dedication of 3,308 m² of creekline corridor. The creekline corridor land dedication is to be effected prior to or on registration of the subdivision for Stage 2 in accordance with Condition E4. (Note: the creekline land dedication has been deducted from the cash contribution which would otherwise be payable. The base (unimproved) valuation for the creekline corridor is \$146.67 per m² based on the current Section 94 Contribution Plan adopted 1 September 2008, Table 6.2, page 43, wherein the property is in Buffer Area 1).*



Comment - The area of Lot 13 to be amended to 3,200 m² and additional cash contribution of \$15,840.36 is required.

Amend wording of condition to:

The following is to be made for the provision of the public infrastructure and services pursuant to S94 of the Environmental Planning and Assessment Act 1979:

- a) Payment of the total cash contribution of \$1,936,715.64. The cash component of the Developer Contribution is to be paid prior to the issue of the Subdivision Certificate or 1 September 2016 (whichever is the earlier to occur)
- b) Dedication of **3,200m²** of creekline corridor. The creekline corridor land dedication is to be effected prior to or on registration of the subdivision for Stage 2 in accordance with Condition E4. (Note: the creekline land dedication has been deducted from the cash contribution which would otherwise be payable. The base (unimproved) valuation for the creekline corridor is \$146.67 per m² based on the current Section 94 Contribution Plan adopted 1 September 2008, Table 6.2, page 43, wherein the property is in Buffer Area 1).
- c) **Payment of additional cash contribution of \$15,840.36. The cash component of the Developer Contribution is to be paid prior to the issue of the Subdivision Certificate.**

E4. *The dedication of 3,308m² of Narrabeen Creekline corridor (measured 25m from the creekline 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 2.*

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.

Comment - The area of Lot 13 is to be amended to 3,200 m².

Amend wording of condition to:

The dedication of **3,200m²** of Narrabeen Creekline corridor (measured 25m from the creekline 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 2.

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.



3. ASSESSMENT

Pursuant to S.4.56 of the EP&A Act, Council may modify the consent subject to the following:

4.56 Modification by consent authorities of consents granted by the Court (cf previous s 96AA)

(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

Comment - The proposed minor reduction in Lot 13 area being dedicated results from a registered surveyors boundary re-definition along Narrabeen Creek. The boundary adjustment does not alter the approved subdivision and civil works, which have been carried out in accordance with the approved DA and CC plans. The minor reduction in lot area does not generate any drainage and/or open space concerns for the Narrabeen Creek corridor.

The boundary adjustment is relatively minor and results in no change in environmental impacts compared with the approved development. The reduction in area of land to be dedicated to Council results in an increase in development contributions payable to Council pursuant to condition C19 of the consent.

Finally, council's notification procedures are set out in Appendix 1 of the Pittwater 21 Development Control Plan state that as a non-statutory policy, Council may exercise its discretion in determining notification requirements and circumstances where notification is not required. In this regard, Section 2.2 of the DCP Appendix 1 provides guidance as follows, with the relevant matters for consideration underlined for reference:

2.2 When is the notification letter required? [paragraph 4]

A notification letter is not required for applications to modify a consent already granted where the application;

- is to correct minor errors, misdescription or miscalculation in accordance with the Environmental Planning & Assessment Act 1979 section 96(1), or*
- in Council's opinion, does not have the potential to detrimentally impact adjoining or surrounding land, or significantly alter the height, external configuration or siting of the building, or*
- has the support from adjoining and surrounding landowners, community groups or associations and any other persons affected by the proposal. This must be demonstrated by way of signatures on the submitted plans.*

All other applications to modify consent already granted are required to be notified by mail. Council may apply its discretion in instances of minimal environmental impact and not required the application to be notified by mail in accordance with the Environmental Planning & Assessment Act 1979 section 96(1A).



As stated above, the proposed modifications are deemed to have no environmental impact. Consequently, Council may apply its discretion and not notify the modification application.

To assist Council in determination of this application, please find enclosed within this submission a copy of the Notification of Determination, approved DA Plan of Subdivision, final Linen Plans (as currently being assessed by council as part of the Subdivision Certificate application process) and Plan of Redefinition for Lot 25 Section C DP5464.

For any queries please do not hesitate to contact myself or Frank Carrozza on Ph. 9869-1855.

Regards,

Craig & Rhodes Pty Ltd

Ben Rourke
Senior Town Planner