

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2019/0062
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<b>Responsible Officer:</b>	Rebecca Englund
<b>Land to be developed (Address):</b>	Lot 5 DP 736961, 9 Fern Creek Road WARRIEWOOD NSW 2102 Lot 13 DP 1092788, 13 Fern Creek Road WARRIEWOOD NSW 2102 Lot 102 DP 1033854, 6 A Orchard Street WARRIEWOOD NSW 2102 Lot C DP 367229, 6 Orchard Street WARRIEWOOD NSW 2102
<b>Proposed Development:</b>	20 Lot Community Title Subdivision to provide for 18 residential allotments 1 large residue lot 1 community lot containing a private road and infrastructure and construction and dedication of a new public road
<b>Zoning:</b>	R3 Medium Density Residential R3 Medium Density Residential R3 Medium Density Residential RE1 Public Recreation RE1 Public Recreation
<b>Development Permissible:</b>	Yes - Zone R3 Medium Density Residential Yes - Zone RE1 Public Recreation
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Jelena Radmanovich Nour Developments Pty Ltd
<b>Applicant:</b>	Skycorp Holdings Pty Ltd

<b>Application lodged:</b>	21/02/2019
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Subdivision only
<b>Notified:</b>	13/03/2019 to 15/04/2019
<b>Advertised:</b>	16/03/2019
<b>Submissions Received:</b>	0
<b>Recommendation:</b>	Approval

### 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

Pittwater 21 Development Control Plan - C6.1 Integrated Water Cycle Management  
 Pittwater 21 Development Control Plan - C6.2 Natural Environment and Landscaping Principles

## SITE DESCRIPTION

<p><b>Property Description:</b></p>	<p>Lot 5 DP 736961 , 9 Fern Creek Road WARRIEWOOD NSW 2102          Lot 13 DP 1092788 , 13 Fern Creek Road WARRIEWOOD NSW 2102          Lot 102 DP 1033854 , 6 A Orchard Street WARRIEWOOD NSW 2102          Lot C DP 367229 , 6 Orchard Street WARRIEWOOD NSW 2102</p>
<p><b>Detailed Site Description:</b></p>	<p>The works approved under N0013/15 are located over three (3) separate land titles, known as 6 Orchard Street, 6A Orchard Street, and 9 Fern Creek Road, Warriewood.</p> <p>6 Orchard Street is legally referred to as Lot C in Deposited Plan 3677229, and is owned by a private landowner. 6 Orchard Street is rectangular in shape, with a road frontage to Fern Creek Road to the west, and a total area of approximately 15,140m<sup>2</sup>. 6 Orchard Street currently contains a 2 storey residential dwelling, swimming pool and multiple sheds, outbuilding and green houses. 6 Orchard Street has been largely cleared and is generally free of any significant vegetation, with the exception of a number of canopy trees along the Fern Creek Road and Orchard Street frontages.</p>

6A Orchard Street is legally referred to as Lot 102 in Deposited Plan 1033854, and is owned by Pittwater Council. 6A Orchard Street is slightly irregular in shape, with a road frontage to Fern Creek Road to the west and Orchard Street to the south, and a total area of approximately 284m<sup>2</sup>. 6A Orchard Street is known as the Orchard Street Road Reserve, and comprises a number of significant canopy trees.

9 Fern Creek Road is legally referred to as Lot 5 in Deposited Plan 736961, and is owned by Pittwater Council. 9 Fern Creek Road is slightly irregular in shape, with a partial road frontage to the cul-de-sac of Fern Creek Road to the south, and a total area of approximately 11,562m<sup>2</sup>. The development proposed on 9 Fern Creek Road is limited to a drainage easement and associated infrastructure connecting the site to the creekline.

The site subject to the proposed subdivision is generally limited to 6 and 6a Orchard Street, Warriewood. When these two lots are consolidated, the site will feature frontages to both Fern Creek Road to the west and Orchard Street to the south, and comprise a total area of approximately 15,424m<sup>2</sup>. The site is located within Sector 901A of the Warriewood Valley Urban Land Release Area. With the exception of existing low-density residential development to the south and south-east, the site is surrounded by land zoned for medium density development that is yet to be developed.

The modification application seeks to relocate the approved stormwater discharge pipe from 9 Fern Creek Road to 13 Fern Creek Road. 13 Fern Creek Road is legally referred to as Lot 13 in Deposited Plan 1092788, and is owned by Frasers Property AHL Limited. 13 Fern Creek Road is irregular in shape, with no road frontage. The northern boundary of 13 Fern Creek Road is formed by the centreline of Fern Creek.

Map:



## SITE HISTORY

On 20 June 2016, Development Application N0013/15 was approved by the Land and Environment Court of NSW.

The subject application is the 4th modification application lodged with respect to N0013/15 since that time.

On 3 May 2018, a prelodgement meeting was held between Council and the applicant with regard to the stormwater amendments proposed. At which time, Council's Engineers, Water Management/Riparian, and Reserves teams all encouraged the relocation of the pipe proposed.

## PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent to modify development consent N0013/15 which approved the 20 lot community title subdivision of the subject site, to provide for 18 residential allotments, 1 superlot and 1 community lot containing a private road and private infrastructure. The modification application seeks to amend:

- the location of the stormwater discharge pipe from the north-western corner of the site to the south-western corner of the site, and
- to replacement of nominated street trees with an alternate species and smaller pot sizes.

## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

### Section 4.55(1A) Assessment

The relevant matters for consideration under Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55(1A) - Other Modifications	Comments
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>Yes</b> The modification, as proposed in this application, is considered to be of minimal environmental impact.
(b) 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 N0013/15.
(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 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 Regulation 2000 and Pittwater 21 Development Control Plan.
(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.	No submissions were received in relation to this application.

### Section 4.15 Assessment

In accordance with Section 4.55 (3) 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 'Matters for Consideration'	Comments
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 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>
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>(i) <b>Environmental Impact</b> 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) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	No submissions were received in relation to this application.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition of the application Council received no submissions.

**REFERRALS**

Internal Referral Body	Comments
Landscape Officer	<p>The modification application, relevant to landscape issues, is partially acceptable subject to conditions.</p> <p><b>The following modification proposal is not acceptable, and is subject to conditions</b></p> <p>The proposal to amend Condition C10 (f)(vi) and Condition C11 (b) (iv): to delete 500 litre street tree planting container sizes to smaller containers is not accepted.</p> <p>The intent and wording of the Warriewood Valley Landscape Masterplan for pre-order stock is for the developer to initiate and order plant material in advance. This requires the developer, through an arrangement with nurseries, to deliver the required size at the time of installation. From DA approval to commencement of works and commencement of any landscaping, sufficient time is available for these arrangements to be put in place.</p> <p>It is appreciated that container sizes of 500 litre are less readily available, and thus the condition shall permit container sizes at 400 litre size.</p> <p><b>The following modification proposal is acceptable (subject to stormwater drainage approval)</b></p> <p>The proposal seeks to redirect the previously approved stormwater drainage easement. The proposed redirection of the stormwater pipe requires the removal of five (5) trees as identified in the Arboricultural Impact Assessment. This Landscape assessment does not consider the merits of the stormwater drainage easement design, and only considers the impact upon existing trees.</p> <p>Should the stormwater drainage design be approved by the relevant Council Officer, the following existing trees will require removal, as identified in the Arboricultural Impact Assessment:</p> <ul style="list-style-type: none"> <li>• Tree 2 - Swamp Mahogany; and Trees 5 to 8 - all Cheese Trees.</li> </ul> <p>The following trees shall be retained and protected in accordance with the Arboricultural Impact Assessment recommendations as listed in Appendices 4 to 8:</p> <ul style="list-style-type: none"> <li>• Tree 1 - Swamp Mahogany; Tree 3 - Turpentine; and Tree 4 - Cheese Tree.</li> </ul>

Internal Referral Body	Comments
	<p>A Project Arborist shall be engaged to supervise tree protection works and shall provide certification of the works at completion.</p> <p>Replacement tree planting following the stormwater drainage works shall be installed to replace the existing trees removed at a ratio of 1:1, consisting of the same species as removed, and installed at 75litre pot size, installed in close proximity from the removed species, as determined by a Project Arborist.</p>
NECC (Development Engineering)	<p>The modification to change the alignment of the site storm water outlet pipe is not supported . The alignment of the proposed outlet pipe is to remain parallel to the side boundary of the property at Lot 12 (number 12) Fern Creek Road and discharge via a head wall to the creek . This alignment is consistent with the development application approval N0013/15.</p> <p>Having the storm water outlet line remain in this position will reduce the impacts on the creek/riparian area as all future subdivisions in this locality will drain to the one outlet avoiding the need for multiple creek outlets.</p>
NECC (Riparian Lands and Creeks)	<p>The modification to change the alignment of the site storm water outlet pipe is not supported.</p> <p>The alignment of the proposed outlet pipe is to remain aligned with the boundaries of 9 and 13 Fern Creek Road and discharge via a head wall to the creek. This alignment is consistent with the development application approval N0013/15. Having the storm water outlet line remain in this position will reduce the impacts on the creek/riparian area as all future subdivisions in this locality will drain to the one outlet avoiding the need for multiple creek outlets.</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)**

Nil

### **Pittwater Local Environmental Plan 2014**



Is the development permissible?	Zone R3 : Yes Zone RE1: 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 R3 : Yes Zone RE1: Yes

## Pittwater 21 Development Control Plan

### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes
C6.1 Integrated Water Cycle Management	Yes	Yes
C6.2 Natural Environment and Landscaping Principles	No	Yes

### Detailed Assessment

#### **C6.1 Integrated Water Cycle Management**

The modification application seeks to modify the location of the drainage outlet, which was approved across 9 Fern Creek Road, to connect to the creekline across 13 Fern Creek Road. This change was initiated following advice from Council's Engineers, Stormwater/Riparian and Parks and Reserves teams who raised concern that the approved location would restrict the potential design of Council's public park.

However, in the time since this advice was provided, the stormwater solution for the adjoining site at 9 Fern Creek Road has since been resolved, involving a larger pipe in the same location as that currently approved. The pipe has been designed to accommodate the stormwater discharge associated with the subject site, and as such, a separate discharge point is no longer required.

If the subject site is to be developed in advance of the adjoining site at 9 Fern Creek Road, then the applicant will be responsible for providing the stormwater connection to the creek along the current approved alignment (over 9 Fern Creek Road). However, if the subject site is developed after the adjoining site, the applicant will be able to connect to what will be a public stormwater drainage line immediately adjacent to the western side property boundary, removing the requirement for a separate connection to the creek.

With this in mind, the proposed modifications to the location of the stormwater drainage outlet are not supported.

#### **C6.2 Natural Environment and Landscaping Principles**

The modification application seeks to amend the pot size of the approved *Angophora costata* street trees along Fern Creek Road from 500L to 300L. The change is reflective of a lack of stock of 500L *Angophoras* across the state, which has been a common occurrence across a number of subdivision applications throughout Warriewood Valley. Despite inconsistency with the requirements of the Warriewood Valley Landscape Masterplan, and in turn the provisions of clause 6.2 of P21 DCP, the proposed 300L pot size is considered an acceptable solution for the site, subject to consistency with a

60mm minimum caliper trunk size and a minimum height of 2.5m.

It is noted that Council's Landscape Officer's written feedback requires a 400L minimum pot size. However, it was acknowledged that a 300L pot size may achieve consistency with the minimum trunk size and height requirements above. As such, Council's Landscape Officer is satisfied with the inclusion of 300L pot sizes if these minimum dimensions can be achieved.

The landscape plans provided to support the application also propose to amend to 500L pot size for street trees along Orchard Street to 100L. This change is not supported by Council's Landscape Officer, and the same minimum dimensions are required for these trees. Amended conditions are recommended in this regard.

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

The proposal will not significantly effect 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

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

### **RECOMMENDATION**

THAT Council as the consent authority grant approval to Modification Application No. Mod2019/0062 for 20 Lot Community Title Subdivision to provide for 18 residential allotments 1 large residue lot 1 community lot containing a private road and infrastructure and construction and dedication of a new public road on land at Lot 5 DP 736961,9 Fern Creek Road, WARRIEWOOD, Lot 13 DP 1092788,13 Fern Creek Road, WARRIEWOOD, Lot 102 DP 1033854,6 A Orchard Street, WARRIEWOOD, Lot C DP 367229,6 Orchard Street, WARRIEWOOD, subject to the conditions printed below:

**A. Add Condition A.1A - Modification of Consent - Approved Plans and supporting Documentation to read as follows:**

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

- a) The approved plans referenced in the 'Notice to Applicant of Determination of a Development Application' of development application N0013/15, dated 25 June 2015,
- b) as modified by N0013/15/S96/2, dated 12 September 2016, and as modified by N0013/15/S96/3, dated 21 November 2016
- c) as further modified by the following Modification Approved Plans:

<b>Landscape Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
Cover Sheet ASC04.1-DD-100, issue K	15 January 2019	Sym Studio
Landscape Plan (1 of 4) ASC04.1-DD-101, issue J	9 January 2019	Sym Studio
Landscape Plan (2 of 4) ASC04.1-DD-102, issue J	9 January 2019	Sym Studio
Landscape Plan (3 of 4) ASC04.1-DD-103, issue J	9 January 2019	Sym Studio

- d) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

**B. New Condition A.1B to read as follows:**

The proposed use of 300L Angophora costatas along Fern Creek Road is acceptable, subject to consistency with the minimum trunk caliper and height prescribed for street trees by Condition C10(f) (iv). The proposed use of 100L Eucalyptus robusta along Orchard Street is not supported, and must be replaced with a pot size consistent with Condition C10(f)(iv).

Reason: To ensure an appropriate scale of street tree along public road reserves.

**C. Modify Condition C10 to read as follows:**

- ...
- f. Landscaping incorporating:
- i. 2.1m wide shared footpath in Orchard Street located directly behind the kerb of the indented parking bays for the full length of the development site in accordance with the Warriewood Valley Urban Release Area Landscape Masterplan and Design Guidelines: Collector Street S-2;
  - ii. 2.1m wide shared footpath in Fern Creek Road located 0.6m from the property boundary for the full length of the development site in accordance with the Warriewood Valley Urban Release Area Landscape Masterplan and Design Guidelines: Collector Street S-2.
  - iii. Provision of a kerb ramp at the corner of Fern Creek Road and Orchard Street to facilitate pedestrian access across Fern Creek Road.
  - iv. All street trees shall be installed as a minimum **300-400L** litre stock, **with a minimum trunk caliper of 60mm and a minimum height of 2.5m**. All trees to be grown by recognised nursery under Natspec growing guidelines. Street trees shall be centred within the landscape verges with understorey 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.
  - v. All street trees in the public road reserves shall be located a minimum of 1.5m from the edge of kerb, and shall be located in consideration of underground services.
  - vi. The Eucalyptus punctate in the Orchard Street road reserve shall be replaced with Eucalyptus robusta.
  - vii. Garden areas to include minimum 400mm cultivated soil (compost added) and mulched with 100mm hardwood chip. Planting to be at a high density (ie. 4 per square metre) and generally include drought tolerant native species up to 1m ultimate height. All shrub / groundcover planting to be minimum 5 litre size.

Reason: To ensure an appropriate scale of street tree along public road reserves.

In signing this report, I declare that I do not have a Conflict of Interest.

**Signed**



**Rebecca Englund, Principal Planner**

The application is determined on 03/06/2019, under the delegated authority of:



**Matthew Edmonds, Manager Development Assessments**