

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2018/0376
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<b>Responsible Officer:</b>	Rebecca Englund
<b>Land to be developed (Address):</b>	Lot 6 DP 736961, 10 Fern Creek Road WARRIEWOOD NSW 2102
<b>Proposed Development:</b>	Modification of Development Consent N0540/15 granted for a twenty 20 lot community title subdivision and construction of associated infrastructure and access roads
<b>Zoning:</b>	R3 Medium Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Pic 10 Warriewood Pty Ltd Paul Ivan Bezinovic
<b>Applicant:</b>	Skycorp Holdings Pty Ltd

<b>Application lodged:</b>	20/07/2018
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Subdivision only
<b>Notified:</b>	07/08/2018 to 23/08/2018
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	1
<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 - C6.2 Natural Environment and Landscaping Principles

### SITE DESCRIPTION

<b>Property Description:</b>	Lot 6 DP 736961 , 10 Fern Creek Road WARRIEWOOD NSW 2102
<b>Detailed Site Description:</b>	The site is known as 10 Fern Creek Road and has a legal description of Lot 6 in Deposited Plan 736961. The site is irregularly shaped, comprising a rectangular northern portion and a triangular southern portion, with a total area of 1.024ha. The western and south western portion of the site is directly adjacent to Fern Creek Road, a cul-de-sac accessed from the northern side of Orchard Street. Access to the site is currently provided via two existing vehicular crossovers along the site's western boundary. The site experiences a decrease in level of approximately 13 metres from south to north resulting in a 6.6% or 3.7 degree slope. The works approved pursuant to N0540/15 have been commenced and are nearing completion. The site forms part of Sector 901A, as identified on the Release Area Map of PLEP 2014.

Map:



**SITE HISTORY**

On 15 December 2015, Development Application N0540/15 was lodged with Council.

On 1 March 2016, Council received notification of the Class 1 Appeal lodged with the NSW LEC against the deemed refusal of N0540/15.

On 20 June 2016, a s34 agreement was reached between the parties, such that N0540/15 was approved by the NSW LEC.

On 20 July 2018, the subject modification application was lodged with Council.

**PROPOSED DEVELOPMENT IN DETAIL**

The modification application seeks to modify development consent N0540/15 as follows:

- modification to Condition C10(n)(vii), which requires all street trees on Fern Creek Road to be installed with a 400L pot size, to allow for 100L and 200L pot sizes, and
- modification to Condition A1, to reference amended landscape plans representative of the changes to pot sizes sought.

In consideration of the application a review of (but not limited) documents as provided by the applicant in support of the application was taken into account detail provided within Attachment C.

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

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

**Section 4.55 Assessment**

The relevant matters for consideration under Section 4.15(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 N0540/15.
(c) it has notified the application in accordance with:	The application has been publicly exhibited in accordance with the

Section 4.55(1A) - Other Modifications	Comments
(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	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.	See discussion on “Notification & Submissions Received” in this report.

### 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 (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 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 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	(i) <b>Environmental Impact</b> The environmental impacts of the proposed

Section 4.15 'Matters for Consideration'	Comments
on the natural and built environment and social and economic impacts in the locality	<p>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	See discussion on “Notification & Submissions Received” in this report.
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 process council is in receipt of 1 submission/s from:

Name:	Address:
Ms Kay Linda Millar	7 Orchard Street WARRIEWOOD NSW 2102

The matters raised within the submission is addressed as follows:

- Availability of plant stock

Comment: A submission has been received which questions the intent of the modification, citing availability of Angophora Costatas with a 400L pot size in other nurseries around Sydney. The submission laments the loss of significant vegetation in the area and encourages the

implementation of more advanced street trees. Council's Landscape Architect has endorsed the findings of the applicant re: the availability of larger size street trees and is supportive of the proposed modification.

## MEDIATION

No requests for mediation have been made in relation to this application.

## REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p><i>Following the inability to source the required 400 litre size required by Condition from various Nurseries, the modification application to adjust pot sizes for street tree planting under this application is acceptable, subject to the amended Condition wording, as follows:</i></p> <p><b><i>All street trees shall be installed as soon as practicable in accordance with the following sizes as sourced:</i></b></p> <p><b><i>i) Angophora costata - 100 litre size, as sourced from Alpine Nursery x 20</i></b>  <b><i>Each tree shall be at least 2.5 metres tall with a minimum 40mm caliper, and protected by a tree guard,</i></b></p> <p><b><i>ii) Waterhousia floribunda - 200 litre size, as sourced from Alpine Nursery x 10</i></b>  <b><i>Each tree shall be at least 3.0 metres tall with a minimum 50mm caliper, and protected by a tree guard,</i></b></p> <p><b><i>iii) Syzgium paniculatum - 100 litre size, as sourced from Dooralong Native Plants x 20</i></b>  <b><i>Each tree shall be at least 2.0 metres tall with a minimum 40mm caliper, and protected by a tree guard,</i></b></p> <p><b><i>iv) Council shall provide approval of the stock quality by inspecting at least one specimen of each nominated street tree,</i></b></p> <p><b><i>v) Council may reject any of the stock following planting if any of the trees do not meet Council's satisfaction.</i></b></p> <p><u>Planner Comment:</u> There is limited ability to require the applicant to obtain Council's satisfaction of plant stock prior to planting; However, Council will ultimately be responsible for signing of on the adequacy of plantings prior to the release of any subdivision certificate. Whilst the general intent of these comments are supported, minor amendments to the wording are required, as outlined in the proposed recommendation.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been

External Referral Body	Comments
	received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

### 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?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

### Pittwater 21 Development Control Plan

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
C6.2 Natural Environment and Landscaping Principles	No	Yes

#### Detailed Assessment

### C6.2 Natural Environment and Landscaping Principles

Clause C6.2 of P21 DCP provides that street trees shall have a pot size between 35-500L dependant on species selection and plant location, in accordance with the *Warriewood Valley Landscape Masterplan* ("Masterplan"). The Masterplan then prescribes the need for 200-400L for street trees on any Local Streets (such as Fern Creek Road) and 200L for street trees on Access Streets (such as the proposed internal roads). The proposed modification results in inconsistency with these requirements, with *Angophora Costata's* with 100L pot sizes proposed along Fern Creek Road and *Syzygium paniculatum* with 100L pot sizes proposed along the internal road. It is noted that despite the proposed reduction from 500L to 200L for the pot sizes of the proposed *Waterhousia floribunda* along the internal

roads, the proposal remains consistent with the Masterplan in this regard.

Whilst the larger pot size is preferred, Council's Landscape Architect has endorsed the position of the applicant regarding the lack of availability of adequate typical street trees with larger pot sizes. Whilst some larger sizes may be available in the market, the stock is not of adequate quality, and as such, preference is placed on sourcing higher quality smaller plantings to be planted immediately, with extra emphasis on tree protection measures.

The proposed amendments to accommodate a smaller pot size have been endorsed by Council's Landscape Architect, who is satisfied that the landscaped treatment in the medium term will be consistent with that originally anticipated in N0540/15.

### **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**

### **POLICY CONTROLS**

#### **Pittwater Section 94 Development Contributions Plan**

### **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. Mod2018/0376 for Modification of Development Consent N0540/15 granted for a twenty 20 lot community title subdivision and construction of associated infrastructure and access roads on land at Lot 6 DP 736961, 10 Fern Creek Road, WARRIEWOOD, subject to the conditions printed below:

### **A. Amend Condition A1 to read:**

The development is to be undertaken in accordance with the following plans and documents:

1. Letter from Willow Tree Planting "Development Application N540/15 - 10 Fern Creek Road, Warriewood, Proposed 20 Lot Community Title Subdivision. Response to Statement of Facts and Contentions Dated 23 March 2016 and Following discussion at Section 34 Conference on 11 May 2016" dated 19 May 2016.
2. Letter from Northrop "Development Application N540/15 - 10 Fern Creek Road, Warriewood, Proposed 20 Lot Community Title Subdivision. Response to Statement of Facts and Contentions Dated 23 March 2016 and Following discussion at Section 34 Conference on 11 May 2016" dated 18 May 2016.
3. Letter from Northrop " 6 Orchard Street Stage 2 and 10 Fern Creek Road, Warriewood Valley Residential Subdivision (DA N0470/15) and (DA N0540/15) - Additional DA Information in Response to Section 34 Conference" dated 25 May 2016
4. Updated Plan of Subdivision, dated May 2016, prepared by Stephen Bowers Architects. Drawings numbered:
  - DA-01 (Revision B)
  - DA-02 (Revision B)
  - SK-01 (bulk earthworks plan)
5. Updated civil engineering drawings, dated May 2016, prepared by Northrop. Drawings numbered:
  - DA1.11 (Revision 6)
  - DA1.31 (Revision 5)
  - DA3.11 (Revision 1)
  - DA4.01 (Revision 5)
  - DA4.02 (Revision 5)
  - DA4.21 (Revision 5)
  - DA4.22 (Revision 4)
  - DA4.31 (Revision 5)
6. Arboricultural Statement and Tree Protection Method prepared by Treehaven Envirosapes dated 31 May 2016, together with Addendum to Arboricultural Statement and Tree protection Method prepared by Treehaven Envirosapes dated 15 June 2016, and accompanying Tree Schedule v03.
7. Design to Existing Cut to Fill Diagram, dated 14 June 2016, prepared by Stephen Bowers Architects. Drawing number DA3,11 (Revision 3).
8. Tree Retention and Removal Plan, dated 20 June 2016, prepared by sym.studio. Drawings numbered:

- ASC07.1-SK-01 (Issue G)
- ASC07.1-SK-02 (Issue G)
- 9. Landscape Plans, dated 17 September 2015, prepared by sym.studio. Drawing numbers:
  - ASC07.1-DD-101 (Issue E)
  - ASC07.1-DD-102 (Issue F)
- 10. Community Management Statement, prepared by Phillipa Russel Lawyers, dated 20 June 2016.

*as further modified by:*

- 1. *Modified Landscape Plans, ASC07.1-DD-100 issue J, ASC07.1-DD-101 Issue I and ASC07.1-DD-102 Issue I, prepared by Sym Studio, dated 22 June 2018*

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

Prior to the issuance of a Construction Certificate, written approval under Section 139 of the Roads Act is to be obtained from Council for the works within the Fern Creek Road reserve up to the centreline and for the full length of the development site. Engineering plans and specifications for the said works are to include the following:

- a. The works in relation to the full length of the Fern Creek Road frontage of the development site and including the works in relation to the vehicular access to the development are to be provided.
- b. Kerb and gutter and associated stormwater drainage to drain the road pavement for the full length of the roadway of that part of Fern Creek Road for the full frontage of the site subject to this consent (vertical faced kerb only will be permitted).
- c. Road shoulder and road pavement construction including pavement design and treatments up to the road centre line in Fern Creek Road for the full frontage of the site subject to this consent.
- d. Footpath/cycleway 2.1 metres wide for the full length of the frontage in Fern Creek Road at a level to match the kerb and gutter, is to be provided.
- e. Pavement design and treatments.
- f. The public shared path in Fern Creek Road is to be wholly located on public land.
- g. The intersection of the Community Title roads with Fern Creek Road is to be designed to cater for safe movements by a 12.0 metre long single unit truck (Austroads standard) entering and leaving the Community Title road.
- h. Street lighting using Ausgrid standard lights/poles is to be provided in Fern Creek Road with lighting of the pedestrian refuge and intersection to meet the relevant RMS and Australian Standards.
- i. The undergrounding of existing services, including overhead power supply and communication cables, for the full length of the public road reserve.
- j. Street name signs (complying to Council's requirements) to be provided in Fern Creek Road at the intersection with the Community Title roads.
- k. All traffic facilities in Fern Creek Road to be designed to cater for semi-trailers and articulated buses with no vehicle overhang of nature strips and a minimum 300mm as a clearance of all kerb and traffic islands, for all wheel paths.
- l. The road design plans for Fern Creek Road are to extend for a minimum distance of 30 metres along Fern Creek Road beyond the side boundaries of both sides of the site to ensure the works will match into future roadworks in Fern Creek Road in front of adjacent properties.
- m. The roadway of the intersection of the Community Title road with Fern Creek Road is to be constructed in concrete from the edge of the road carriageway (kerb and gutter) in Fern Creek Road for the full width of the nature strip.

n. Landscaping incorporating:

- i. A 2.1m wide footpath along the Fern Creek Road verge frontage of Lot 2, Lot 3, Lot 4, and a portion of Lot 21 adjacent to Lot 4, shall be located directly behind the kerb, with no landscape strip between the kerb and footpath.
- ii. A 2.1m wide footpath along the Fern Creek Road verge (north-south alignment) fronting a portion of Lot 21, Lot 10, Lot 11, Lot 12, Lot 13, and Lot 14, shall be located 600mm from the property boundary.
- iii. A 1.5m wide footpath along the Community Title road adjacent to Lot 12, shall be located 600mm from the property boundary.
- iv. All underground utility services located under the footpath.
- v. Kerb ramps located in association with the footpaths for all road crossings.
- vi. Along the Fern Creek road verge, a total of 16 *Angophora costata* street trees shall be planted.
- vii. *Road reserve street tree planting shall be in accordance with the following requirements:*
  - all street trees shall be installed in accordance with the Modified Landscape Plans referenced in this consent
  - each 100L size tree shall be at least 2.5 metres tall, with a minimum 40mm caliper
  - each 200L size tree shall be at least 3.0 metres tall, with a minimum 50mm caliper
  - each street tree is to be protected by a tree guard
  - all street trees shall be located a minimum of 1.5m from the back of kerb
  - understorey planting to all street trees shall be in accordance with the Modified Landscape Plans referenced in this consent

o. Any inconsistencies between proposed plans are to be clarified and resubmitted for consideration.

The plans required above are to meet the objectives and requirements of the Warriewood Valley Roads Master Plan, Austroads, AusSPEC, and P21 DCP and achieve a road design and landscaped effect consistent with the Warriewood Valley Landscape Masterplan and Design Guidelines (Public Domain).

The engineering design and plans for road and drainage works must be certified as meeting the requirements outlined above by a suitably qualified and experienced Civil Engineer who is NPER accredited by the Institution of Engineers (Australia) prior to submission to Council.

**C. Amend Condition E8, to read as follows:**

*A suitably qualified landscape architect is to provide certification that the landscaping and replacement canopy tree plantings has been undertaken on the individual residential allotments and within the proposed and existing road reserves, in accordance with the Modified Landscape Plans referenced in this consent.*

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 23/10/2018, under the delegated authority of:




**Matthew Edmonds, Manager Development Assessments**





















## ATTACHMENT A

No notification plan recorded.

## ATTACHMENT B

	<b>Notification Document</b>	<b>Title</b>	<b>Date</b>
	2018/498099	Notification Map	07/08/2018

## ATTACHMENT C

Reference Number	Document	Date
 2018/470492	Plans - Master Set - Approved	05/10/2017
 2018/470486	Owners Consent	13/02/2018
 2018/470488	Land & Environment Court Judgement	19/07/2018
 2018/470493	Plans - Master Set	19/07/2018
 2018/470490	Report - Landscape Compliance Letter	19/07/2018
 MOD2018/0376	10 Fern Creek Road WARRIEWOOD NSW 2102 - Section 96 Modifications - Section 96 (1a) Minor Environmental Impact	20/07/2018
 2018/461105	invoice for ram applications - Skycorp Holdings Pty Ltd	20/07/2018
 2018/461107	DA Acknowledgement Letter - Skycorp Holdings Pty Ltd	20/07/2018
 2018/470481	Modification Application Form	25/07/2018
 2018/470483	Applicant Details	25/07/2018
 2018/470489	Report - Statement of Modifications	25/07/2018
 2018/498036	ARP Notification Map	07/08/2018
 2018/498061	DA Acknowledgement Letter (not integrated) - Skycorp Holdings Pty Ltd	07/08/2018
 2018/498099	Notification Map	07/08/2018
 2018/498131	Notification Letter - 116	07/08/2018
 2018/499697	MOD2018/0376 - 10 Fern Creek Road, Warriewood	07/08/2018
 2018/527428	Online Submission - Millar	17/08/2018
 2018/674214	Stamped Plans	22/10/2018
 2018/670348	superseded - Landscape Referral Response	22/10/2018
 2018/671897	Landscape Referral Response	22/10/2018