



Warriewood Properties Pty Ltd

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Level 1, 4 Ponderosa Parade,
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31 October 2018

Northern Beaches Council
Dee Why

Attn: General Manager

Dear Sir,

Re: Application to amend Development Application N0085/11 formerly known as 23B Macpherson Street, Warriewood (Lot 11 Section C DP 5464) for the purposes of facilitating the Community Title Subdivision of Lots 5, 6 & 7 in DP 270822 into 13 residential Lots and amendment to the existing community lot (Lot 1 DP 270822) now known as 26-46 Hakea Drive, Warriewood

This application is submitted as a Section 4.55(1A), formerly Section 96 (1A), as it is of no environmental impact and no changes are sought to the approved development. This letter serves as the amendment to the Statement of Environmental Effects.

Background

I refer to Council's development consent DA N0182/16 dated 19 December 2016 as amended for the construction of 13 dwellings and community title subdivision and the approval and release of Subdivision Certificate SC2018/0020 dated 31 July 2018.

We lodged the Subdivision Plan at NSW Land Registry Services on 15 August 2018. NSW Land Registry Services advised us by requisition dated 24 August 2018 that an additional interim step is required.

As Lot 1 DP 270822 Community Association Property has increased in size (by 270 m² or 9.3%) as a result of the internal road known as Hakea Drive being widened to add visitor and disabled car spaces (as per the approved DA N0182/16), Land Registry Services have advised we first need to submit a Plan of Boundary Adjustment before the 13 lot Subdivision Plan can be registered. This is because the community scheme legislation does not allow a subdivision of association property and a development lot. Section 14 is the relevant clause of the Community Land Development Act 1989 which covers the conversion of a development lot to community property.

This interim step is in two parts:-

1. A Plan of Boundary Adjustment between Lot 1 Community Property DP 270822 and Lot 7 DP 270822 (a development lot). This is because the proposed walkway being a strip of common property has been deleted from Lot 1 and added to Lot 7.

2. A Plan of Subdivision of Lots 5, 6 and 7 DP 270822 to create a new 'temporary' lot (Lot 47 DP 270822) being the increased area which gets converted to Community Property Lot 1 by registration of an Instrument of Conversion Form 21CE.

These plans need to be signed by Council as they facilitate the subdivision certificate approval SC2018/0020 to enable registration.

The plans also include a Deposited Plan Administration Sheet which is also required to be signed by Council, together with the Instrument of Conversion Form 21CE.

Please note that the outcome of this interim step is identical to the subdivision plan that has already been approved and released by Council as SC 2018/0020 dated 31 July 2018.

We wrote to Council on 30 August 2018 advising of the situation (copy of letter attached) and requested assistance with the early release of the replacement documents.

However, Ms Claire Ryan Principal Planner at Council wrote back on 2 October 2018:-

"Following discussion with Rebecca Englund, it has been established that Council cannot proceed with signing the recently submitted documentation relating to SC2018/0020. Instead, a modification application to the approved subdivision under the previous development application N0085/11 is required in order to adjust the boundaries as desired. A new subdivision certificate must then be applied for, reflecting the desired changes".

I refer to our subsequent meeting, email and telephone conversations with Council in relation to the possibility of satisfying clause 2.75(f) and/or 2.75(b) of the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

We believe there is no need for the development consent to be modified. That is because the proposal is *"excising from a lot land that is, or is intended to be, used for public purposes"* and therefore exempt under clause 2.75(f) of the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

There is no definition of "public purpose" in the code. You are therefore entitled to use the ordinary and natural meaning of the expression.

Our legal advice is the test is satisfied because the public will benefit from the subdivision because the area of land and the road infrastructure available for use by members of the public and the emergency services will be increased and enhanced. Members of the public and the emergency services will have improved access to and use of the site if the area of Lot 1 is increased. The fact that Lot 1 is a private access way does not preclude members of the public from using and enjoying that land and does not prevent the land being used for a public purpose.

Council planners recently advised they do not agree that it is exempt development under clause 2.75(f).

Also, Council does not agree that clause 2.75(b) is satisfied because the additional temporary lot (Lot 47) that is required to be created to satisfy Section 14 of the Community Land Development Act 1989 in relation to the conversion of a development lot to community property. As an alternative solution to creating an additional lot (i.e. 13 residential lots plus temporary lot 47 which simultaneously gets converted to community property on registration of Instrument of Conversion, hence unit entitlement of zero), we proposed 12 residential lots plus temporary lot 47 (i.e. leaving one larger residential lot until temporary lot 47 is converted to Lot 1), but this was unfortunately also not supported by Council planners.

Current

Council have advised that DA NO0085/11 as amended is the correct DA to amend.

Therefore, our application to modify the approved subdivision includes:-

1. A Plan of Boundary Adjustment between Lot 1 Community Property DP 270822 and Lot 7 DP 270822 (2 sheets)
2. Plan of Subdivision of Lots 5, 6 and 7 DP 270822 into 13 residential lots (Lots 34-46) and creating temporary Lot 47 DP 270822 (3 sheets)
3. Plan of Lot 1 following conversion of Lot 47 DP 270822 to Association Property (1 sheet)

We also attach the Section 73 certificate, works as executed plan, compliance certificate for road works that all infrastructure works are complete and relevant conditions satisfied.

We note that all of the usual documents that referred to the original 8 super lot subdivision (Subdivision Certificate P06/15 dated 16 December 2015) creating Lots 1-8 in DP 270822 and also to the subsequent subdivisions were provided and approved by Council. Stage 1 - 17 residential lot subdivision of Lots 3 and 4 DP 270822 was approved (Subdivision certificate P07/15 dated 16 December 2015) creating Lots 9-25 in DP 270822. Stage 2 - 8 residential lot subdivision of Lot 8 DP 270822 was approved (Subdivision certificate P11/16 dated 22 February 2017) creating Lots 26-33 in DP 270822. As this application is for the amendment of subdivision of Lots 5, 6 & 7 DP 270822 (and amendment of Lot 1) only, the previous original supporting documentation regarding engineering, water management etc has not been duplicated in this application.

Furthermore, and unique to this situation, as all the infrastructure roads, water management facilities etc has actually already been built and signed off by Council then we contend that there should be no delay in sending the application again through engineering.

However, we are again including the as-built documents for the Lot 1 road civil works and the water, electricity, sewer and gas connection plans for lots 5, 6 & 7 for absolute clarity.

We wish to again point out that Council have already approved and released Subdivision Certificate SC2018/0020 dated 31 July 2018. Therefore, all of the above documents have already been assessed and approved.

We trust that everything is in order, please do not hesitate to contact me should you require clarification or further information.

Unfortunately, this unique situation has already delayed the registration of the subdivision plan (since 15 August 2018) and hence people being able to move into their new home. As you can imagine, this is now an extremely urgent issue for those concerned and we would greatly appreciate it if Council could facilitate the early approval of this application.

Thank you.

Yours sincerely,

Warriewood Properties Pty Ltd



Paul Allinson