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The General Manager
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Attention: Rebecca Englund

**SECTION 4.55(1A) – N0540/15 – COMMUNITY TITLE SUBDIVISION OF 1 LOT INTO 20 LOTS AND ASSOCIATED INFRASTRUCTURE
10 FERN CREEK ROAD, WARRIEWOOD (LOT 6 DP 736961)**

Dear Rebecca,

Reference is made to the abovementioned Development Consent (N0540/15) issued on 20 June 2016 for *The Community title subdivision of 1 lot into 20 lots and the construction of associated infrastructure at 10 Fern Creek Road, Warriewood.*

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 N0540/15 (**Appendix 1**).

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

- **Appendix 1:** Development Consent N0540/15
- **Appendix 2:** Approved Landscape Plan
- **Appendix 3:** Modified Landscape Plan
- **Appendix 4:** Landscape Architect Compliance Letter

1. INTRODUCTION

This application seeks a modification to N0540/15 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.

The conditions proposed to be modified under this application include **Condition No. A.1.9** and **Condition No. C.10.n.vii**. The nature of the modifications sought are further detailed in **Section 3** of this statement.

2. SUBJECT SITE

The site subject to Development Consent N0540/15 is located at 10 Fern Creek Road, Warriewood (highlighted in yellow in **Figure 1** below).



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

3. PROPOSED CONSENT MODIFICATIONS

To facilitate the objectives of this application, the modifications sought N0540/15 include the following:

A. Prescribed Conditions:

1. The development is to be undertaken in accordance with the information provided by the applicant in support of the application, including the Statement of Environmental Effects, and in accordance with the following plans and documents:

9. Landscape Plans, dated 17 September 2015, prepared by sym.studio. Drawing numbers:

- ASC07.1-DD-100 (Issue J)
- ASC07.1-DD-101 (Issue ~~E~~ I); and
- ASC07.1-DD-102 (Issue ~~F~~ I).

C. Matters to be satisfied prior to the issue of the Construction Certificate:

10. Prior to the issue of a Construction Certificate, written approval under Section 139 of the Roads Act is to be obtained from Council for 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:

n. Landscaping incorporating

vii. Road reserve street planting shall be in accordance with the following requirements:

- all street trees shall be installed as 400 litre size *or, where trees of this size cannot be locally sourced, in accordance with the tree sizes nominated in the approved Landscape Plans and Plant Schedule within ASC07.1-DD-100 (Issue J).*

As per the modified Landscape Plan (**Appendix 3**), the Plant Schedule has been amended accordingly and nominated the following tree sizes:

- | | |
|--|--|
| ▪ Angophra costata: | 100L; Quantity 20: Alpine Nursery |
| ▪ Waterhousea floribunda: | 200L; Quantity 10: Alpine Nursery |
| ▪ Syzigium Paniculatum Sub Resilience: | 100L; Quantity 20: Dooralong Native Plants |

The Landscape Architect, Sym Studio, has provided a recommendation letter (**Appendix 4**) 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 N0540/15.

As demonstrated above, the proposed modifications seek to allow some flexibility in relation to the street tree planting requirements. Whilst 400L trees 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 N0540/15 are considered reasonable and will adequately facilitate appropriate street tree planting in accordance with the context of the locality.

4. STATUTORY REQUIREMENTS

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 N0540/15 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 result in a development outcome substantially the same as the development approved under N0540/15 as it involves amendments solely to the required street tree planting sizes and will have no measurable impact on the ultimate development outcome for the site including the subdivision layout and yield. Furthermore, the proposed modification would not result in any further 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

The subject land is part zoned R3 Medium Density Residential 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 proposed modification would not result in any of the R3 zone objectives being compromised. The development shall remain capable of achieving these objectives to the same extent as the approved development under N0540/15.

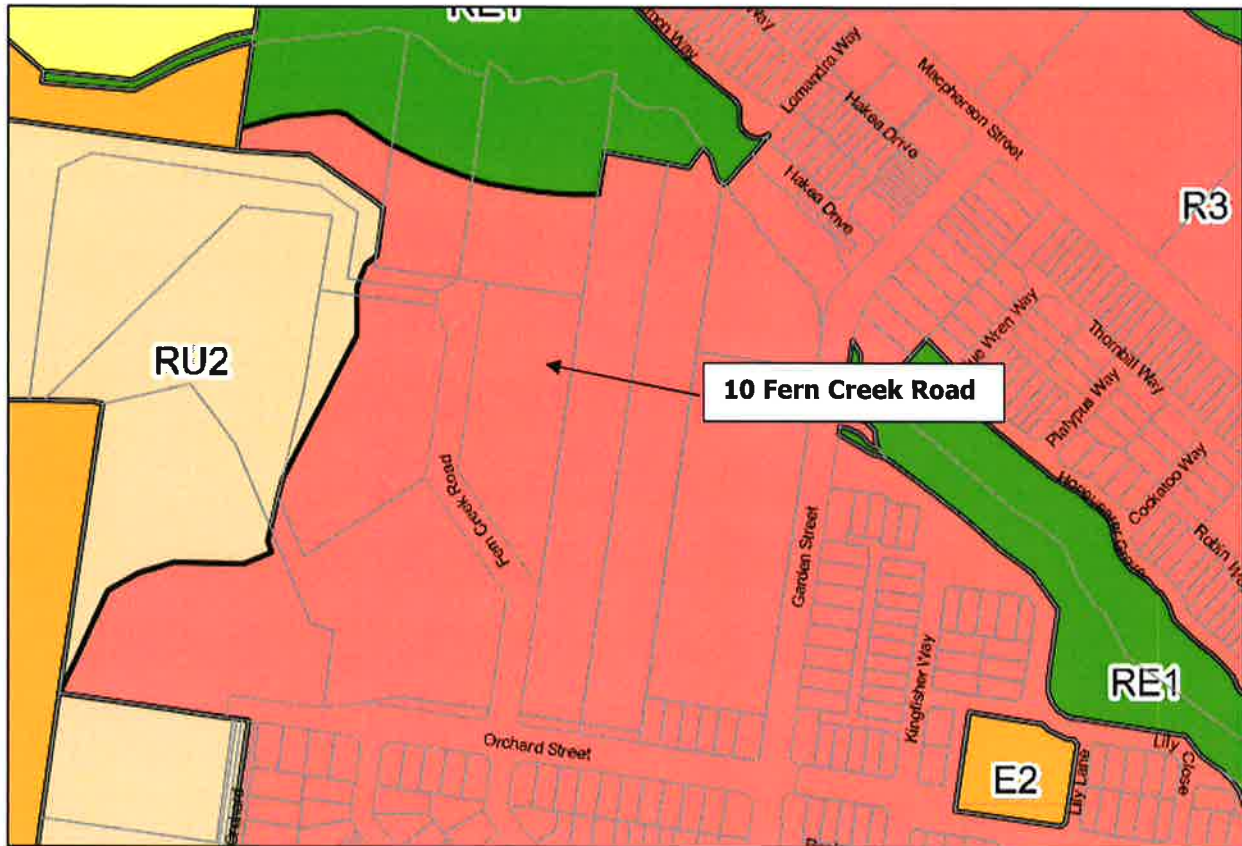


Figure 4. Zoning Map (Source: PLEP 2014)

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.

5.2 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 400L. 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 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 assessed and approved under the original development application (N0540/15).

It is important to note that the proposed modifications are contextually appropriate in light of the planting of 100L trees at 2 Fern Creek Road. Accordingly, the proposed street tree sizes sought under this application shall remain consistent and commensurate to landscape planting previously carried out within the locality.

7. SUITABILITY OF THE SITE FOR DEVELOPMENT

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 N0540/15 and is therefore considered to remain suitable for the site and satisfies s4.55(1A) of the EP&A Act. Furthermore, street planting of this nature has previously been supported and carried out within the release area and is therefore considered suitable for the site.

Based on the above, the modifications proposed to development consent N0540/15 are considered to warrant support and a favourable determination by Northern Beaches Council.

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

Yours Faithfully,



Thomas Cook
Director
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