



**BMN PROPERTIES PTY LTD & NORTHERN BEACHES COUNCIL  
NSW LAND AND ENVIRONMENT COURT PROCEEDINGS No 2023/00450443  
4 FOREST ROAD, WARRIEWOOD ('THE SITE')**

**PROPOSED AMENDMENTS TO PROPOSED DEVELOPMENT AND SUPPLEMENTARY  
INFORMATION SUBMITTED ON BEHALF OF BMN PROPERTIES PTY LTD**

**1. OVERVIEW**

DA2023/0129 (the **Development Application**) is proposed to be amended to respond to contentions raised by the Respondent in the course of the proceedings. The following documents are provided in support of the proposed amended development scheme:

Tab	Document	Reference and/or date	Consultant
1	Town Planning Statement	December 2024	Urbis
2	Subdivision Plan	November 2024	Acor
3	Amended SEE	July 2024	Urbis
4	Bushfire	Dec 2024	Travers Bushfire & Ecology
5	Flora and Fauna Impact Assessment, and Addendum	July 2024 and 26 August 2024	Kingfisher Ecology
6	Amended Geotechnical Report	5 December 2024	Alliance
7	Amended Stormwater Management Plan	December 2024	Acor
8	Transport Impact Assessment	3 December 2024	JMT Consulting
9	Civil Engineering Plans, Long sections	December 2024	Acor
10	Typical Building Layouts and Perspectives	(various dates)	MHDP Architects
11	Amended Landscape Plans	16 December 2024	A Total Concept
12	Review of Environmental Factors	December 2024	Travers Bushfire & Ecology
13	Amended Arboricultural Report – Rev D	December 2024	Naturally Trees
14	Additional Information	(various dates)	MHDP Architects

## **2. DESCRIPTION OF AMENDMENTS**

The Applicant proposes to amend the proposal to provide an adjusted thirteen (13) Lot subdivision to address concerns with integration into the hillside, privacy to neighbouring sites, tree preservation, minimising ecological impacts and traffic amenity along with other changes addressing issues raised in the Statement of Facts and Contentions dated 24 January 2024.

The Changes proposed to the proposal are as follows:

- a) Adjustments to APZ areas, such that the area of the road reserve beyond Road MC01 will not be maintained as an APZ.
- b) Modifying the road design to minimise impact on existing native vegetation in the road reserve.
- c) Improving the road design to reduce the extent of steep sections of roadway, improving sightlines and adding traffic calming features.
- d) A reduction of bulk earthworks via the removal of retaining walls within and between lots, so as to minimise the impact on the natural topography.
- e) Additional landscaping to conform to the WVMP.
- f) The addition of screen planting on the Northern and Eastern boundaries of the site to improve the privacy for neighbouring properties.

Details of the proposed changes are illustrated in the attached amended plans and supporting documents.

### 3. RESPONSE TO CONTENTIONS THAT WARRANT REFUSAL OF THE APPLICATION

The proposed amended Development Application is summarised as follows against the Contentions contained in the Statement of Fact and Contentions dated 24 January 2024.

CONTENTION	RESPONSE
<p><b>Contention 1 - Bushfire (Integrated Development)</b></p> <p>The development application should be refused as it does not comply with the requirements of Planning for Bush Fire Protection 2019, and NSW Rural Fire Service have refused to issue General Terms of Approval.</p>	<p>The amended proposal demonstrates compliance with the requirements of Planning for Bush Fire Protection 2019 (PBP).</p> <p>A revised Bushfire Protection Assessment includes detailed analysis of the identified bushfire hazards. This analysis no longer relies on the application of the Remnant provisions at A1.11.1 of PBP. Adoption of a Forest classification to all hazards and further slope analysis to support the amended proposal compliance with PBP has been completed in the amended proposal.</p> <p>The revised Bushfire Report uses agreed slope analysis to inform the amended proposal. The amended proposal no longer relies on off-site APZ maintenance beyond our boundary, removing concerns about on going management and maintenance of this area.</p> <p>The amended bushfire report confirms that Lots 1-9 readily meet the requirements for APZ setbacks at building envelopes/pads. Lot 10 can also satisfy the required setback for APZs however, the building pad has been modified to ensure that no part of the building's walls is within the APZ area. Lots 11-12 require APZs within the western boundaries of the lots and satisfy the requirements for APZs and achieve a bushfire attack level of not greater than 29kW/m<sup>2</sup> (BAL 29). Lot 13 is constrained; however, a building envelope is achievable within the subject lot to comply with BAL-29. Although the buildable area for Lot 13 is smaller than Lots 11 and 12 it is comparable with Lots 1-5 in area.</p> <p>The amended bushfire report concludes that the proposed residential development satisfies the relevant Standards of PBP.</p>

<p><b>Contention 2 - Earthworks (Excavation and Landfill)</b></p> <p>The Development Application should be refused as it involves excessive excavation and fill works and is not designed to respond to the topography of the land.</p>	<p>The amended proposal minimises the extent of excavation and fill works necessary to restore the original topography of the site and to accommodate the proposed development. Much of the artificial fill added to the site over the last forty years to cater to previous land uses will be removed and/or reshaped to restore the original ground level.</p> <p>The existing cut and fill on the site distorts the desired future development of Lots 1-7 and is therefore modified to ensure the site conditions are appropriate.</p> <p>The highest point of the site is approximately 26m higher than the lowest point of the site. The level of the road must pass from the existing level of Forest Road, through the existing land form and adjoin the new road at 8 Forest Road accounting for much of the proposal cut and fill in the proposal. The proposal locates the proposed perimeter road (MC01) and access road (MC02) in a carefully considered manner to minimise the grade of the road and associated retaining walls whilst balancing the requirements for safe traffic/pedestrian amenity.</p> <p>Where retaining walls are proposed within the amended scheme, subsurface conditions have been assessed by Alliance Geotechnical to provide simplified construction design making use of stabilised rock cut solutions.</p> <p>The proposed development has removed the proposed location of retaining walls on proposed lots, with these to be considered in subsequent applications for dwellings on the lots.</p>
<p><b>Contention 3 - Subdivision Design</b></p> <p>The Development Application should be refused as it is inconsistent with the residential subdivision principles set out in P21 DCP.</p>	<p>The amended proposal achieves consistency with the residential subdivision principles set out in Pittwater 2021 DCP. The proposed subdivision responds to the physical characteristics as to the slope of the land, vegetation and constraints, including bushfire risks that exists on the site.</p> <p>The amended subdivision plan provides efficient and safe pedestrian and vehicles linkages to adjoining and nearby road networks, Mater Maria Catholic College, public transport and public open space. The amended proposal also establishes lots which are capable of supporting future dwellings in a manner consistent with DCP controls.</p> <p>The amended subdivision implements a sensitive and appropriate response to the topographical character of the site as well as its relationship to adjacent existing roads and the Court-approved development to the West at 8 Forest Road Warriewood (approved 2017).</p> <p>The amended proposal provides detailed long sections and 3D images of the preferred future Lot dwellings. An additional set of dwelling plans and long sections which demonstrate the viability of “split-level” designs as suggested by Northern Beaches Council have been provided in the amended proposal to illustrate the variety</p>

	of dwelling forms that the Lots can accommodate.
<p><b>Contention 4 - Biodiversity</b></p> <p>The Development Application should be refused as insufficient information has been provided to enable a proper assessment, and it fails to demonstrate that the proposal avoids and minimises impacts upon the biodiversity values and native vegetation of the Site and surrounding land.</p>	<p>The amended proposal minimises adverse impacts on the biodiversity values and native vegetation of the Site and surrounding land.</p> <p>The amended Arborist Report provides an analysis of the potential impact of the revised development on the trees that currently exist on the subject site and provides a tree management plan and details the species of trees and recommended mitigation measures to protect the trees. The amended arborist reports map every tree down to 20mm diameter regardless of height and assess whether trees close to the road alignment and road cutting can be retained or require removal in great detail.</p> <p>An update of the previously supplied Flora and Fauna Assessment and Addendum Report has been completed with respect to the amended proposal. A BDAR (streamlined small area module) is required to be prepared based on further review of the existing material and biodiversity values mapping. An integrated vegetation management plan that has biodiversity mitigation measures integrated as per the mitigation measures of the BDAR is to be prepared and submitted to support the proposed works. This is due for completion in January 2025.</p>
<p><b>Contention 5 - Stormwater Management</b></p> <p>The Development Application should be refused as the design and arrangements of the proposed stormwater management infrastructure is unacceptable and does not comply with the Respondent's Water Management Specification.</p>	<p>The amended Stormwater Management Plan (SWMP) has been prepared as part of the amended scheme. The amended SWMP complies with Clause C6.1 (Integrated Water Cycle Management) of P21 DCP or the Respondent's Water Management Specification.</p> <p>The proposal does not require an easement to drain water over the land adjoining to the North. The water drainage to the North will be limited to drainage within Council's drainage system via public infrastructure contained within the neighbouring property.</p> <p>The amended SWMP advises detention of Lot runoff will be handled on each individual Lots in line with the recommendations made in the SWMP. In addition, lot 7 will be responsible via a positive covenant for the ongoing maintenance of the bio-retention basin and underlying OSD tank servicing the entire site. The costs incurred for the ongoing maintenance of the bio-retention basis and OSD will be shared between Lots 1-10 via a community management statement.</p> <p>Access to the bioretention basin has been provided through a modified design. The amended SWMP includes the Operation and Maintenance Plan for the</p>

	<p>bioretention basin (see appendix B2-3 of the SWMP).</p> <p>The amended MUSIC modelling provides a clear indication of the split between the detention and retention functions of the rainwater tanks proposed for each lot.</p>
<p><b>Contention 6 - Road Design</b></p> <p>The Development Application should be refused as the proposed road design does not satisfy the requirements of the Warriewood Valley Roads Masterplan, Austroads or the Respondent's technical documents.</p>	<p>The amended proposal relies on and refers to the Transport Impact Assessment to demonstrate compliance with the requirements of the Warriewood Valley Roads Masterplan.</p> <p>The amended proposal supports the exceedance in gradient of part of MC-01 based on Austroads guidelines with respect to general maximum gradients, "Higher values may be warranted to suit local conditions". Whereby a portion of MC-01 perimeter road exceeds the maximum gradient for a distance of 25 metres in length, which is a small portion of the road. The exceedance does not occur at an intersection; and the exceedance does not occur on any vehicle access points into future residential lots.</p> <p>The predicted traffic load arising from the amended proposal indicates the use of MC01 will be 1000 – 1500 vehicles per day. This is based on traffic movement from the proposed development of the subject site, 8 Forest Road and nearby sites, with 25 vehicles per hour or 250 vehicles per day expected to use the section of Jubilee Avenue near 8 Forest Road. The Transport Impact Assessment concludes that there would be minor increase to traffic flows and there would be no adverse impacts to the flow of traffic within the area.</p> <p>The proposed streets for the site are designed to accommodate two-way traffic with the provision to allow for on-street car parking, and proposes a footpath that is directly adjacent to the kerb, with a combined services trench beneath the footpath. The proposed streets are in accordance with the Warriewood Valley Roads Masterplan.</p> <p>Roads proposed within the subject development application have a 12.5m wide cross section and a 7.5m wide road carriageway to allow sufficient width for safe entry and exit into the local street, as per the Warriewood Valley Roads Masterplan.</p>
<p><b>Contention 7 - Public Interest</b></p> <p>The Development Application should be refused as approval of the proposal is not in the public interest.</p>	<p>The amended proposal is permissible with consent in the R3 Medium Density zone and in the public interest on the basis that it is compatible with the relevant zone objectives and the requirements of the DCP.</p> <p>Concerns raised by the public relate predominately to privacy which have been illustrated in the amended scheme with landscaping, built form 3D images, section details for those Lots bounding the site.</p>



### B3 - RESPONSE TO CONTENTIONS THAT THERE IS INSUFFICIENT INFORMATION

CONTENTION	RESPONSE
<p><b>Contention 8 - Water Quality</b></p> <p>The Development Application does not provide sufficient information to demonstrate that it complies with the water quality aspects of the Respondent's Water Management Specification.</p>	<p>The amended proposal provides additional material addressing water quality management along with supporting modelling.</p>

17 DECEMBER 2024

