

Property and Commercial Development Referral Response

Application Number:	Mod2019/0477
To:	Daniel Milliken
Land to be developed (Address):	Lot 100 DP 1253448 , 9 - 15 Lawrence Street FRESHWATER NSW 2096

Reasons for referral

This application seeks consent on land being adjoining or adjacent to any Council

Assets/Property/Facilities

And as such, Councils development engineers are required to consider the likely impacts on drainage regimes.

Officer comments

The proposal is a modification to consent for an approved shop top housing scheme. Among other modifications, it is proposed to remove the vehicular access via Lawrence Street, and replace this with vehicular access via the existing Council carpark to the rear of the property, accessed via Oliver Street.

The Oliver Street carpark is currently zoned RE1 – Public Recreation under the Warringah LEP 2011 and is classified as “Community” land under the provisions of the Local Government Act 1993. Property understands that there is a current Planning Proposal which seeks to rezone this land to SP2 – Infrastructure (Carpark) and to reclassify the land to “Operational” in order to potentially allow granting legal vehicular access by private properties through the carpark.

If the reclassification of the carpark land is successful and the applicant wishes to obtain permanent vehicular access to their site through the carpark, an application for an easement (Right of Carriageway) (ROW) over the carpark will need to be submitted to Council. An application will be referred to the relevant internal/external stakeholders for identification of issues and comments. Council may also wish to publicly notify the proposal for community engagement. If it is considered the proposal has merit, the proposal will be reported to the elected Council for formal consideration.

Council may also wish to impose ongoing conditions/obligations on any proposed ROW benefiting private property owners and have those conditions registered on their property as a Positive Covenant.

Please note that part of the carpark access encroaches on the Harbord Literary Institute site and that this encroachment does not form part of the Planning Proposal. In order for a ROW to be created over this portion of land, it may need to be the subject of a road widening as the process for creating a ROW over Community classified land would require another similar Planning Proposal to rezone and reclassify this land. There are also restrictions on the title to this land which may restrict dealings or require Ministerial Consent. Council’s Transport and Civil Infrastructure Group should be consulted about the process involved and whether this is a suitable mechanism for addressing this issue.

Additionally, part of the carpark is located on some Crown Land managed by Council. The process to register a ROW over the Crown Land may require separate processing, assessment and approvals including addressing the issue of Native Title.

The applicant for a ROW over Council land is required to accept all associated costs (as the process is intended to be cost neutral for Council) as well as pay compensation for the ROW. The full amount of

associated costs involved varies on the circumstances but as a guide it is considered to be in excess of \$20,000 for this proposal. This should not be viewed as a final costing and an applicant should seek independent advice in relation to these costs. This amount includes but is not limited to items such as a Council application fee of \$2,345 (non-refundable deposit), Council legal costs, document preparation costs, registration costs, survey plan preparation and valuation costs.

The compensation payable for the proposed ROW itself is to be determined by an independent qualified valuer, however, please note there is a minimum charge of \$11,450 (Inc. GST) (2019-2020 charge) for the compensation for each easement (or ROW) in accordance with Council's adopted Fees & Charges.

Given the above complicated issues regarding any application for a ROW through the carpark which may take some time to complete with no guarantee of a successful outcome at this time, Property is concerned that should this modification to development consent be approved without the finalisation of the reclassification of the carpark and any proposed ROW through the carpark, Council will be placed in a position where the development has no legal vehicular point of access to a public road and may not be able to obtain one for some time. As such, it is recommended that the proposal be refused or alternately a deferred commencement granted until such time as any proposed ROW through the carpark is registered. Additionally, any existing vehicular access from Lawrence Street should also be retained until any proposed ROW through the carpark can be finalised/registered.

Referral Body Recommendation

Refusal

Parks, Reserves and Foreshores Conditions:

Nil.