

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2018/0617
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<b>Responsible Officer:</b>	Rebecca Englund
<b>Land to be developed (Address):</b>	Lot 31 DP 5464, 31 Warriewood Road WARRIEWOOD NSW 2102 Lot 30 DP 5464, 29 Warriewood Road WARRIEWOOD NSW 2102
<b>Proposed Development:</b>	Modification of Development Consent N0182/13 granted for the 40 Lot community title subdivision of the existing sites
<b>Zoning:</b>	R3 Medium Density Residential 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>	Colonial Credits Pty Ltd
<b>Applicant:</b>	Craig & Rhodes Pty Ltd

<b>Application lodged:</b>	14/11/2018
<b>Integrated Development:</b>	Yes
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Subdivision only
<b>Notified:</b>	05/12/2018 to 29/01/2019
<b>Advertised:</b>	08/12/2018
<b>Submissions Received:</b>	0
<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

Assessment - Strategic and Place Planning (S94 Warriewood Valley)

Pittwater 21 Development Control Plan - C6.1 Integrated Water Cycle Management

Pittwater 21 Development Control Plan - C6.4 The Road System and Pedestrian and Cyclist Network

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 31 DP 5464 , 31 Warriewood Road WARRIEWOOD NSW 2102 Lot 30 DP 5464 , 29 Warriewood Road WARRIEWOOD NSW 2102
<b>Detailed Site Description:</b>	The site comprises two separate allotments, being 29 Warriewood Road (Lot 30 Section C DP5464) and 31 Warriewood Road (Lot 31 Section C DP 5464). The site is an irregularly shaped allotment with a total area of 22470m <sup>2</sup> that adjoins Warriewood Road to the north-east and Narrabeen Creek to the south/south-west. The site has been developed in accordance with N0182/13, as amended, with residential lots, roadways and water management infrastructure.

Map:



## SITE HISTORY

### Site History

On 15 October 2014, development application N0182/13 was approved by the NSW Land and Environment Court.

Since this time, development application N0182/13 has been modified on three separate occasions.

On 10 July 2018, the applicant lodged subdivision certificate application SC2018/0058 in relation to Stage 1 of the subdivision approved pursuant to N0182/13, as amended.

On 25 July 2018, the applicant lodged subdivision certificate application SC2018/0060 in relation to Stage 2A of the subdivision approved pursuant to N0182/13, as amended.

On 31 August 2018, Council wrote to the applicant in relation to both SC2018/0058 and SC2018/0060, raising concerns with regard to outstanding satisfaction of conditions of consent. Particularly relevant to the subject modification application, Council identified a discrepancy with the area of the creekline corridor to be dedicated to Council.

### Application History

On 14 November 2018, the subject modification application was lodged with Council. The application was subsequently referred to relevant referral bodies and notified/advertised in accordance with the Regulations and clause A5.1 of P21 DCP.

On 21 December 2018, the applicant presented additional information and amended plans.

On 30 January 2019, a referral response was received from the Natural Resources Access Regulator, confirming that the existing general terms of approval remain valid for the amended proposal and no amendments are necessary.

## PROPOSED DEVELOPMENT IN DETAIL

At the time of lodgement, the application sought to reduce the area of creekline corridor land to be dedicated to Council from 3308m<sup>2</sup> to 3200m<sup>2</sup>, which affects the following conditions of consent:

- Condition B1, which reads as follows:

*The development is to be staged in the following manner:*

*Stage 1 – Excavation and demolition works, site works and services in part or whole, subdivision to create 11 Torrens Title residential lots, construction of temporary road 6.5m wide on proposed Lot 7 and two residue lots (Lots 12 and 13), with Lot 13 being the area **3308m<sup>2</sup>** (measured 25m from the centreline of Narrabeen Creek).*

...

- Condition C19, which reads as follows:

*The following is to be made for the provision of public infrastructure and services pursuant to s 94 of the Environmental Planning and Assessment Act 1979:*

*a. Payment of a total cash contribution of \$1,936,715.64. The cash component of the Development Contribution is to be paid prior to the issue of the Subdivision Certificate or 1*

September 2016 (whichever is the earlier to occur);

b. Dedication of **3308m<sup>2</sup>** of creekline corridor. The creekline corridor land dedication is to be effected prior to or on registration of the subdivision for Stage 2 in accordance with Condition E4. (Note: the creekline corridor land dedication has been deducted from the cash contribution which would otherwise be payable. The base (unimproved) valuation for the creekline corridor is \$146.67 per m<sup>2</sup> based on the current Section 94 Contributions Plan adopted 1 September 2008, Table 6.2, page 43, wherein the property is in Buffer Area 1).

- Condition E4, which reads as follows:

*The dedication of **3,308m<sup>2</sup>** of Narrabeen Creekline corridor (measured 25m from the creekline of Narrabeen Creek) is to be effected prior to or through the registration of the Subdivision Plan the subject of the Subdivision Certificate for Stage 2. All structures and introduced / contaminated fill material within the creekline corridor land is to be removed prior to the creekline corridor land being dedicated to Council.*

On 21 December 2018, the applicant sought to amend the application to exclude a portion of land that will ultimately contain sewer infrastructure, further reducing the area of land to be dedicated to Council to 3151m<sup>2</sup>.

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

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

### Section 4.56 Assessment

The relevant matters for consideration under Section 4.56 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.56 - 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 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	<p>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 DA N0182/13.</p> <p>The modifications do not radically alter the development outcome anticipated on the site, and the works and the associated impacts are essentially and materially the same as that originally approved.</p>
<p>(b) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require,</p> <p>or</p>	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Regulation 2000, and Pittwater 21 DCP.



Section 4.56 - Other Modifications	Comments
(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	
(c) it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application	All those who objected to the original development application were notified.
(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.	No submissions were received in relation to this application.

### Section 4.15 Assessment

In accordance with Section 4.56 (1A) 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 DCP 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 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 on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the P21 DCP 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</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>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	No submissions received.
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 of the application Council received no submissions.

## MEDIATION

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

## REFERRALS

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	Minor amendment to lot incorporating riparian corridor does not alter impacts to biodiversity. No comments or changes to conditions required
NECC (Development Engineering)	<p>No objections to the proposal to modify the land area of Lot 13 from 3308m<sup>2</sup> to 3151m<sup>2</sup>. Noting that Lot 13 will eventually be dedicated to council as a riparian corridor.</p> <p>It is also noted that within the dedication area and corresponding to the shared pathway location an open excavation exists which is intended to be a pit forming part of the subdivision sewer disposal line. It is also not clear whether the developer will demolish the block retaining wall adjacent to this area and naturally batter the area.</p>

Internal Referral Body	Comments
	<p><u>Planner comment:</u> Upon review it was noted that the reduction from 3200m<sup>2</sup> to 3151m<sup>2</sup> eroded any possibility of achieving a continual shared pathway. Council's engineer provided further feedback advising that the continuation of the shared pathway is of utmost importance, and as such, Council would be willing to accept the land that will ultimately contain the sewer manhole, resulting in an area of 3200m<sup>2</sup> to be dedicated to Council.</p>
NECC (Riparian Lands and Creeks)	<p>This application is recommended for approval.</p> <p>While it is noted that the riparian area for Narrabeen Creek has been reduced, resulting in an inner creekline corridor of less than the required 25 metres, it is recognized that overall this will not have a significant impact on the creek.</p>
NECC (Stormwater and Floodplain Engineering – Flood risk)	<p>The proposed modification to the area of Lot 13 and minor reduction in the width of the creekline corridor is unlikely to result in a detrimental flooding impact or an increased flood risk to life and property.</p>
Strategic and Place Planning (S94 Warriewood Valley)	<p>As identified in the previous referral response, the Applicant is seeking to reduce the quantum of creek corridor land to be dedicated to Council. DA N0182/13 requires the dedication of 3,308m<sup>2</sup> of land. The Assessment Officer has advised that the Applicant is now seeking to dedicate 3,200m<sup>2</sup> of land based on a request from Council's Development Engineer to include land containing the bike path connection to the adjacent property. The proposed reduction in creek dedication is 108m<sup>2</sup>, or 3.3%.</p> <p>As previously advised, based on confirmation from all other referrals that a reduced creek width in this location will not cause any adverse flooding impacts to adjacent or downstream properties, the proposed reduction can only be supported by the Principal Development Contributions Officer subject to the imposition of conditions requiring an appropriate monetary contribution.</p> <p>The monetary contribution is based on the monetary offset received by the Applicant for the dedication of land and is derived from the land value identified in the contributions plan in force at the time of determination, being \$146.67/m<sup>2</sup> as identified in Table 6.2 of the Warriewood Valley Section 94 Contributions Plan No.15 Amendment 16.</p> <p>The monetary contribution will be indexed to reflect the effects of inflation from the time the contribution was originally made by the Applicant, being 19 October 2016. The monetary contribution is calculated as follows:  108m<sup>2</sup> x \$146.67 = \$15,840.36 x indexation  Indexation = 115.2 (current CPI) / 110.4 (CPI at the time the contribution was originally paid)  Total monetary contribution = \$16,529.07</p> <p>A draft amended condition of consent has been provided.</p>

Internal Referral Body	Comments

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.
Nominated Integrated Development – Department of Primary Industries (Controlled Activity Approval for works within 40m of watercourse)	A response was received from NSW Natural Resources Access Regulator on 30 January 2019, confirming that the General Terms of Approval issued on 1 August 2013 remain valid for the amended proposal and no amendments to the existing General Terms of Approval are necessary.

### 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

### Compliance Assessment

Clause	Compliance with Requirements
2.6 Subdivision - consent requirements	Yes
6.1 Warriewood Valley Release Area	Yes

### Pittwater 21 Development Control Plan

### Compliance Assessment



Clause	Compliance with Requirements	Consistency Aims/Objectives
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
C6.1 Integrated Water Cycle Management	No	Yes
C6.2 Natural Environment and Landscaping Principles	Yes	Yes
C6.4 The Road System and Pedestrian and Cyclist Network	No	Yes
D16.1 Character as viewed from a public place	Yes	Yes

### Detailed Assessment

#### **C6.1 Integrated Water Cycle Management**

The application was approved with a 25m setback between the bioretention basin and the property boundary (General Arrangement Plan 1762E-101, revision E, dated 19 September 2014 '**General Arrangement Plan**'). The General Arrangement Plan also demonstrated the proposal realignment of the centreline of Narrabeen Creek along the property boundary, such that the boundary and the centreline of the creek would become one and the same. The resultant area between the boundary/centreline of the creek and the bioretention basin, which Council calculated to be 3308m<sup>2</sup>, was then to be dedicated to Council, consistent with this development control, the Warriewood Valley Water Management Specification and the Strategic Review.

This 25m setback and the proposed realignment of the centreline of Narrabeen Creek is also demonstrated in the documentation provided to support the construction certificate application (General Arrangement Plan Interim Creek Design 1726C CW 004, revision K, dated 6 July 2016 '**Interim Creek Design**'). However, it is apparent that there are some anomalies in the Interim Creek Design, as follows:

- the 25m riparian corridor boundary does not measure to be half of the 50m riparian corridor boundary, and
- the 25m riparian corridor boundary does not measure to 25m on the scale provided, and
- when measured using the scale provided and the scale of the 50m mark, the 25m corridor measures at approximately 24m.

At the time that the application was originally approved, the proposal was shown to be consistent with the provisions of this clause, and the following requirements were included as conditions of consent:

- prior to the issue of a construction certificate, a new plan of subdivision was to be created to demonstrate the creekline land to be dedicated to Council (Condition C3), and
- the 3308m<sup>2</sup> creekline corridor (measured 25m from the centreline of the creek) to be created and dedicated to Council (Condition B1 and E4),

The subject modification application has been lodged following the completion of the works, as it became apparent that the area between the bioretention basin and the property boundary is only 3200m<sup>2</sup>, falling short of the 3308m<sup>2</sup> requirement of the consent. Furthermore, as demonstrated on the WAE survey, the bioretention basin is located at a minimum distance of approximately 23.5m from the property boundary.

The SEE suggests that this shortfall arises because the creekline was never proposed to be relocated, and the applicant never intended to do the creekline works, such that even if the centreline of the creekline is to be realigned by Council in the future, it would not be relocated prior to the issuance of the subdivision certificate. Furthermore, the applicant states that the 3308m<sup>2</sup> requirement is an error, as this area of land could never be achieved.

Council maintains the opinion that 3308m<sup>2</sup> can be achieved when the 25m buffer is measured from the property boundary. Whilst Council appreciates that the creekline works have not been undertaken, and the centreline and the boundary remain different, this should not be affected the setback of the bioretention basin or the area of creekline corridor land available to dedicate to Council.

Although reference to '25m from the centreline of the creek' may have created confusion, the bioretention basin should still be setback 25m from the property boundary (as shown on the General Arrangement Plan and the Interim Creek Design') such that the resultant 3308m<sup>2</sup> of creekline line would still be available for dedication. Furthermore, any discrepancy between the nominated area of land to be dedicated and the 25m buffer line should have been detected at CC stage, however the CC application was not accompanied by a plan demonstrating the dedication of land, as required by Condition C3.

Upon review of all information presented, it appears that the shortfall is a result of as-built changes to the bioretention basin, whereby the basin is located too close to the boundary, reducing the available area to dedicate to Council.

Nonetheless, Council has reviewed the modifications proposed and raises no concern in this regard, subject to rectification of the necessary development contribution and the demolition of any redundant structures within the land to be dedicated to Council.

Note: Throughout the process of this application, the applicant sought to further reduce the creekline corridor area to 3151m<sup>2</sup> to maintain an area of land containing yet to be constructed sewer infrastructure. However, this amendment is not supported, as it removes the ability to suitably align the shared pathway, and as such, if amended, Council will rely on the plans submitted at lodgement.

#### **C6.4 The Road System and Pedestrian and Cyclist Network**

The as-built setback of the bioretention basin alters the location of the shared pathway that runs on the outer edge of the inner creekline corridor to be dedicated to Council, the impacts of which are considered with regard to both adjoining properties, as follows:

- 23-27 Warriewood Road: The adjoining property to the south-west has been approved with a shared pathway that meets that originally approved at 29-31 Warriewood Road, with an outer edge located 25m from the centreline of the creek. As a result of the proposed modification, the two pathways will no longer align. However, the adjoining property owners have not yet commenced construction of the shared pathway, and the final design of these works is subject to approval from Council, such that Council can ensure the connection of the shared pathway. If, for whatever reason, the shared pathway on the adjoining site is built in the approved location and there is a resultant misalignment, Council will ultimately own the land such that the anomaly can be corrected.
- 41 Warriewood Road: The shared pathway on the adjoining site has been constructed. At the time of lodgement of this modification, the area to be dedicated to Council enabled a smooth transition of the the shared path. However, the application was subsequently modified, such that the area of land required to achieve a smooth connection is proposed to remain in private ownership. Construction of a sewer connection is currently underway in the area of land in

question, and whilst Council ultimately agreed to accept this infrastructure, Council advised that the dedication could not occur until the works were complete. To avoid this delay, the applicant subsequently amended the application to remove this portion of land from that to be dedicated to Council.

However, the smooth continuation of the shared pathway is of utmost importance, and as such, Council is willing to accept the land before the sewer works are complete, subject to a condition of consent to require the existing hole to be filled until construction continues.

Subject to conditions of consent, and ignoring the subsequent amendment to the application, the proposal will achieve appropriate connectivity along the shared pathway, consistent with this development control.

### **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**

### **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. Mod2018/0617 for Modification of Development Consent N0182/13 granted for the 40 Lot community title subdivision of the existing sites on land at Lot 31 DP 5464,31 Warriewood Road, WARRIEWOOD, Lot 30 DP 5464,29 Warriewood Road, WARRIEWOOD, subject to the conditions printed below:

**A. Add Condition A0 - 'Approved Plans and supporting Documentation' to read as follows:**

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

- a) the approved plans and documents listed in Annexure "B", being the Notice to Applicant of Determination of a Development Application relating to N0182/13, dated 3 August 2015 and signed 13 August 2015,
- b) as modified by the Notice of Determination of Mod2017/0344 dated 27 April 2018,
- c) as further modified by:

Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Plan of Subdivision of Lots 30 & 31 Section C DP 5464, sheets 1 to 4 of 4	14 March 2018	Andrew Richard Thomas

- d) Any plans and / or documentation submitted to satisfy the conditions of this consent.

**B. Modify Condition B1 to read as follows:**

The development is to be staged in the following manner:

Stage 1 – Excavation and demolition works, site works and services in part or whole, subdivision to create 11 Torrens Title residential lots, construction of temporary road 6.5m wide on proposed Lot 7 and two residue lots (Lots 12 and 13), with Lot 13 being the area **3,200m<sup>2</sup>**.

Stage 2A – Construction of temporary road 6.5m wide (on proposed Lot 16), internal access streets and section of Lorikeet Grove, water management facilities, drainage and subdivision of residue lot (Lot 12) to create 21 residential lots, 1 residue lot and 1 common lot under Community Title, and the dedication of Lorikeet Grove section and Narrabeen Creek corridor to Council.

Stage 2B – Subdivision of residue lot to create 8 residential lots under Community title.

Stage 3 – Removal of the temporary road, 6.5m wide on Lots 7 and 16 and of the temporary turning bay for service vehicles.

**C. Modify Condition C19 to read as follows:**

- (i) The following is to be made for the provision of public infrastructure and services pursuant to s 94 of the Environmental Planning and Assessment Act 1979:
- a. Payment of a cash contribution of \$1,936,715.64. The cash component of the Development Contribution is to be paid prior to the issue of the Subdivision Certificate or 1 September 2016 (whichever is the earlier to occur):
  - b. Dedication of **3,200m<sup>2</sup>** of creekline corridor **reduced from** 3,308m<sup>2</sup>. The creekline corridor land dedication is to be effected prior to or on registration of the subdivision for Stage 2 in accordance with Condition E4. (Note: the creekline corridor land dedication has been deducted from the cash contribution which would otherwise be payable. The base (unimproved) valuation for the creekline corridor is \$146.67 per m<sup>2</sup> based on the current Section 94 Contributions Plan adopted 1 September 2008, Table 6.2, page 43, wherein the property is in Buffer Area 1).
- (ii) The proponent/applicant is to provide a bank guarantee:
- a. For the full amount of the cash contribution of \$1,936,715.64;
  - b. In which the bank unconditionally pays the guaranteed sum to Council as requested by Council in writing not earlier than 12 months from the provision of the guarantee or completion of the work;
  - c. In which the bank must pay the guaranteed sum without reference to the applicant/proponent or landowner or other person who provided the guarantee, and without regard to any dispute, controversy, issue or other matter relating to the development consent or the carrying out of development;
  - d. In which the guarantee shall not be cancelled until such time as the cash contribution is paid;
  - e. In which the applicant/proponent is responsible for any charges associated with establishing or operating the bank guarantee.
- (iii) Interest shall accrue on any unpaid balance of the cash contribution identified above at the rate of 4% per annum, which interest shall accrue from the issue of the first construction certificate or 1 January 2016, whichever is the earlier to occur. The interest is to be paid at the same time as the payment of the cash contribution.
- (iv) In accordance with the Warriewood Valley Section 94 Contributions Plan No.15, the proponent/applicant may negotiate with Council for the direct provision of other facilities and services and dedication of land (other than the dedication of **3,200m<sup>2</sup>** of land stated above) in lieu of the cash contribution above (or any portion of that cash contribution) or deferral of payments through an agreement for Material Public Benefit under the Warriewood Valley Section 94 Contributions Plan No.15. Where an agreement for Material Public Benefit is sought regarding the payment of cash contributions, the agreement for material public benefit is to be finalised and signed by the proponent and Council prior to the issue of the first construction certificate.
- (v) ***A cash contribution of \$16,529.07 reflecting the reduced area of creekline corridor land to be dedicated to Council. This additional cash contribution is to be paid prior to the issue of the Subdivision Certificate for Stage 1. The monetary contribution is to be adjusted by CPI at the time of payment in accordance with the Warriewood Valley Contributions Plan Amendment 16 (as amended).***

**D. Amend Condition E4 to read as follows:**

***The dedication of 3,200m<sup>2</sup> of Narrabeen Creekline corridor is to be effected prior to or through the registration of the Subdivision Plan the subject of the Subdivision Certificate for Stage 2A.***



**E. New Condition B22 to read as follows:**

***The shared pathway within the inner creekline corridor to be dedicated to Council is to align with the as-built shared pathway on the adjoining property at 41 Warriewood Road, Warriewood.***

**F. New Condition B23 to read as follows:**

***The as-built block work retaining walls and fill in the north-western corner of Lot 13 are to be removed and the land is to be battered in accordance with the recommendations of a suitably qualified geotechnical engineer. Furthermore, the as-built hole (for the sewer works) adjacent to the shared pathway connection to 41 Warriewood Road is to be filled to match with the level of the adjoining shared pathway and the required batter. Evidence of the completion of these works is to be submitted to Council within 28 days of the date of issuance of this modification application (Mod2018/0617).***

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 //, under the delegated authority of:



**Matthew Edmonds, Manager Development Assessments**