



**PROPOSED MODIFICATION
DA 491/2016 LOT 32 SECTION C
DP5464, 41 WARRIEWOOD ROAD,
WARRIEWOOD
STATEMENT OF ENVIRONMENTAL EFFECTS**

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1 Background

On 1 December 2017 the Land and Environment Court approved a residential development containing 29 residential lots and associated works on Lot 32 Section C DP 5464, 41 Warriewood Road, Warriewood.

This consent contained a number of conditions relating to the provision of infrastructure in relation to the development including the dedication of land, the provision of works both onsite and within the road reserve and the payment of a monetary contribution.

1.1 Applicant's details

The applicant is WOOLWICH PTY LTD ACN 608 231 787 of Level 1 of 8 Knox Lane Double Bay NSW 2028. The applicant is the owner of the land, subject of this modification application.

1.2 Modification sought

The applicant is seeking the modification of the contribution amounts in Condition C13 of DA No 491/2016 to ensure the contribution applied is reasonable based on the scope and purpose of infrastructure required to be provided for this development under the consent. This application is being made to the Land and Environment Court under Section 4.55 of the *Environmental Planning and Assessment Act 1979* (the Act).

These modifications are sought on the basis that the contribution rates imposed are considered unreasonable in the circumstances of the case. There will be no expected impacts as a result of the proposed modification.

No modification is being sought to the scale or layout of the development and as such the development will remain substantially the same development as originally approved.

Note: This application is restricted to the consideration of the reasonableness of the contribution in the circumstances of the case (refer Section 7.13(3) of the Act) and is not an appeal on the validity of the plan in its entirety.

1.3 Applicable contributions plan

The contribution plan that applies to this land is the *Warriewood Valley Section 94 Contributions Plan (Amendment 16, Revision 2)* which was adopted by Council on 31 January 2017.

1.4 Legislative and policy context

Section 7.11 of the *Environmental Planning and Assessment Act 1979* (the Act) enables a consent authority to impose a condition of development consent that requires a contribution, either by dedication of land and/or the payment of a monetary contribution towards.

Section 7.11(2) requires that any such condition can only require a 'reasonable dedication or contribution' towards the provision of the infrastructure for which the development creates demand.

The *Environmental Planning and Assessment Regulation 2000* (the Regulation) sets out the details of what a contribution plan must contain and the process to be followed when developing, adopting and implementing a plan.

In addition to these requirements there are Practice Notes that provide detailed practical guidance regarding the development and implementation of the contributions plan. This suite of documents guide the determination of what is considered reasonable for the purposes of a contribution.

1.5 Capping of contributions

The contributions plan that applies to this development is exempt from the application of the \$20,000 per lot/dwelling cap imposed by Ministerial Direction. The provision of this exemption was based on

the extent to which development within the area to which the plan applies had progressed at a given date and was not the result of a detailed assessment of the reasonableness of the plan.

2 Justification for variation in contribution rate

The following are the key areas in which the contribution rate applied is not reasonable:

1. The rate applied does not cover all works within the contribution plan with significant road and cycleway works required to be provided by the developer as a material public benefit with no offset against contributions payable
2. The contribution rate is based on an arbitrary starting point of \$55,000 per dwelling which is then indexed as the plan progresses rather than an assessment of the demand for infrastructure and the cost of providing that infrastructure.
3. The method of calculation of the monetary contribution is not based on the apportionment of the estimated cost of works across those generating demand for those works and there is no breakdown within the plan, either by way of an apportionment formula or summary table that demonstrates the contribution payable for each group of infrastructure
4. Lack of consideration of existing development on the site.

2.1 Works within the plan

Under Section 7.11(1) of the Act a condition can be applied that requires:

- a) *The dedication of land free of cost, or*
 - b) *The payment of a monetary contribution*
- or both.*

In addition, section 7.11(5) states that a consent authority may accept the provision of a material public benefit in partial or full satisfaction of a condition imposed under section 7.11(1) (i.e in lieu of payment of a monetary contribution or dedication of land). There is no power for a condition to be imposed under section 7.11 of the Act that requires works to be undertaken in addition to the provision of land or a monetary contribution. Such works are considered a material public benefit (section 7.11(5)) and should therefore be offset against the contribution payable

Condition C13 meets the requirement of section 7.11(1) in that it only requires the payment of a monetary contribution and the dedication of land and on the surface would appear reasonable in that regard. However, in addition to the requirements of Condition C13 there are a number of works within the contributions plan to be undertaken at the full cost of the developer. These works are required to meet the needs of development that is beyond the subject property and as such should be not be solely funded by the developer of the property which they adjoin. When calculating a reasonable contribution and offset should be provided for these works.

The relevant conditions are as follows:

- Condition C7(e) – construction of a footpath/cycleway across the full length of the Warriewood Road frontage of the development
- Condition C9(d) – construction of a shared path 2.5m wide adjacent to Road No.1 which will connect Warriewood Road to the cycleway adjacent to Lorikeet Grove
- Condition C20(g) – rehabilitation and management of the creek-line
- C22(d) – creation of an easement to allow public access to the cycleway adjacent to the bio-retention facility

These conditions require the provision of pedestrian/cyclist facilities and creek line rehabilitation works that are covered by the works schedule in the contributions plan and it is not reasonable to require a cash contribution in addition to the provision of actual works.

2.2 The basis for contribution rates within the plan

The contribution rates in the relevant contribution plan are not based on the reasonable division of the cost of providing the necessary infrastructure between the development that creates the demand for that infrastructure. They are instead based on an arbitrary base rate of \$55,000 per lot/dwelling adopted in 2011/12 and indexed within the plan. This indexation is not based on a published index but instead based on a three year forecast of annual CPI rather than an actual CPI.

2.3 Method of calculation of contribution rates

Under clause 27(1)(d) of the Regulation, the plan must include the formulas for determining the contributions required for different categories of infrastructure. This formula would generally take a form similar to the following:

$$A = B \div C$$

Where:

A = Contribution payable

B = Cost of infrastructure

C = Number of dwellings that will generate demand.

There is no such formula within the contributions plan and as such it is not possible to determine the reasonableness of the costs associated with the work or the manner in which the costs have been allocated between development generating the demand for that infrastructure.

Table A in the Plan does, however, indicate breakdown in the total cost of works for each infrastructure category and the information in this table has been used to determine the proportional allocation of the contribution between the various categories.

2.4 Existing development on the site

Condition C13 does not identify the number of dwellings/lots that are being levied or any offsets that have been provided. As section 7.11 contributions are only to be levied based on additional demand offsets must be provided for existing development.

3 Calculation of adjusted contribution rate

3.1 Offset for infrastructure provided on site

Council are seeking a contribution towards the following works under the contributions plan that applies to the development:

- Traffic and transport
- Multi-functional creek line land acquisition
- Multi-functional creek line works
- Public recreation and open space
- Pedestrian and cycleway network
- Community facilities
- Bushfire protection
- Plan management and administration.

As required by conditions of consent the developer is to provide the following as part of this development:

- Road upgrades across the full frontage of the development
- Dedication of the multi-functional creek line
- Restoration works within the multi-functional creek line
- The provision of a cycleway/footpath across the full Warriewood Road frontage of the site as well as an additional cycleway/footpath adjacent to Road No.1 and generally adjacent to the Lorieket Grove extension.

In addition to this, under Clause 6.2.2 of the contributions plan, the provision of passive open space for development within this area is through the acquisition and embellishment of the multi-functional creek line.

It is not reasonable to impose both a monetary contribution for these infrastructure items and require their provision on-site as this means that the developer is essentially paying twice for these items. These items should therefore be removed from the contribution payable.

There are two components to the calculation of an adjusted contribution rate:

- The quantum of the offset provided in lieu of the dedication of the land for the multi-functional creek line
- The calculation of the offset for the works that are to be provided under the conditions of the development consent.

3.2 Offset for the dedication of the multi-functional creek line

Condition C13 requires the dedication of 3,977 square metres of land for the provision of a multi-functional creek line corridor. An offset has been provided in the monetary contribution for the dedication of this land based on the valuation set in Table 4 in the contributions plan

This table contains two rates for land:

- \$53.39/square metre for land that is yet to be acquired and
- \$146.67/square metre for land that has already been acquired.

The offset provided by Council for the dedication of this land under the consent is based on a rate of \$53.39/square metre and equates to an offset of \$212,332.03.

The difference between the two amounts specified in Table is not explained in the plan, however as the higher value appears to only apply to land that has already been acquired it would indicate that Council is aware that the cost estimate applied to land yet to be dedicated is not a reasonable representation of the value of that land.

An independent valuation by Lunney Watt & Associates Pty Ltd, dated 14 December 2018, has advised that the current market value for this land is \$200/square metre. This valuation makes allowance for the constraints that apply to the subject land and is a reasonable representation of the current market value of the land. It should be applied when calculating the offset that applies.

Based on the valuation by Lunney Watt & Associates Pty Ltd the offset applied should be \$795,400 rather than the \$212,332.03 applied under Condition C13.

3.3 Offset for the land for the cycleway

Condition C22(d) requires the creation of an easement to ensure future public access to the cycleway that is to be constructed adjacent to Lorikeet Grove and the bio-retention facility. This easement will affect approximately 244 square metres of the subject land. As this easement requires public access to private land and restricts the future use of the land in the provision of an item of infrastructure, the value of the land should be offset against the contribution payable.

When calculating the value of the land it is acknowledged that this land is subject to constraints similar to that discussed in Section 3.2 above and as such a valuation of \$200/square metre is considered reasonable when calculating the offset. In this regard an offset of \$48,800 is considered reasonable.

3.4 Offset for works provided as conditions of consent

Due to the structure of the contributions plan it is difficult to isolate the components of the contribution payable that apply to individual infrastructure categories. The contributions plan does however contain a breakdown of costs between the stated categories and based on this it is possible to determine a proportion of the contribution that should be allocated. The offsets have been calculated based on these percentages.

When calculating the contribution applicable for the development an offset has been allowed for the following infrastructure as an equivalent or similar is provided on site:

- Creek line rehabilitation
- Pedestrian and cyclist facilities

3.5 Offset for existing dwellings

Under condition C13 the contribution payable has been calculated on the basis of a contribution for each of the 29 lots created. Contributions are only payable on the additional demand created and as such a offset should be granted for any dwellings that existed on the site prior to the current development. Assuming a single dwelling on the existing site, this would result in a contribution being payable on the basis of 28 additional dwellings only.

4 Methodology for calculating a reasonable contribution rate

Under Condition C13, the monetary value of the contribution imposed is the equivalent of \$1,759,830.97 being the monetary contribution imposed (\$1,547,498.94) and \$212,332.03 (the offset applied for the dedication of 3,977 square metres of land at \$53.39/square metre. As outlined in above this contribution is not reasonable as it fails to:

- Apply a reasonable market rate for the dedication of land for the creek line
- Fails to consider the value of the land to which the restriction as to user will apply allowing public access to the cycleway and
- Fails to properly consider works provided on site that are subject to the monetary contribution payable (ie creek line rehabilitation and pedestrian and cycleway works)

A reasonable market value for the land was determined to be \$200/square metre (refer Sections 3.2 and 3.3 above). The offset applied for the creek is \$795,400 (ie 3,977square metres @ \$200/square metre) and the offset for the cycleway land is \$48,800 (ie 244 square metres @ \$200/square metre).

The identification of the costs for individual categories of infrastructure is more problematic as no information is provided in the contributions plan as to the breakdown of the contribution payable by infrastructure category, the expenditure values shown in Table A of the plan have been used to calculate the proportion of expenditure allocated to each category. This was then applied to the total contribution payable to identify the contribution associated with those categories that are excluded from a reasonable contribution as an equivalent item is provided on site.

The calculation is outlined in Table 1 below.

Table1: Calculating a reasonable contribution

Total contribution C13 (monetary + land)	\$ 1,759,830.97
Deductions for works	
Creek rehabilitation	\$ 200,295.12
Pedestrian and cyclist network	\$ 56,139.34
Deductions for land dedication	
Land dedication for creek	\$ 795,400.00
Restricted land for cycleway	\$ 48,800.00
Contribution payable with offsets	\$ 659,196.51

5 Conclusion

Having regard to the structure and content of the contribution plan and the scope of works required to be provided on site as conditions of development consent the contribution rate applied under Condition C13 of DA 491/2016 is unreasonable in the circumstances of the case.

Based on the methodology outlined above and allowing for offsets for the works to be provided on site as a result of conditions of consent above a reasonable contribution to be applied to this development is **\$659,196.51**.