

Section 96(1A) Modification

Application to modify Development Consent N0027/16

53C Warriewood Road, Warriewood

7 February 2017

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1 Introduction

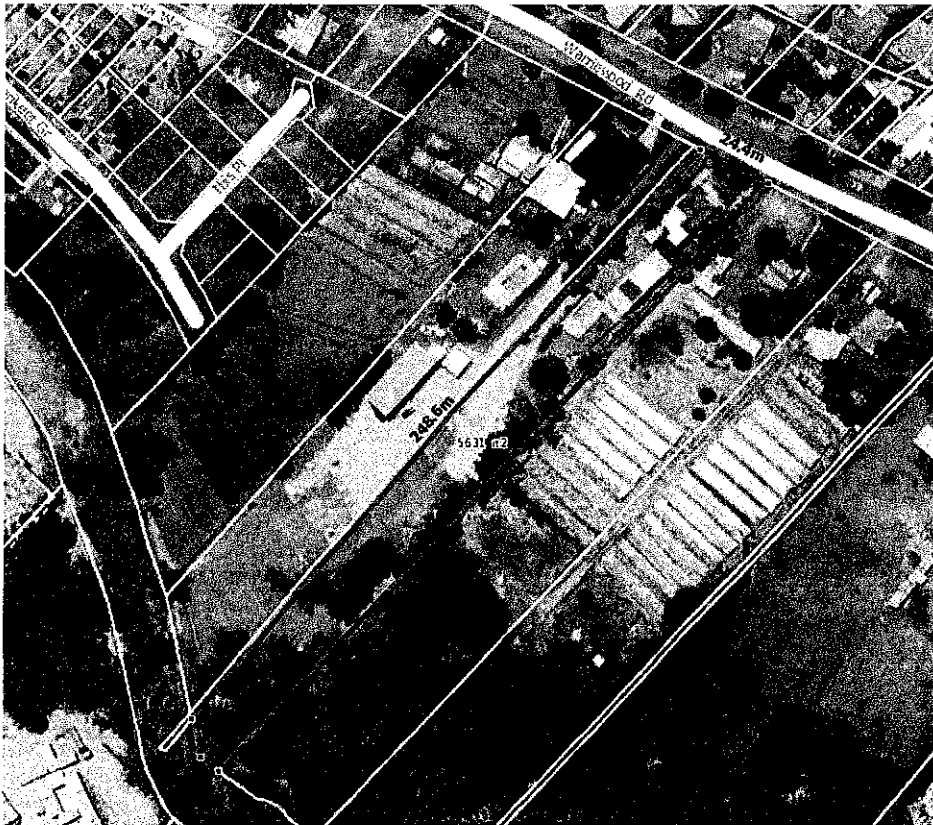
This statement has been prepared by PPD Pty Ltd to accompany a Section 96(1A) application to modify Development Consent N0027/16 issued by Council in accordance with the Environmental Planning and Assessment Act 1979 (EP&A Act). The consent relates to land at 53C Warriewood Road, Warriewood.

2 Site

The site is located in Warriewood Valley, approximately 27km north of the Sydney Central Business District. The valley is located between the suburbs of Narrabeen and Mona Vale in the local government area of Pittwater.

The site at 53C Warriewood Road, Warriewood, is formally known as Lot 4 in DP 1115877. It is trapezoidal in shape, has a total area of 5,631sqm and has a 24m frontage to Warriewood Road (see Figure 1).

Figure 1. Aerial view of site



3 Relevant Development Applications

Application Number: N0330/14

On 30 July 2015 Council granted a deferred commencement approval for:

"Community Plan of Subdivision of land to create 10 residential lots and 1 accessway lot, civil works and landscaping"

This determination relates to the subject land at 53C Warriewood Road, Warriewood.

The deferral refers to the provision of a groundwater contamination assessment report being submitted to Council within six (6) months from the date of the consent. This report has recently been provided to Council and by letter dated 2 December 2015 the Council has advised the consent is now operational.

Application Number: N0027/16

On 18 August Council granted development approval for:

"Construction of a three storey residential apartment building comprising 6x2 bedroom apartments and 14 car spaces, 7 three storey dwellings plus associated landscaping"

This determination relates to the subject land at 53C Warriewood Road, Warriewood.

4 Proposed Modifications

4.1 Description of Modification

This application seeks to modify the Development Consent N0027/16 for "Construction of a three storey residential apartment building comprising 6x2 bedroom apartments and 14 car spaces, 7 three storey dwellings plus associated landscaping" by amending Condition of Consent C16 to

1. Have payment of the Section 96 payment monetary contribution deferred from issue of Construction Certificate to issue of Occupation Certificate; and
2. Delete any reference to the monetary contribution being paid prior to the issue of a Subdivision Certificate.

4.2 Reasons for Modifications

Condition of Consent C16 currently has a monetary contribution for the provision of public infrastructure and services that has to be made prior to the issue of a Construction Certificate. The main reasons for this request to have the payment deferred to the issue of an Occupation Certificate are:

- payment at the construction certificate stage rather than at the occupancy certificate stage, is unreasonable and will place unnecessary additional financial burden on the development that will impact on affordability.
- the s 94 contributions relate to demand and there is no actual demand until the dwellings are occupied.
- the s 94 plan allows for the provision of services and facilities into the future as can be provided for in works plans.
- the immediate demands for services and facilities are catered for by the development itself, for example, roads, landscaping and parks.

Deletion of any reference to Subdivision Certificate in Condition of Consent C16 is requested because this application does not involve the requirement for a Subdivision Certificate. A previous Development Application (N0330/14) dealt with the requirements for subdivision and the s94 contributions have been paid to Council in accordance with the requirements of the relevant condition of consent.

4.3 Changes to Conditions of Consent

The following provides details of the proposed changes to the conditions of consent. Any new wording or condition is written in red and italics, any removed wording is written with a strikethrough.

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

- ~~16. A monetary contribution of \$378,334 (subject to (a) below) is to be made for the provision of public infrastructure and services pursuant to Section 94 of the Environmental Planning and Assessment Act 1979.~~

~~a) The monetary contribution will be adjusted at the time of payment in accordance with the latest Consumer Price Index as published quarterly by the Australian Bureau of Statistics as outlined in Council's Warriewood Valley Section 94 Contributions Plan (Plan No. 15). The monetary contribution is to be paid prior to issue of the first Construction Certificate or Subdivision Certificate of the development (whichever occurs first) or prior to the issue of the Subdivision Certificate of the development where no Construction Certificate is required.~~

~~b) The Applicant may negotiate with Council for the direct provision of facilities and services in lieu of the monetary contribution above (or any portion of that contribution) through a Material Public Benefit offer to Council in accordance with the Warriewood Valley Section 94 Contributions Plan (Plan No. 15). Any Material Public Benefit agreement between the Applicant and Council must be finalised, formally signed and in place prior to payment being made.~~

E. Matters to be satisfied prior to the issue of Occupation Certificate:

1. A monetary contribution of \$378,334 (subject to (a) below) is to be made for the provision of public infrastructure and services pursuant to Section 94 of the Environmental Planning and Assessment Act 1979.

a) The monetary contribution will be adjusted at the time of payment in accordance with the latest Consumer Price Index as published quarterly by the Australian Bureau of Statistics as outlined in Council's Warriewood Valley Section 94 Contributions Plan (Plan No. 15). The monetary contribution is to be paid prior to issue of the first Construction Certificate Occupation Certificate or Subdivision Certificate of the development (whichever occurs first) or prior to the issue of the Subdivision Certificate of the development where no Construction Certificate is required.

b) The Applicant may negotiate with Council for the direct provision of facilities and services in lieu of the monetary contribution above (or any portion of that contribution) through a Material Public Benefit offer to Council in accordance with the Warriewood Valley Section 94 Contributions Plan (Plan No. 15). Any Material Public Benefit agreement between the Applicant and Council must be finalised, formally signed and in place prior to payment being made.

5 Environmental Assessment

When determining an application for modification of a consent Section 96(3) of the Environmental Planning and Assessment Act 1979 (the 'Act') requires Council to *"take into consideration such of the matters referred to in section 79C (1) as are of relevance to the development the subject of the application"*.

Section 79C(1) of the Act requires Council to take into consideration the following matters:

- (a) the provisions of:
 - (i) any environmental planning instrument, and
 - (ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and
 - (iii) any development control plan, and
 - (iiia) any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and
 - (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and
 - (v) any coastal zone management plan (within the meaning of the Coastal Protection Act 1979),

that apply to the land to which the development application relates,

(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,

(c) the suitability of the site for the development,

(d) any submissions made in accordance with this Act or the regulations,

(e) the public interest.

The following subsections assess the proposed modifications against the relevant matters prescribed in the Act.

5.1 Environmental Planning and Assessment Act 1979

The Environmental Planning and Assessment Act 1979 (the 'Act') is the key environmental planning legislation in New South Wales. In brief, the EP&A Act establishes the regime in which proponents and consent authorities address environmental issues for proposed developments. This includes the ability to modify development approvals through Section 96 of the Act.

In regards to this proposed modification, we are seeking a Section 96(1) modification in accordance with the EP&A Act. The following provides comment on the requirements of Section 96(1) which are shown in **bold** and *italics*:

likely to be, required as a consequence of development in Warriewood Valley. There is a notion that levies will be paid for services and facilities that will not be required for some time following development in Warriewood Valley.

The small scale of development will ensure that there is no immediate impact on the demand for services to be met.

Much of the immediate demand for services and facilities are catered for by the development itself, for example, roads, landscaping and parks.

Much of the development of Warriewood Valley has not happened and this has an impact on when certain services and facilities will need to be provided.

Payment of the contributions earlier at the CC stage rather than the OC stage will place unnecessary additional financial burden on the development that will impact on affordability.

The primary purpose of the contributions plan is satisfied with payment of the monetary contribution at the OC stage. In particular

- public services and facilities will still be provided in a reasonable time within the Warriewood Valley;
- the new development that benefits from public services and facilities will contribute to its provision;
- the existing Pittwater community will not be unreasonably burdened by the provision of public infrastructure required (either partly or fully) as a result of this minor development;
- Council will continue to provide for the co-ordinated delivery of services and facilities consistent with Council's strategic intent.

In summary, given the circumstances outlined, the proposed modification to the timing of contribution payments as proposed will not detrimentally impact on Council's ability to adequately provide timely services and facilities that will, or are likely to be, required as a consequence of development in Warriewood Valley.

5.3 Pittwater Local Environmental Plan (LEP) 2014

The proposed modification does not raise any additional issues in relation to the provisions of the LEP.

5.4 Pittwater 21 Development Control Plan (DCP)

The proposed modification does not raise any additional issues in relation to the provisions of the LEP.

5.5 Environmental Impacts

The proposed modification does not raise any additional issues in relation to environmental impacts from the proposed development.

5.6 Site Suitability

The proposed modification does not raise any additional issues in relation to the suitability of the site to accommodate the proposed development.

5.7 Public Interest

The proposed modification does not raise any additional issues in relation to the public interest associated with the proposed development.

6 Conclusion

The proposed modification has been assessed to be a modification that:

- Has minimal environmental impact; and
- Is substantially the same development as the development for which the consent was originally granted.

It is requested that Council approve the proposed modification to N0027/16 in accordance with Section 96(1A) of the EP&A Act 1979 for the development located at 53C Warriewood Road, Warriewood.