



MO/GK
15743
24 February 2016

Ms Caroline McNally
Secretary
NSW Department of Planning & Environment
23-33 Bridge Street
SYDNEY NSW 2000

Attention: Natasha Harras (Team Leader, Modification Assessments)

Dear Natasha,

**MP10_0230 MOD 2 - PROJECT APPROVAL - WOOLLOOWARE BAY TOWN CENTRE
461 CAPTAIN COOK DRIVE, WOOLLOOWARE**

Further to your email of 18 November 2015 in relation to the abovementioned matter, we hereby submit amended stratum subdivision plans prepared by David Tremain (**Attachment A**). As requested, these plans are overlain on the currently approved Retail/Club building plans by Scott Carver Architects as per Project Approval MP10_0230.

The proposed subdivision provides for the orderly and economic development of the site by ensuring that there are appropriate land ownership arrangements in place to facilitate the delivery and ongoing operation of the retail, stadium and leagues club operations on the site. Finalisation of the stratum subdivision as proposed will also allow for the implementation of appropriate land ownership and development financing mechanisms to be implemented in a timely manner to support the commencement of construction in accordance with the Project Approval. The development arrangements require the creation of each of the proposed lots, including Part Lot 315, as a necessary precondition in order to ensure that the development is able to proceed in a timely manner. Additional information regarding the creation of the proposed Part Lot 315 is provided below.

1.0 PROPOSED PART LOT 315

Part Lot 315's lowest vertical extent is the deck of the Level 3 car parking area at the south-western corner of the approved building. The proposed lot then extends two levels up within this horizontally confined area – allowing for the provision of future expansion of the Level 4 parking deck and addition of a roof structure (subject to separate planning approval) – before extending horizontally and vertically to include an area generally described as the airspace above the retail building. Part Lot 313 (the Leagues Club building) would be unlimited in height.

An easement for parking across the Level 3 parking area of Part Lot 315 would be created for the benefit of Part Lot 312, ensuring that this area is able to continue to be used for its approved use as car parking to support the retail building. As such, the creation of Part Lot 315 would not give rise to any impacts in terms of the construction, ownership or ongoing management of the interface between the approved retail and Leagues Club uses.

It is well-established law that an approval for subdivision is simply an approval for the creation of a lot, and does not pre-empt or import any approval for the subsequent development or use of the lot(s) created for any purpose. In *Broker Pty Ltd v Shoalhaven City Council* [2008] NSWCA 311, the NSW Court of Appeal held that the remarks of Sugerman J in *Smith v Randwick Municipal*

Council (1950) 17 LGR (NSW) 246 remain applicable to the present definition of subdivision of land. As per Sugerman J:

The approval of a subdivision into lots ... is in law the approval of a subdivision simpliciter and not its approval with any condition or for any particular purpose such as shops or dwellings, etc. The question what sort of building may be erected upon the respective blocks is one which in strictness arises for decision later when it is sought to build on them and one which will be affected by circumstances as they then exist, by various considerations including the size of the lots, and by other matters which may have occurred in the meantime, such, for instance, as the proclamation of the area as a residential area. It could happen that land once subdivided might afterwards be struck with sterility in the hands of owners of the blocks; for instance if there had been a subdivision into lots of a size suitable only for the erection of shops in a position in which subsequent events showed, or had the result, that it would not be profitable or permissible to erect shops. [our emphasis]

Sugerman J's interpretation was also upheld in *Wehbe v Pittwater Council* [2007] NSWLEC 827 at 27-29.

The consequence of this is that proposed subdivision does not in any manner imply a development right for Part Lot 315, nor does it encumber the future operation of the planning assessment and approvals framework set out under the *Environmental Planning and Assessment Act 1979* (EP&A Act). As such, the proposed creation of Part Lot 315 does not give rise to any relevant planning issues that would warrant its removal from the current proposed modification to the approved stratum subdivision plan.

In essence, the proposed creation of Part Lot 315 is no different to the creation of a lot in Torrens title in a greenfield setting for a parcel of land that benefits from no existing planning approval for development. The creation of this lot does not create any entitlement for a development consent, nor preclude the effective operation of the statutory planning framework to ensure that any future proposal for development is satisfactorily assessed and regulated.

In the absence of any environmental impacts or relevant planning considerations arising from the proposed creation of Part Lot 315, we hereby recommend that this parcel be approved as shown in **Attachment A**. For certainty, the determination should include a condition requiring that an easement for access and parking be registered over Part Lot 315 for the benefit of Part Lot 312.

2.0 CONCLUSION

We trust that the Department now has sufficient information to finalise its assessment and determine the modification application. We note that Sutherland Shire Council has not raised any issues regarding the proposed subdivision and that the Department has not received any public submissions on this modification. Accordingly, we have no hesitation in recommending that the Department proceed to approve this modification under the applicable delegations.

Should you have any queries about this matter, please do not hesitate to contact me on 9409 4961 or moliver@jbaurban.com.au.

Yours faithfully,



Michael Oliver
Senior Planner