



# **LATE ITEM MEMO**

**BUSINESS PAPER  
(Items 11 and 13)**

**GENERAL MEETING**

**Wednesday 14 September 2016  
at 6:30PM**



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- ITEM 11**     **PL63/16** - Development Application - Alterations and Additions to a Hardware and Building Supplies Establishment and Erection of Signage - 246-250 New Line Road, Dural

*Additional information with **CHANGE** to Recommendation*

Group Manager's Report No. PL63/16 recommends that the application be approved as a deferred commencement subject to the registration of a drainage easement over the downstream property.

On 10 September 2016, the applicant submitted a letter of in-principle agreement for the creation of an easement to drain water from the owner of the downstream property (Sydney Water) in favour of the development site. Accordingly, the requirement for "deferred commencement" has been addressed. A condition is recommended that the applicant must register the proposed drainage easement over the downstream property with the NSW Department of Lands prior to the issue of a construction certificate.

**RECOMMENDATION**

THAT Development Application No. DA/266/2016 for alterations and additions to a hardware and building supplies establishment and erection of signage at Lot 1 DP 1049242 and Lot 13 DP 1049239, Nos. 246 - 250 New Line Road, Dural be approved subject to the conditions of consent detailed in Schedule 1 of Group Manager's Report No. PL63/16 as amended by Late Item Memo No. LM12/16 to include the following condition:

**1. Easement Over Downstream Land**

- a) To protect in perpetuity the approved development, the proposed drainage easement over downstream property Lot 661 DP 1043597 must be registered with the NSW Department of Lands.
- b) Evidence of this registration must be submitted by the applicant to Council prior to the issue of a construction certificate.

ROD PICKLES  
Manager - Development Assessment  
Planning Division

JAMES FARRINGTON  
Group Manager  
Planning Division

**Attachments:**

There are no attachments for this report.

File Reference: DA/266/2016

Document Number: D07050978

**ITEM 13**      **PL61/16** - Development Application - Subdivision of Four Allotments into Four Lots - Calabash Point, Berowra Creek

*Additional information with **CHANGE** to Recommendation*

Council has received a submission from a solicitor and resident of on behalf of Calabash Point. The submission provides a legal opinion that the amended plans are fundamentally different to the application as originally submitted and accordingly, a new development application should be lodged.

The amended application was made in accordance with the provisions of Clause 55 of the *Environmental Planning and Assessment Regulation 2000* and notified in accordance with Council's requirements. The Regulation enables Council to accept amended plans subject to procedural requirements being met. The *Environmental Planning and Assessment Act 1979* and the associated *Regulations* are not limiting in regards to the amendments that can be made and do not restrict the ability to add additional allotments. Furthermore, the amended plans do not alter the characterisation of the proposal as "subdivision" of land.

Notwithstanding, legal advice should be sought by the applicant and peer reviewed by Council's solicitor in respect to Clause 55 of the *Regulations* to confirm that the amended proposal can be determined by Council.

**RECOMMENDATION**

THAT Council defer consideration of Development Application No. DA/1009/2013 for subdivision of four allotments into four lots and construction of two jetties and pontoons at Lot 1 and Lot 2 DP 882783, Lot 78 DP 752048 and Lot 163 DP 1113745, Calabash Point, Berowra Creek to enable the applicant to submit legal advice concerning the application of Clause 55 of the *Environmental Planning and Assessment Regulation 2000 Act 1979* to the amended proposal.

ROD PICKLES  
Manager - Development Assessment  
Planning Division

JAMES FARRINGTON  
Group Manager  
Planning Division

**Attachments:**

There are no attachments for this report.

File Reference: DA/1009/2013

Document Number: D07051281