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MEMORANDUM

DATE: 7 October 2020

TO: Northern Beaches Local Planning Panel (NBLPP)

CC: Anna Williams, Development Assessment Manager
Peter Robinson, Executive Manager

FROM: Anne-Marie Young, Principal Planner

SUBJECT: MOD2020/0332 Item 3.2 – 173 - 175 Riverview Road, Brookvale

REFERENCE: Section 138 of the Roads Act

Dear Panel Members,

OVERVIEW

The purpose of this memo is to advise the Panel of the wording of Section 138 and 139 of the Roads Act 1993.

Section 138 reads:

138 Works and structures

(1) A person must not—

- (a) erect a structure or carry out a work in, on or over a public road, or*
 - (b) dig up or disturb the surface of a public road, or*
 - (c) remove or interfere with a structure, work or tree on a public road, or*
 - (d) pump water into a public road from any land adjoining the road, or*
 - (e) connect a road (whether public or private) to a classified road,*
otherwise than with the consent of the appropriate roads authority.
- Maximum penalty— 10 penalty units.*

(2) A consent may not be given with respect to a classified road except with the concurrence of RMS.

(3) If the applicant is a public authority, the roads authority and, in the case of a classified road, RMS must consult with the applicant before deciding whether or not to grant consent or concurrence.

(4) This section applies to a roads authority and to any employee of a roads authority in the same way as it applies to any other person.

(5) This section applies despite the provisions of any other Act or law to the contrary, but does not apply to anything done under the provisions of the Pipelines Act 1967 or under any other provision of an Act that expressly excludes the operation of this section



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Section 139 Nature of consent

(1) A consent under this Division—

- (a) may be granted on the roads authority's initiative or on the application of any person, and*
- (b) may be granted generally or for a particular case, and*
- (c) may relate to a specific structure, work or tree or to structures, works or trees of a specified class, and*
- (c1) in relation to integrated development within the meaning of section 91 of the Environmental Planning and Assessment Act 1979, is subject to Division 5 of Part 4 of that Act, and*
- (d) may be granted on such conditions as the appropriate roads authority thinks fit.*

(2) In particular, a consent under this Division with respect to the construction of a utility service in, on or over a public road may require the service to be located—

- (a) in such position as may be indicated in that regard in a plan of subdivision or other plan registered in the office of the Registrar-General with respect to the road, or*
- (b) in such other position as the roads authority may direct.*

(3) In particular, a consent under this Division with respect to the erection of a structure may be granted subject to a condition that permits or prohibits the use of the structure for a specified purpose or purposes.

In order to obtain consent for works on a Council roadway a form 4025 infrastructure works application is required, the link to the application is provided below.

<https://www.northernbeaches.nsw.gov.au/sites/default/files/documents/pdf-forms/infrastructure-works-on-council-roadway-section-138a/4025-infrastructure-works-on-council-roadway-oct2020.pdf>