

## DA Referral Response

Strategic & Place Planning 3 (Development Contributions)

**To:** Thomas Prosser  
**Date:** 23 October 2023  
**Application Number:** DA2023/0976  
**Land to be developed (Address):** 20-22 Macpherson Street Warriewood  
**Record Number:** 2023/494226

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### INTRODUCTION

On 26 July 2023, Strategic and Place Planning received a referral request for application (DA2023/0976) for demolition works, civil and infrastructure works, subdivision into 53 lots and one community title road, the construction of 53 dwellings and associated works.

### SUBJECT SITE

The subject site comprises of 20 – 22 Macpherson Street Warriewood (Lot 1 DP 592091). The Flower Power nursery and ancillary café currently exists on site.

The subject site is located on north-east of Macpherson Street. The subject site is rectangular in shape and contains a section of Narrabeen Creek at its rear boundary.

The subject site is zoned R3 – Medium Density Residential under Pittwater LEP 2014. The site is identified as Sector 301 under the PLEP Urban Release Area Map and the Warriewood Valley Strategic Review Report.

### PROPOSED DEVELOPMENT

This DA is for an integrated housing development, resulting in the subdivision of site to create 53 residential allotments and the construction of a dwelling on each residential lot.

The existing café and nursery are proposed to be demolished to make way for the proposed residential subdivision. The land is to be subdivided under Community Title, into 54 lots:

- Lot 1 is to contain the internal road, as community association (common property);
- 53 residential allotments, with each lot containing a dwelling to be built as part of this DA (10 detached two storey dwellings and 43 attached two storey dwellings including 14 adaptable dwellings);
- associated civil works including bulk earthworks, internal road network to facilitate vehicular site access via driveways comprising majority one-way anti-clockwise circulation loop (labelled as Roads No. 1 to No. 5 inclusive on submitted DA

plans but not labelled as a lot under the submitted plan of subdivision), installation of stormwater network including pit and pipe infrastructure and the construction of on-site stormwater detention and water quality infrastructure; installation of essential services (e.g. potable water, waste water, electricity, gas and NBN); landscaping of each proposed lot and verges, including street tree planting and public domain treatment; and

- Narrabeen Creek rehabilitation works.

The submitted subdivision plan shows a development staging sequence, not mentioned in the DA form or the submitted SEE prepared by Urbis, as being:

- subdivision to create community lot (Lot 1), 7 super lots (Lots 2 to 8 inclusive) and Lots 9 to 16 inclusive; and
- Lots 2 to 8 inclusive will be further re-subdivided into individual residential lots.

The submitted subdivision plan has not identified the following:

- defined lot showing extent of the community association lot.
- a lot containing the outer 25m creek corridor and water management basin, and what ownership this lot would be.

The 53 residential allotments are proposed to accommodate:

- a detached dwelling on proposed lots 42 to 47 and Lots 58 to 61 inclusive, resulting in 10 dwellings under this typology; and
- an attached dwelling on proposed lots 9 to 41 and lots 48 to 57 inclusive, resulting in 43 dwellings under this typology.

14 of the attached dwellings (terraces) are adaptable dwellings, to be sited on proposed lots 16, 17, 42, 43, 44, 45, 46, 47, 48, 57, 58, 59, 60 and 61.

The stormwater management report notes the provision of:

- a temporary OSD tank, shown on the submitted plans to be under part of the internal road shown as Road No. 2. Clarification should be sought on how the tank is 'temporary' if is underneath a road.
- and a bio-retention basin located to the north of lots 58 and 59.

The Statement of Environmental Effects and submitted plan of subdivision are inconsistent in referring to the inner creek line corridor being identified as a Residue lot and "Proposed Council reserve" respectively and will need to be rectified by the applicant.

## **ASSESSMENT OF DA**

1. The additional plans submitted on 25 September 2023 show this development is being staged however, no details are provided as to what each stage delivers. These details are required to ensure:
  - a) an assessment can be made that appropriate infrastructure will be provided at each stage to cater for the lots created at that stage:
  - b) development contribution can be determined for each development stage.

2. Concern is raised on the encroachment into the outer 25m creek line corridor by proposed residential allotments 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60 and 61, in terms of their rear yards being within the outer 25m creek corridor.

A critical element of the planning for Warriewood Vally release area is the integration of the outer 25m creek line corridor land as a landscape buffer supporting habitat and assisting in stormwater and water quality management whilst the inner 25m creek line corridor is a stormwater/environmental feature with the 1%AEP flood event conveyed along Fern Creek and Narrabeen Creek.

The thirteen (13) residential allotments encroaching into the outer 25m creek corridor means that sections of the landscape buffer will be in private ownership, resulting in:

- inconsistencies in how this buffer area will be maintained, and
- potential that this is built upon as they are rear yards for individual residential allotments including having vertical structures on them,

that, in turn, results in detracting from the original intent of the outer 25m creekline corridor as a landscape buffer and water management feature.

3. Insufficient information has been provided for the following:

- a) This DA is seeking development consent for rehabilitation works within the section of Narrabeen Creek which is within the development site. The works associated with this inner 25m creek corridor land should be part of the water management scheme developed by the applicant for the overall development however **no** details on the proposed rehabilitation of the inner 25m creek corridor are submitted with the DA. This is crucial in maintaining the features along the creek line corridor in accordance with the objectives of the PLEP.

A critical element of the planning for the Warriewood Valley release area is the integration of the creek line corridor as a stormwater/environmental feature with the 1%AEP flood event conveyed along Fern Creek and Narrabeen Creek. Without the details on the rehabilitation works, the DA as submitted has not addressed objective (b) of Part 6.1(1) and Part 6.1(4) of the PLEP in considering the impacts and rehabilitation of the creek line corridor. The proposed development:

- *is to ensure that there is no adverse impact on waterways and creek line corridors, the existing native riparian vegetation is protected and rehabilitates the creek line corridors;*
- *will not have any significant adverse impact on opportunities for rehabilitation of aquatic and riparian vegetation, habitats and ecosystems within creek line corridors;*
- *will not have any significant adverse impact on the water quality flows within creek line corridors; and*
- *will not have any significant adverse impact on the stability of the bed, shore, and banks of any watercourse within creek line corridors.*

- b) The submitted Community Management Statement does not provide the following details:

- The responsibility for funding the maintenance of water management facilities and internal road/laneways associated with this development given these infrastructure items would be in private ownership in perpetuity.
- The maintenance regime and standard required for these privately-owned infrastructure items to ensure they continue to operate effectively over time; and to ensure there are no adverse impacts on the creek and surrounding properties in the long term.
- What occurs in the event of a dispute.

4. Clarification is required to the following:

- a) Is the OSD tank under Road No. 2 temporary or permanent to ascertain and fully assess the water management scheme developed for the overall development.
- b) As the DA is an integrated housing development, accounting for the impervious area of each residential lot is critical in:
  - the sum total of the impervious area of the development site, and
  - the modelling outcomes of the water management scheme developed for the overall development including the OSD tank.

A plan demonstrating that each residential lot has an impervious area based on the modelling assumption for each lot – Assessment Officer responsibility (see a) below).

#### Strategic Planning Response

Objective (a) of Part 6.1(1) of the Pittwater LEP requires consideration of the Warriewood Valley Release Area in accordance with the *Warriewood Valley Strategic Review Report* and the *Warriewood Valley Strategic Review Addendum Report*.

In this regard, the development site:

- Is identified as a residential sector, labelled Sector 301 in the above report and the LEP Urban Release Area Map; and
- Has an assigned dwelling range for residential development, from 42 to 53 dwellings/lots.

If the residential development is not within this range then it would be prohibited development [See *Lotus Project Management Pty Ltd v Pittwater Council [2015] NSWLEC 166* and *Karimbla Constructions Services (NSW) Pty Ltd v Pittwater Council [2015] NSWLEC 83*].

The number of residential allotments proposed under this development is within the dwelling range identified.

Water management for each development sector or buffer area by way of Water Management Specifications for Warriewood Valley includes on-site detention requirements as well as the creek line corridors. The Water Management Specifications has a total impervious area of 50% for each development sector, and accounts for the calculated site cover for each proposed lot as a total sum, in the development sector.

The inter-related DCP provisions for water management means that the site coverage at sector and at the individual lot scale modelled and specified under the water management report prepared for development must be complied with at the development and construction phase otherwise there is potential for water management impact on any adjacent or downstream properties in the future. Section A3, Appendix A of the *Warriewood Valley Urban Land Release Water Management Specification (February 2001 as amended)* states:

*“If a sectors impervious area exceeds 50%, a reassessment of the site storage requirements, is in the same method outlined in Appendix A, is required based on the calculated impervious proportion of site”.*

Based on the objectives and considerations listed above, this DA proposes:

An impervious area for the development sector of 49.86%. Council's Catchment team and Development Engineers should confirm the impervious area (development site and individual lot scale) modelled under the submitted Water Management Report prepared for this DA and potential impacts.

- a) Notwithstanding there is no plan detailing the site coverage for each proposed residential allotment to demonstrate it is aligning with the impervious fraction calculated at the lot scale under the submitted Water Management Report.

Given this is an integrated housing development, the DA Officer should confirm the plans are consistent with the modelled impervious area for the sector and site cover for each residential lot.

- b) As discussed already, the applicant will need to address the following matters:

- Plans detailing the proposed rehabilitation works of the inner 25m creek line corridor land;
- encroachment onto the outer 25m creek line corridor by proposed residential allotments 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60 and 61;
- if required, matters identified in a) and b) above,

as part of the overall water management scheme developed for this proposed subdivision.

Where inconsistency exists, there needs to be determination on the likely adverse impacts on adjacent and downstream properties including Narrabeen Creek in accordance with Part 6.1(4) of PLEP and related DCP provisions.

#### Development Contribution Response

Warriewood Valley Contributions Plan Amendment 16 Revision 4 adopted on 1 July 2022 applies to the subject site and to all residential, commercial and industrial development that would result in a commensurate increase in demand for infrastructure and services of the type provided by this plan.

The applicant is to confirm the staging of this DA given there is a submitted staging plan however no details are provided in the SEE. The staging of development is to clearly state the stages and what encompasses each development stage including the construction of dwellings and the infrastructure associated with the subdivision and housing construction.

The applicant should be advised that the reconstruction and rehabilitation of the inner 25m creek line corridor as well as the inner 25m creek line corridor land are identified items of the Warriewood Valley Contributions Plan. The reconstruction and rehabilitation of the creek at Sector 301 is known as Item 2.53 under this Plan.

The applicant may wish to make an Offer to Northern Beaches Council to Enter into a Planning Agreement in relation to the developer delivering Item 2.53 for Council as a Works-In-Kind/Material Public Benefit. In this way, if the Offer is progressed to an Executed Planning Agreement, the total monetary amount payable to Council as development contributions will be re-calculated based on offsetting the contribution for the value of the works of Item 2.53 in the Contributions Plan. It is recommended that the applicant seek a pre-lodgement meeting for any future Planning Agreement. Links to the Policy and Guide are provided below:

- Council's Planning Agreement Policy 2022 can be found at [https://files.northernbeaches.nsw.gov.au/sites/default/files/Planning\\_Agreement\\_Policy\\_2022\\_Adopted\\_28\\_June\\_2022.pdf](https://files.northernbeaches.nsw.gov.au/sites/default/files/Planning_Agreement_Policy_2022_Adopted_28_June_2022.pdf)
- Guide for Developers 2022 can be found at <https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/general-information/planning-agreements/guide-developers-mar2022.pdf>

At this initial stage of assessment, the contribution amount has not been calculated based on the inconsistencies noted above including the subdivision plan, the encroachment of lots in the outer 25m creek line corridor and the staging of this development.

Upon receipt of this additional information, the DA should be re-referred to SPP for review and to enable the calculation of a development contribution if appropriate.

Note: Should you have any concerns with the referral comments above, please discuss with the Responsible Officer.

## **RECOMMENDATION**

1. As submitted, there are inconsistencies with the DA that needs to clarification by the applicant. The following additional information should be requested:
  - A. Details on the staging of the development consistent with the submitted subdivision plans, and should include the timing of creation of the community lot incorporating all land and infrastructure that is to be in private ownership and the land containing the inner 25m creek corridor being dedicated to Council.

Details should also include timing of the construction of dwellings on individual allotments or superlot and subsequent subdivision of superlot(s) into individual residential allotments.



These details are required for the purpose of calculating the development contribution amount payable to Council at each stage, and confirming what is to be produced on site for each development stage.
  - B. Details of the water management scheme developed for this development needs to include:

- Plans detailing the proposed rehabilitation works of the inner 25m creek line corridor land;
  - Plans detailing the site coverage for the overall development site and for each proposed residential allotment to demonstrate it is aligning with the impervious fraction calculated at the total site area and lot scale respectively under the submitted Water Management Report.
  - Assessment on the impacts of the proposed encroachment onto the outer 25m creek line corridor by proposed residential allotments 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60 and 61, noting the encroachment contradicts Section C6.1 of the Pittwater 21 DCP.
- C. Details on maintenance schedule including funding for maintenance of the private infrastructure - water management facilities, outer 25m creekline corridor land and internal road network -proposed as a part of this development; including details in the event of conflict.
- D. Clarification on the 'temporary' OSD tank located under the road reserve.
2. On receipt of the above additional information listed in point 1 above, the DA with the additional information is to be referred to S&PP (development contributions) for further consideration.
3. The applicant should be advised that the submitted DA includes infrastructure identified under the adopted Warriewood Valley Contributions Plan namely:
- A. Item 2.53 Multi-functional Creek line Strategy (Rehabilitation Works)
  - B. Item 301 Multi-functional Creek line Strategy (Land Acquisition)

A Planning Agreement pathway is available to deliver works-in-kind identified under the Warriewood Valley Contributions Plan. If the applicant wishes to pursue this pathway, an application for pre-lodgement meeting for the Planning Agreement can be lodged.

Council's Principal Development Infrastructure Officer will be in contact with the applicant to discuss the advice provided in the recommendation.

*This referral response has been peer-reviewed in accordance with agreed procedures. On approval/signature by peer reviewer, the contents of the DA referral response are included into Council's ASSESS program against this DA.*

Prepared by: Shivani Tapas	Peer Review By: Liza Cordoba
	
Position: Planner	Position: Manager Strategic & Place Planning
DATE: 23 October 2023	DATE: 23 October 2023