



northern  
beaches  
council

17 October 2022



Creative Planning Solutions Pty Ltd  
Level 3 397 Riley Street  
SURRY HILLS NSW 2010

Dear Sir/Madam

**Application Number:** DA2021/2600  
**Address:** Lot 1 DP 349085 , 49 Warriewood Road, WARRIEWOOD NSW 2102  
Lot 2 DP 972209 , 43 Warriewood Road, WARRIEWOOD NSW 2102  
Lot 2 DP 349085 , 45 Warriewood Road, WARRIEWOOD NSW 2102  
**Proposed Development:** Subdivision of land, creek line works and the construction of two (2) residential flat buildings

Please find attached the Notice of Determination for the above mentioned Application.

Please be advised that a copy of the Assessment Report associated with the application is available on Council's website at [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au)

Please read your Notice of Determination carefully and the assessment report in the first instance.

If you have any further questions regarding this matter please contact the undersigned on 1300 434 434 or via email quoting the application number, address and description of works to [council@northernbeaches.nsw.gov.au](mailto:council@northernbeaches.nsw.gov.au)

Regards,

A handwritten signature in blue ink, appearing to read 'R. Piggott'.

Rodney Piggott  
**Acting Executive Manager Development Assessment**

## NOTICE OF DETERMINATION

<b>Application Number:</b>	DA2021/2600
<b>Determination Type:</b>	Development Application

### APPLICATION DETAILS

<b>Applicant:</b>	Creative Planning Solutions Pty Ltd
<b>Land to be developed (Address):</b>	Lot 1 DP 349085 , 49 Warriewood Road WARRIEWOOD NSW 2102 Lot 2 DP 972209 , 43 Warriewood Road WARRIEWOOD NSW 2102 Lot 2 DP 349085 , 45 Warriewood Road WARRIEWOOD NSW 2102
<b>Proposed Development:</b>	Subdivision of land, creek line works and the construction of two (2) residential flat buildings

### DETERMINATION - REFUSED

<b>Made on (Date)</b>	26/09/2022
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### Reasons for Refusal:

1. **State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (SEPP 65) and Associated Apartment Design Guide (ADG)**

The proposed development should not be approved in its current form as it fails the principles of SEPP 65 insofar as they apply to context and neighbourhood character, built form & scale, amenity, housing diversity and social interaction, and aesthetics.

Particulars:

- a) The proposed building is not compatible with the context of the site that currently contemplates a bulk and scale significantly less than that proposed.
- b) The development does not provide an appropriate dwelling mix.
- c) The proposal is inconsistent with a number of the requirements as contained in the ADG referenced in SEPP 65

2. **State Environmental Planning Policy (Resilience and Hazards) 2021**

The proposed development is unsatisfactory in respect to Section 4.15 of the EPA Act, as the application is found to be inconsistent with the provisions of SEPP (Resilience and Hazards) 2021.

Particulars:

- a) Insufficient information has been submitted to demonstrate that the land will be suitable in its



current state (or will be suitable after remediation) for the purpose for which the development is proposed to be carried out.

b) There has been substantial activity on the site since the original Preliminary Site Investigation (PSI) was completed. As such, the conclusions of the PSI are no longer valid. A new PSI is required in order to consider additional contaminants of concern relative to the works completed. More extensive testing for asbestos may also be required.

c) Insufficient information has been submitted for the consent authority to be satisfied that appropriate measures have been taken to protect or enhance the biophysical, hydrological and ecological integrity of the coastal wetlands, as required under Part 2.7 SEPP (Resilience and Hazards) 2021.

### 3. **Pittwater Local Environmental Plan (PLEP 2014)**

The proposed development is unsatisfactory in respect to Section 4.15 (1) (a) (i) of the EPA Act, as the application is found to be inconsistent with the provisions of PLEP 2014.

#### Particulars:

a) The development is inconsistent with the aims of the Plan, as it relates to promoting development that is compatible with neighbouring development in terms of bulk, scale and appearance and use.

b) The proposed development does not comply with the 10.5m maximum building height development standard prescribed by clause 4.3(3) of PLEP 2014. The proposal involves a maximum building height of 12.34m.

c) The clause 4.6 written request to vary the building height standard is not supported.

d) Insufficient information has been provided to enable Council to be satisfied that the proposed development will not result in any adverse impacts upon the environment, adverse impact upon opportunities for rehabilitation of aquatic and riparian vegetation, habitats and ecosystems within the creek line, water quality and flows within the creek line, and the stability of the bank within the creek line, as required by Clause 6.1(4) of PLEP 2014.

### 4. **Non-compliance with Pittwater 21 Development Control Plan (P21DCP)**

#### Particulars:

a) The proposed development fails to comply with key objectives of P21DCP.

b) The proposed development fails to comply with the following clauses of P21DCP 2014:

- Section C6.8 - Residential Development Subdivision Principles
- Clause B3.6 – Contaminated Land and Potentially Contaminated Land
- Clause B3.11 – Flood Prone Land
- Clause C6.1 – Integrated Water Cycle Management
- Clause C6.8 – Residential Development Subdivision Principles
- Clause D16.1 Character as viewed from a public place

### 5. **The Warriewood Valley Development Contributions Plan (Amendment 16 Revision 3) 2018**



The proposal does not adequately demonstrate compliance with the Warriewood Valley Contributions Plan which requires that the inner 25m creek corridor be dedicated, as a separate lot, to Council. The Contributions Plan and Control C6.1 of the P21DCP identify that the inner 25m creek corridor must be brought into public ownership.

The Contributions Plan estimates that the creek corridor on the subject properties is 1,471m<sup>2</sup> in size. The exact area of land to be dedicated is subject to a final plan of subdivision. No plan of subdivision has been provided. The plan of subdivision is also required to show an easement for access and maintenance over the land that contains the section of shared path within Lot 13.

**6. Vehicular access to the basement carpark**

The application has not demonstrated that basement access cannot be achieved from the Warriewood Road frontage of the site. Given the number of dwellings that are proposed for the site, and the potential traffic volumes generated, the impact on the local access road network has not been adequately addressed.

**7. Endangered Ecological Community (EEC)**

The proposal has failed to demonstrate that the development is sensitively designed in response to the natural constraints of the site, specifically the presence of an EEC (Swamp Sclerophyll Forest).

**8. Integrated Development - General Terms of Approval**

The proposal is Integrated Development under Section 100B of the Rural Fires Act 1997 and the Rural Fires Act 2000. Agency responses to these integrated development referrals have not yet been provided.



## Right to Review by the Council

You may request Council to review this determination of the application under Division 8.2 of the Environmental Planning & Assessment Act 1979. Any Division 8.2 Review of Determination application must be lodged on the NSW Planning portal within 3 months of this determination, to enable the assessment and determination of the application within the 6 month timeframe.

*NOTE: A fee will apply for any request to review the determination.*

## Right of Appeal

If you are dissatisfied with this decision Division 8.3 of the Environmental Planning & Assessment Act 1979 may give you the right to appeal to the Land and Environment Court within 6 months after the date on which you receive this notice.

**Signed**            On behalf of the Consent Authority

A handwritten signature in blue ink, appearing to read 'R. Piggott'.

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Name            Rodney Piggott  
**Acting Executive Manager Development Assessment**  
Date            26/09/2022

**NOTE:** Signed by Northern Beaches Council in accordance with the Environmental Planning and Assessment Act 1979 and EP&A Regulation 2000 as determined by the Sydney North Planning Panel on 26/09/2022.