

## Strategic Planning Referral Response

<b>Application Number:</b>	DA2023/0154
<b>Proposed Development:</b>	Construction of a dwelling house on Lot 9
<b>Date:</b>	04/05/2023
<b>To:</b>	Olivia Ramage
<b>Land to be developed (Address):</b>	Lot C DP 367229 , 6 Orchard Street WARRIEWOOD NSW 2102

### Officer comments

On 6 March 2023, Strategic and Place Planning received a referral request for DA2023/0154 for construction of a dwelling house on Lot 9 (an approved allotment under Development consent N0013/15).

Approved lot 9 is a corner allotment, rectangular in shape and has a total site area of 406.6m<sup>2</sup> (34.11m length x 11.92m wide). The proposed plans show access to approved lot 9 will be from Kite Street that is not yet constructed (with its secondary street frontage at Fern Creek Road).

### SUBJECT SITE

The development site is an approved residential allotment, known as Lot 9 in the subdivision of 6 and 6A Orchard Street, and 9 Fern Creek Road, Warriewood. The subdivision, including approved Lot 9 are not yet registered with NSW Land Registry Services.

6 and 6A Orchard Street are zoned R3 Medium Density Residential under the Pittwater LEP 2014.

Approved Lot 9 (the development site) will, when registered, retain the zoning of its parent properties that is R3 Medium Density Residential under the Pittwater LEP 2014.

### Chronology

On 25 June 2015, the former Pittwater Council issued a Notice of Determination on Development Application N0013/15 involving the subdivision of 6 and 6A Orchard Street, and 9 Fern Creek Road, Warriewood under Community Title and creates 18 residential allotments, 1 large residue lot (known as Lot 20), 1 community lot containing a private road and infrastructure, and construction and dedication of a new public road. This consent included condition 12 requiring the payment of a monetary contribution of \$1,074,618 to Council based on the approved 18 residential allotments. Condition 12 reads as follows:

*12. A cash contribution of \$1,074,618 (subject to (a) below) is payable to Pittwater Council for the provision of public infrastructure and services pursuant to Section 94 of the Environmental Planning and Assessment Act 1979.*

*a. The monetary component of the developer contribution is to be paid prior to issue of the first Construction Certificate or Subdivision Certificate (whichever occurs first) or prior to the issue of the Subdivision Certificate where no Construction Certificate is required. The cash contribution will be adjusted at the time of payment in accordance with the latest Consumer Price Index as published quarterly by the Australian Bureau of Statistics as outlined in Council's Warriewood Valley Section 94 Contributions Plan (Plan No. 15).*

*b. The proponent shall provide evidence of payment of the cash contribution (subject to (a) above) to the Certifying Authority within 14 days of fulfilling*

*the condition (a).*

*c. The proponent may negotiate with Council for the direct provision of other facilities and services, the dedication of land in lieu of the cash contribution above (or any portion of that cash contribution) or the deferral of payments through a Material Public Benefit Agreement between Council and the proponent in accordance with the Warriewood Valley Section 94 Contributions Plan (Plan No.15). The agreement for Material Public Benefit Agreement between the proponent and Pittwater Council must be finalised, formally signed and in place prior to the issue of the first Construction Certificate. The Warriewood Valley Section 94 Contributions Plan (Plan No.15) may be inspected at Pittwater Council, 1 Park Street Mona Vale or Council's website.*

Since then, the consent was modified a number of times however Condition 12 (as worded above) has not been changed.

On 25 August 2017, Council received the contribution amount imposed for 18 residential allotments approved under consent N0013/15 as amended.

On 15 June 2018, a Construction Certificate was issued facilitating the works for subdivision under N0013/15 as amended.

#### **ASSESSMENT OF DA**

DA2023/0154 proposes the construction of a dwelling house on proposed Lot 9 approved under the amended consent N0013/15. The subdivision and proposed Lot 9, approved under N0013/15 are not yet registered with NSW Land Registry Services.

Development contributions imposed under Consent N0013/15 has been paid. Consent N0013/15 approves the creation of proposed lot 9 (the development site to which a dwelling house is proposed by way of this current DA) and development contributions have been paid for proposed Lot 9 (and future entitlement for a dwelling house on this allotment).

As the subject DA, DA2023/1054 seeks to construct one dwelling house on Lot 9, there is no development contribution generated by this development. This is consistent with the Warriewood Valley Contributions Plan since the contribution has been paid against approved Lot 9 accounting for 1 new residential lot to accommodate 1 dwelling on same.

As at time of finalising this referral response:

- a Subdivision Certificate reflecting consent N0013/15 has not been issued to facilitate registration of the subdivision.
- Proposed Lot 9 although approved is still an unregistered residential allotment.

Given the above circumstances, it would be prudent to impose a condition restricting the issue of any Occupation Certificate (Interim or Final) for the dwelling house until such time as the development site and the subdivision are duly registered with NSW Land Registry Services.

It is also noted that a referral response has also been sought from Environmental Health in relation to 'unsewered land'. This allotment has a currently development consent for subdivision and is in the Warriewood Valley Release Area where all new lots is the Release Area (and via the consent conditions) will need to be connected to water and sewer before the subdivision can be registered with NSW Land Registry Services. The referral is therefore unnecessary and could result in advice contrary with the planning framework for this Release Area. It is recommended that the DA Referral list be amended to remove the requirement for DA proposals for construction of any class of building on land identified under the Warriewood Valley Release Area being referred to Environmental Health

(unsewered land).

### **RECOMMENDATION**

A. This development application does not generate a development contribution, as this has already paid for under consent N0013/15 for the creation of Lot 9 (the development site upon which a dwelling house is proposed under the DA2023/0154).

B. No objection is raised to this DA being granted consent subject to a condition being imposed regarding the timing of an occupation certificate. The condition is to read as follows:

Prior to the issue of an Occupation Certificate (Interim or Final) and prior to occupation of the dwelling house, the conditions under consent N0013/15 has been complied with and the subdivision for N0013/15 has been registered with NSW Land Registry Services.

C. The PRG consider amending the DA Referral list to remove the requirement for DA proposals for construction of any class of building on land identified under the Warriewood Valley Release Area being referred to Environmental Health (unsewered land). The planning framework for the Warriewood Valley Release Area is for all development in the Release Area to be serviced and connected to potable water and sewer and is imposed as a condition in the development consent for any development on land in Warriewood Valley Release Area.

The proposal is therefore supported.

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

### **Strategic Planning Conditions:**

Nil.