

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2020/0458
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Responsible Officer:	Anne-Marie Young
Land to be developed (Address):	Lot 25 DP 5464, 2 Macpherson Street WARRIEWOOD NSW 2102
Proposed Development:	Modification of Development Consent Modification of Development Consent DA2019/0887 granted for subdivision of land into 24 community title lots comprising 22 residential lots and 2 residue lots
Zoning:	R3 Medium Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Karimbla Properties (NO. 32) Pty Ltd
Applicant:	Karimbla Constructions Services (NSW) Pty Ltd

Application Lodged:	24/09/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Subdivision only
Notified:	20/10/2020 to 03/11/2020
Advertised:	Not Advertised
Submissions Received:	4
Clause 4.6 Variation:	Nil
Recommendation:	Refusal

PROPOSED DEVELOPMENT IN DETAIL

The subject modification seeks to amend condition 6 of DA2019/0887 which requires:

Warriewood Valley Contributions Plan - Creekline corridor

The following is to be made for the provision of local infrastructure and services pursuant to section 7.11 of the Environmental Planning and Assessment Act 1979 and the Warriewood Valley Development Contributions Plan (as amended):

- A monetary contribution of \$1,320,770.41 (subject to (a) below) is payable to Northern Beaches Council, and
- Dedication of 6,739sqm of creekline corridor land in accordance with b) below.

a) Written evidence (receipt/s) from Council for the payment of the monetary contribution is to be provided to the Certifying Authority prior to issue of the construction certificate or subdivision certificate (whichever occurs first), or prior to the issue of the subdivision certificate where no construction certificate is required. If the cash contribution (total or in part) remains unpaid after the financial quarter in which the development consent is issued, the amount unpaid (whether it be the full monetary contribution amount or a part thereof) will increase on a quarterly basis in accordance with the applicable Consumer Price Index.

b) The Applicant shall dedicate to Northern Beaches Council a total of 6,739sqm of land for the provision of multi-functional creekline corridor in lieu of a monetary contribution amount calculated in accordance with Table 4 of the Contributions Plan attributed to the Creekline corridor to the value of \$213,386.83. The required dedication is to take place by way of subdivision.

c) The Applicant may negotiate with Council for the direct provision of other facilities and services, and/or the dedication of land (other than land identified in (b) above) in lieu of the monetary contribution above (or any portion of that monetary contribution) or the deferral of payments through a Material Public Benefit Agreement between Council and the Applicant in accordance with the Warriewood Valley Development Contributions Plan (as amended). The agreement for Material Public Benefit Agreement between the Applicant and Council must be finalised, formally signed and in place prior to the payment of the monetary contribution. The Warriewood Valley Development Contributions Plan (as amended) may be viewed at 725 Pittwater Rd, Dee Why or alternatively, on Council's website Development Contributions.

Reason: To provide for contributions in accordance with the Contribution Plan that enables the provision of public infrastructure and services commensurate with the increased demand resulting from development in the Warriewood Valley Release Area.

The application seeks consent to reduce the contributions payable to **\$202,500,81** and to modify the condition as follows:

The following is to be made for the provision of local infrastructure and services pursuant to section 7.11 of the Environmental Planning and Assessment Act 1979 and the Warriewood Valley Development Contributions Plan (as amended):

- A monetary contribution of ~~\$1,320,770.41~~ **\$202,500,81** (subject to (a) below) is payable to Northern Beaches Council, and
- Dedication of 6,739sqm of creekline corridor land in accordance with b) below.

a) Written evidence (receipt/s) from Council for the payment of the monetary contribution is to be provided to the Certifying Authority prior to issue of the construction certificate or subdivision certificate (whichever occurs first), or prior to the issue of the subdivision certificate where no construction certificate is required. If the cash contribution (total or in part) remains unpaid after the financial quarter in which the development consent is issued, the amount unpaid (whether it be the full monetary contribution amount or a part thereof) will increase on a quarterly basis in accordance with the applicable Consumer Price Index.

The applicant, in the SEE states that they are seeking a credit towards rehabilitation and reconstruction work of the creek line that have been commenced.

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - 6.1 Warriewood Valley Release Area

SITE DESCRIPTION

Property Description:	Lot 25 DP 5464 , 2 Macpherson Street WARRIEWOOD NSW 2102
Detailed Site Description:	<p>The site is legally described as Lot 25, Section C, Deposited Plan 5464, and is commonly referred to as 2 Macpherson Street, Warriewood ('the site'). The site is irregular in shape, with a 126.96m wide frontage to Macpherson Street to the south and a total area of 2.327 Hectares. The site adjoins Narrabeen Creek, the centreline of which forms the northern and eastern boundaries of the site.</p> <p>The site was formerly used for the purpose of a market garden, however, the site has been cleared in to allow works in association with the approved civil works DA. Whilst the central portion of the site appears to have been built up over time and is generally level, the perimeter of the site falls away in each direction towards the creekline, the western side boundary and the street.</p> <p>Macpherson Street is a two-lane roadway that was recently upgraded to alleviate impacts associated with flooding, and as a result, the roadway and adjacent footpath is elevated above natural grounds levels at a minimum RL of 4.16m AHD. Two access driveways have been constructed to provide vehicular and pedestrian access to the site.</p> <p>A Sydney Water Sewerage Treatment Plant is located</p>

opposite the site on the southern side of Macpherson Street, with a seniors housing development is located to the east, medium density residential to the north and an existing dwelling to the west. The site is identified as Buffer Area 1M of the Warriewood Valley Release Area, as shown on the Warriewood Valley Release Area Map of PLEP 2014.

Map:



SITE HISTORY

N0431/14

On 27 November 2014, Development Application N0431/14 was lodged with Council, seeking consent for the construction of thirty semi-detached dwelling houses and associated infrastructure at the subject site.

N0431/14

On 18 December 2014, Development Application N0431/14 was refused by Council for the following reasons:

1) *The proposed development is inconsistent with the objectives of clause 6.1 of Pittwater Local Environmental Plan 2014, specifically the need for development to be undertaken in accordance with the Warriewood Valley Strategic Review, which identifies that the subject site has no capacity for residential development.*

2) *The “no dwellings” yield prescribed by clause 6.1(3) of Pittwater Local Environmental Plan 2014 prohibits residential development on the site, and cannot be varied pursuant to clause 4.6 of Pittwater Local Environmental Plan 2014.*

Land and Environment Court Appeal

On 24 December 2014, the Applicant lodged a Class 1 Appeal with the Land and Environment Court of NSW in regards to the refusal of Development Application N0431/14. The proceedings were ultimately listed for a separate 'question of law' hearing to address the following:

Is the "no dwellings" specification for 'Buffer area 1m' in the table to clause 6.1(3) of the Pittwater Local Environment Plan 2014 ("PLEP") a 'development standard' to which clause 4.6 of the PLEP applies?

On 21 May 2015, the Justice Pain found in favour of Council and agreed that the "no dwellings" specification for the site in clause 6.1(3) of PLEP 2014 was in fact a prohibition and not a development standard.

Planning Proposal

On 17 November 2016, the Applicant lodged a Planning Proposal (PP0003/16), which seeks to amend the provisions of clause 6.1(3) of PLEP 2014 to provide for 22 dwellings on the subject site.

On 31 January 2017, Council resolved not to support the Planning Proposal for the following reasons:

- a. It is inconsistent with the relevant strategic study being the 'Warriewood Valley Strategic Re
- b. It has not demonstrated adequate strategic merit or site-specific merit in line with the 'NSW
- c. The information submitted to support the planning proposal for 2 Macpherson Street, Warrie
- d. It is inconsistent with Local Planning Direction '4.3 Flood Prone Land' (issued under Section

Re-zoning Review

On 10 March 2017, Council received notice that a request for a Rezoning Review had been submitted for consideration by the Sydney North Planning Panel.

Gateway Determination of Planning Proposal

On 12 April 2017, the Sydney North Planning Panel determined that the Planning Proposal should proceed to Gateway determination.

On 30 June 2017, Council received notice from the delegate of the Greater Sydney Commission that the Planning Proposal should proceed, subject to condition in the Gateway Determination.

On 26 October 2018, the Planning Proposal was formally gazetted to permit 22 lots on the site including:

- The construction of a new road,
- Civil infrastructure associated with the new road
- Creekline reconstruction, and
- Creekline rehabilitation/revegetation.

N0398/17

On 31 May 2019, development application for the civil works was approved by the Land and Environment Court. It is noted that the court consent did not include a contributions condition.

On 1 April 2020 Construction Certificate ref SY180130OSW02 was approved. Council's Flood Planning and Water Management Unit confirm that based on a review of the cross sections provided as part of the CC application the creek works completed as part of the civil works pursuant to N0398/17 accommodate the 1% AEP flood event.

DA2019/0887

On 28 July 2020, Development consent DA2019/0887 approved the subdivision of land into 24 community title lots comprising 22 residential lots and 2 residue lots. It is of relevance to note that this application did not include work to the creekline corridor which was approved under N0398/17 for civil works. It is also relevant to note that during the assessment of DA2019/0887 the applicant submitted an updated subdivision plan which included an acceptable area of creekline corridor to be dedicated to Council in order to address the referral response from Council's Contribution Officer which had previously recommended refusal of the DA.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2019/0887, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55(1A) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	The modification relates to contributions, as such the application does not raise any issues with relation to environmental impacts.
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	<p>The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2019/0887 for the following reasons:</p> <p>The application seeks to modify condition 6 of the original consent which relates to the payment of contributions and the dedication of the creekline corridor.</p>

Section 4.55(1A) - Other Modifications	Comments
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require, or</p> <p>(ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and</p> <p>(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.</p>	<p>The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Pittwater Local Environment Plan 2011 and Pittwater 21 Development Control Plan.</p> <p>See discussion on “Notification & Submissions Received” in this report.</p>

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The application relates to condition 6 of the original consent, contributions. SEPP 55 is not of any direct relevance to the consideration of the subject modification.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the</p>

Section 4.15 'Matters for Consideration'	Comments
	<p>submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will have a detrimental economic impact on the locality considering the proposed development seeks to reduce the amount of contributions payable for the provision of local infrastructure and services.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The original development application approved the subdivision of the land for residential use which was considered suitable for the proposed development. The subject modification seeks to reduce the payment of contributions which does not directly relate to the suitability of the land.

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	This assessment has found the proposal to be contrary to Section 4.15(1) (iii) of the EPA Act in that the proposed development will have a detrimental economic impact on the locality in that the proposed development seeks to reduce the amount of contributions payable for the provision of local infrastructure and services. In this regard, the development, as proposed, is not considered to be in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 20/10/2020 to 03/11/2020 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of 4 submission/s from:

Name:	Address:
Mr Christopher Peet Hornsby	25 Utingu Place BAYVIEW NSW 2104
Warriewood Residents Association Incorporated	Warriewood Valley Land Release Area Abb Dummynotification Purp WARRIEWOOD NSW 2102
Ms Kay Linda Millar	6 / 1 - 7 Lagoon Street NARRABEEN NSW 2101
Ms Julia Elizabeth Catherine Guinan	25 Utingu Place BAYVIEW NSW 2104

The following issues were raised in the submissions and each have been addressed below:

- **The contribution is required to complete public infrastructure works in accordance with the Warriewood Valley Contribution Plan.**
- **The Applicant's argument that the creekline works have been carried out is not justified.**
- **The modification relates to DA2019/0887 for sub division works and the creekline works were required under N0398/17. The justification can not be supported under a modification to the subdivision DA.**

The matters raised within the submissions are addressed as follows:

- **To application seeks to reduce the contributions to offset the cost, to the developer, of the creekline corridor works. The developer would have needed to complete those works in order to progress the development, not to provide a public benefit nor to save Council from undertaking the work. This modification application is a thinly veiled attempt to cheat Council and the residents of Warriewood Valley of the expected and justified contribution for the site. The loss of developer contributions affects the whole viability of the public infrastructure in the Warriewood Valley.**

Comment:

The application seek to modify condition 6 which related to a DA for subdivision works only, no works to the creekline were approved under DA2019/0887. The works to the creekline relate to N0398/17 which was approved by the Land and Environment Court and were considered to be essential to enable a flood free building pad in the centre of the site. As such, it is agreed that the works completed to the creekline corridor are not in the public interest. Furthermore, the argument for the reduction to the payment of contributions for creek works which related to N0398/17 can not be supported as it has no direct relevance to the subdivision approval (DA2019/0887).

It is agreed that the mechanism for obtaining contributions for the provision of local infrastructure and services is via the requirements of the Warriewood Valley Development Contributions Plan (as amended). The loss of developer contributions has the potential to affect the viability of public infrastructure provision in the Warriewood Valley.

- **The cost of these comprehensive rehabilitation works should be in accordance with the overall rehabilitation strategy and borne by all developers of land and this is what this application is trying to avoid. Clearly the works in the creek line corridor are those required to be carried out to satisfy the conditions included in DA N0398/17 as no such works are required to be carried out by DA2019/0887 (which is for residential subdivision). It is noted that the Construction Certificate relating to the civil works relates to those works outlined in DA N0398/17 not works associated with DA2019/0887. It is also noted that the works carried out in the creek line corridor (not including the bulk earthworks required to satisfy the flooding problem without which residential development of the land would not be able to proceed) are minimal and consist of some stabilization planting and a few trees and shrubs. Certainly, those works (not including the bulk earthworks) for which the applicant seeks a reduction of \$1,118,269.80 would not have cost anywhere near this amount.**

Comment:

As noted above, it is agreed that the works in the creekline corridor relate to those required to satisfy conditions of N0398/17 and no such work was required under DA2019/0887. Notwithstanding the justification for a \$1,118,269.80 reduction in contributions costs, the principle of the application is not supported as the work which the Applicant is seeking a credit for, do not related to the subdivision approval DA2019/0887.

- **The eventual rehabilitation works to be carried out will need to include reconstruction of the creek line to prevent erosion (boulder placement and regrading of the creek bed as it approaches the Downstream MacPherson Street bridge where ad hoc works to date are causing a back-up of the creek extending the length of the development site (there was no previous backup of water) this ponding has significant environmental issues as well as providing a breeding site for mosquitoes and sandflies capable of causing nuisance and disease transmission to nearby residential areas.**

Comment:

Details of the rehabilitation work are not subject to either DA2019/0887 or the subject modification relating to a reduction in contributions. The issues raised in this submission in

relation to the details design of the rehabilitation work and environmental issues has been sent to Council's Flooding and Water Management Team for a separate response.

REFERRALS

Internal Referral Body	Comments
Strategic and Place Planning (S94 Warriewood Valley)	<p>Modification application (Mod2020/0458) seeks approval to modify Condition 6 of consent DA2019/0887. DA2019/0887 sought consent to 24 Lot Community Title Subdivision to accommodate future residential development. DA2019/0887 included dedication of creek line corridor (proposed Lot 24 - being the 25-metre inner creek line corridor) to Council. No creekline works were proposed or subsequently approved under this consent.</p> <p>Condition 6 imposes the payment of development contributions attributable to residential development, in accordance with Warriewood Valley Development Contributions Plan Amendment 16, Revision 3, 2018 (being the "WWV Plan" in force on 28/07/2020). Condition 6 reads as follows:</p> <p>6. Warriewood Valley Contributions Plan - Creekline corridor</p> <p><i>The following is to be made for the provision of local infrastructure and services pursuant to section 7.11 of the Environmental Planning and Assessment Act 1979 and the Warriewood Valley Development Contributions Plan (as amended):</i></p> <ul style="list-style-type: none"> • <i>A monetary contribution of \$1,320,770.41 (subject to (a) below) is payable to Northern Beaches Council, and</i> • <i>Dedication of 6,739sqm of creekline corridor land in accordance with b) below.</i> <ul style="list-style-type: none"> a) <i>Written evidence (receipt/s) from Council for the payment of the monetary contribution is to be provided to the Certifying Authority prior to issue of the construction certificate or subdivision certificate (whichever occurs first), or prior to the issue of the subdivision certificate where no construction certificate is required. If the cash contribution (total or in part) remains unpaid after the financial quarter in which the development consent is issued, the amount unpaid (whether it be the full monetary contribution amount or a part thereof) will increase on a quarterly basis in accordance with the applicable Consumer Price Index.</i> b) <i>The Applicant shall dedicate to Northern Beaches Council a total of 6,739sqm of land for the provision of multi-functional creekline corridor in lieu of a monetary contribution amount calculated in accordance with Table</i>

Internal Referral Body	Comments
	<p><i>4 of the Contributions Plan attributed to the Creekline corridor to the value of \$213,386.83. The required dedication is to take place by way of subdivision.</i></p> <p><i>c) The Applicant may negotiate with Council for the direct provision of other facilities and services, and/or the dedication of land (other than land identified in (b) above) in lieu of the monetary contribution above (or any portion of that monetary contribution) or the deferral of payments through a Material Public Benefit Agreement between Council and the Applicant in accordance with the Warriewood Valley Development Contributions Plan (as amended). The agreement for Material Public Benefit Agreement between the Applicant and Council must be finalised, formally signed and in place prior to the payment of the monetary contribution. The Warriewood Valley</i></p> <p><i>Development Contributions Plan (as amended) may be viewed at 725 Pittwater Rd, Dee Why or alternatively, on Council's website Development Contributions.</i></p> <p><i>Reason: To provide for contributions in accordance with the Contribution Plan that enables the provision of public infrastructure and services commensurate with the increased demand resulting from development in the Warriewood Valley Release Area.</i></p> <p>The dedication of the 25-metre inner creek line corridor is identified works item under the WWV Plan. Accordingly, the cash contribution amount payable and expressed in Condition 6 shows the amount payable minus the value of the creekline corridor land (which is listed in the WWV Plan adjusted to 2020/21 dollars).</p> <p>Assessment of the Modification (Mod2020/0458)</p> <p>The application seeks a reduction of the cash contribution amount payable to Council, imposed by Development consent DA2019/0887. The amount the applicant is wanting/willing to pay is \$202,500.81, based on the amount purported to be equivalent to the value of creekline corridor rehabilitation works.</p> <p>As already advised, DA2019/0887 did not include creekline corridor works. Council did not approve creekline corridor works under the development consent that is the subject of the modification.</p> <p>Accordingly, the subject modification to reduce the cash contribution payable on the basis of creekline corridor works that were not part of a development consent the applicant is now seeking to modify is unreasonable and not supported.</p>

Internal Referral Body	Comments

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

Nil

Pittwater Local Environmental Plan 2014

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Compliance Assessment

Clause	Compliance with Requirements
6.1 Warriewood Valley Release Area	No

Detailed Assessment

6.1 Warriewood Valley Release Area

The subject site is located within the Warriewood Valley Release Area and is identified as Buffer 1m. Clause 6.1 requires:

Development consent must not be granted for development on land to which this clause applies unless the consent authority is satisfied that the proposed development will not have any adverse impact on any of the following:

- opportunities for rehabilitation of aquatic and riparian vegetation, habitats and ecosystems within creek line corridors, and
- the water quality and flows within creek line corridors, and
- the stability of the bed, shore, and banks of a watercourse within creek line corridors.

Comment

The subject site is characterized by a creek line corridor located at the rear of the subject site known as 'Narrabeen Creek'. Development Application (N0398/17) for the civil works including cut and fill to create a suitable building platform for future development, private road, drainage works and environmental management works was approved by the Land and Environmental Court on 31 May 2019. Council's Flood Management Officer and Water Management Officer have confirmed a review of the cross sections provided as part of the Construction Certificate application confirmed that the creek works have been completed as part of the civil works N0398/17 consent and accommodate the 1% AEP flood event. These works were required to satisfy conditions of the court consent to provide a flood free building pad in the centre of the site. The applicant required that these works be completed ahead of Council's anticipated time-frame as such they need to be undertaken at their own cost.

Development Application DA2019/0887 approved 24 Lot Community Title Subdivision to accommodate future residential development; 22 lots for future residential dwellings and the remaining 2 lots for the private access loop road and creek buffer lot and the 25m inner creek line corridor which is required to be dedicated to Council. DA2019/0887 did not approve any physical work to the creek line. The subject modification seeks to amend condition 6 to seek a \$1,118,269.80 credit for the creekwork that has been completed. As explained the creekwork does not form part of the consent to which the modification relates, as such, the application can not be supported.

Pittwater 21 Development Control Plan

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
C6.7 Landscape Area (Sector, Buffer Area or Development Site)	Yes	Yes

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

WARRIEWOOD VALLEY CONTRIBUTIONS PLAN

The Warriewood Valley Development Contributions Plan Amendment 16, Revision 3, 2018 (being the "WWV Plan" in force on 28/07/2020) applies to the proposal. The WWV Plan is consistent with Council's adopted strategic framework for the Warriewood Valley Release Area and complements Pittwater Local Environmental Plan 2014, Pittwater 21 Development Control Plan, Warriewood Valley Landscape Masterplan and Design Guidelines (Public Domain) November 2016 and Warriewood Valley Roads Masterplan May 2016.

Section 5.2.2 of the WWV Plan identifies the dedication of the (6,751sqm) 25-metre inner creek line corridor is identified works item under the WWV Plan. Lot 24 on the approved subdivision plan comprises an area of 6,739sqm (as shown on the updated survey prepared by B&P Surveys, Rev J dated 5 March 2020. As such, condition 6 of DA2019/0887 required the following contribution and dedication to be made for the provision of local infrastructure and services pursuant to section 7.11 of the Environmental Planning and Assessment Act 1979 and the Warriewood Valley Development Contributions Plan (as amended)

- A monetary contribution of \$1,320,770.41 (subject to (a) below) is payable to Northern Beaches Council, and
- Dedication of 6,739sqm of creekline corridor land in accordance with b) below.

Part b of condition 6 required

b) The Applicant shall dedicate to Northern Beaches Council a total of 6,739sqm of land for the provision of multi-functional creekline corridor in lieu of a monetary contribution amount calculated in accordance with Table 4 of the Contributions Plan attributed to the Creekline corridor to the value of \$213,386.83. The required dedication is to take place by way of subdivision.

Accordingly, the cash contribution amount payable and expressed in Condition 6 (b) shows the amount payable minus the value of the creekline corridor land (which is listed in the WWV Plan adjusted to 2020/21 dollars).

The application seeks a reduction of the cash contribution amount payable to Council, imposed by Development consent DA2019/0887. The amount the applicant is wanting/willing to pay is \$202,500.81 based on the amount purported to be equivalent to the value of creekline corridor rehabilitation works. The applicant justifies the \$1,118,269.80 reduction in contributions based on works completed.

The creek line corridor reconstruction and rehabilitation (the 'creek line works') are identified as Item 2.72 in the Warriewood Valley Development Contributions Plan Amendment 16 Revision 3 (the 'Contributions Plan'). When adjusted to 2020/21 dollars, the Contributions Plan prescribes a value of \$1,212,115.73 for the creek works. It is recognised that this is slightly above the reduction sought by the proponent.

DA2019/0887 is a 24 lot Community Title subdivision to accommodate future residential development and the dedication of creek line corridor land (being the 25m inner creek line corridor) to Council. No creek line works were proposed by or subsequently approved under DA2019/0887.

As discussed elsewhere in this report, the creek line works on 2 Macpherson Street were commenced by the proponent as part of an earlier and separate development application comprising civil works only, under N0398/17. This application proposed significant cut within the creek and subsequent fill on the balance of the site to create a flood free building platform in the centre of the site. Creek remediation works were required as a condition of consent to ensure no adverse flooding impacts on adjacent and downstream properties. N0398/17 did not in itself result in a development outcome that requires payment of development contributions on the approved civil works.

The Project Leader Water Management and Team Leader Floodplain Planning and Response have confirmed:

"Based on a review of the cross sections provided as part of the CC application, the creek works completed as part of the civil works DA i.e. N0398/17 do accommodate the 1% AEP flood event. The works are what is required under the contributions plan".

Section 7.11(6) of the Environmental Planning and Assessment Act 1979 (the EP&A Act) stipulates:

If a consent authority proposes to impose a condition in accordance with subsection (1) or (3) in respect of development, the consent authority must take into consideration any land, money or other material public benefit that the applicant has elsewhere dedicated or provided free of cost within the area (or any adjoining area) or previously paid to the consent authority, other than—

- (a) a benefit provided as a condition of the grant of development consent under this Act, or*
- (b) a benefit excluded from consideration under section 7.4(6).*

The creek line works are a benefit provided as a condition of the grant of development consent N0398/17. Creek reconstruction and rehabilitation was only required to ensure no adverse flooding impacts on adjacent or downstream properties as a result of the proponent's significant earthworks within the creek. Therefore, Council is not required to consider the value of creek line works when imposing a condition requiring the payment of a development contribution and s7.11(6) is not applicable.

In summary, DA2019/0887 did not approve creekline corridor works under the development consent that is the subject of the modification. Accordingly, the subject modification to reduce the cash contribution payable on the basis of creekline corridor works that were not part of a development consent the applicant is now seeking to modify is unreasonable and not supported.

Notwithstanding, the appropriate mechanism for the proponent to negotiate a reduction in cash contribution payable to Council is the entering of a planning agreement with Council for the provision of Works-In-Kind under Part 2.6.4 of the Contributions Plan and in accordance with Section 7.4 of the EP&A Act. The Planning Agreement would have to be executed prior to any works commencing. In this instance, the creek line works were already commenced under an earlier development consent that did not require payment of development contributions to Council.

Financial Impact

Accepting a monetary reduction of \$1,118,269.60 will reduce Council's flexibility to prioritise and deliver future infrastructure.

The Contributions Plan (adopted in August 2018) anticipated the creek line works on 2 Macpherson Street would commence in 2020/21. Since the Plan's adoption in 2018, income had been significantly lower than originally anticipated, necessitating a review of the timing of future infrastructure delivery to avoid a deficit in the financial reserve. In 2019, Council commenced a review of the Contributions Plan including updates to the income and expenditure assumptions that underpin the financial (cash-flow) model.

The adopted Delivery Program identifies expenditure of \$7.7m under the Contributions Plan in 2020/21 on items of greater benefit to the broader Warriewood Valley community such as the community facility (\$4.5m), and traffic and transport infrastructure (\$1.8M). As such, the creek line works on 2 Macpherson Street was not identified expenditure for 20/21.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Pittwater Local Environment Plan;
- Pittwater Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects,

all other documentation supporting the application and public submissions, in this regard the application is not considered to be acceptable and is recommended for refusal.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Inconsistent with the objectives of the DCP
- Inconsistent with the zone objectives of the LEP
- Inconsistent with the aims of the LEP
- Inconsistent with the objectives of the relevant EPIs
- Inconsistent with the objects of the Environmental Planning and Assessment Act 1979

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council , as the consent authority REFUSE Modification Application No. Mod2020/0458 for Modification of Development Consent Modification of Development Consent DA2019/0887 granted for subdivision of land into 24 community title lots comprising 22 residential lots and 2 residue lots on land at Lot 25 DP 5464, 2 Macpherson Street, WARRIEWOOD, subject to the reasons outlined as follows:

1. The proposal is contrary to Section 7.11(6) of the Environmental Planning and Assessment Act 1979 which sets out provisions for the imposition of conditions requiring contributions towards the provision or improvement of amenities and services. The proposal is contrary to the Warriewood Valley Development Contributions Plan, Amendment 16, Revision 3 2018 which requires a monetary contribution of \$1,320,770.41 payable to Northern Beaches Council for the provision of local infrastructure and Services.
2. The proposal to be contrary to Section 4.15(1) (iii) of the EPA Act in that the proposed development will have a detrimental economic impact on the locality in that the proposed development seeks to reduce the amount of contributions payable for the provision of local infrastructure and services. As such, the proposal is not in the public interest.

In signing this report, I declare that I do not have a Conflict of Interest.

Signed



Anne-Marie Young, Principal Planner

The application is determined on 03/12/2020, under the delegated authority of:



Lashta Haidari, Acting Development Assessment Manager