

Strategic Planning Referral Response

Application Number:	Mod2018/0617
To:	Rebecca Englund
Land to be developed (Address):	Lot 31 DP 5464 , 31 Warriewood Road WARRIEWOOD NSW 2102 Lot 30 DP 5464 , 29 Warriewood Road WARRIEWOOD NSW 2102

Officer comments

Consent for DA N0182/13 for a 40-lot subdivision and construction of associated infrastructure was issued by the Land & Environment Court on 23 October 2014. Condition C19 (as amended) requires a contribution of \$1,998,815.64 and dedication of 3,308m² of creek corridor land. Modification application MOD2018/0617 seeks to amend Condition C19 to reduce the area of creek corridor land to be dedicated to Council and increase the cash contribution to reflect the reduced land dedication.

The Warriewood Valley Section 94 Contributions Plan No.15 Amendment 16 was in force at the time N0182/13 was determined. In relation to creek corridors the Contributions Plan advises:

“The corridors will generally comprise a total width of 100 metres comprising a 50 metre wide multi-function corridor with a 25 metre private landscape buffer strip each side... The pos.

The approved Plan of Subdivision for N0182/13 identifies the rear property boundary as the proposed centre line of the creek. The quantum of creek land to be dedicated was calculated as 25m from the rear property boundary to ensure the delivery of half of a 50m wide public creek corridor in accordance with the Contributions Plan. This area totalled 3,308m². The value of creek land to be dedicated to Council was calculated at \$146.67/m² as identified in Table 6.2 of the Contributions Plan.

The quantum of creek corridor land to be dedicated to Council was based on the Applicant’s submitted plans and calculated in accordance with the applicable Contributions Plan. The 25m creek corridor area is to be measured from the rear property boundary. To avoid any doubt, Condition C19 will be amended to remove reference to the measurement from Narrabeen Creek.

During the development of the subject sites a water management basin was constructed adjacent to the land to be dedicated to Council. It appears that the outer wall of the basin encroaches on the land to be dedicated to Council. Council will not accept dedication of creek land that contains private water management infrastructure. Mod2018/0617 seeks to reduce the area of creek land to be dedicated to 3,151m² which will ensure the water management basis remains in private ownership.

The Warriewood Valley Section 94 Contributions Plan No 15, Amendment 16 Revision 3 was adopted by Council in August 2018 and is currently in force. Table 4 in this Plan identifies that creek corridor land to be dedicated on Buffer 1j and 1k totals 3,308m². The Contributions Plan also advises:

“Noting that the position of the creek centreline has meandered over the years, to avoid confusion, the area of creek line required to be dedicated to Council is to be measured as 25 metres from the current rear property boundary.”

The modification application is seeking a variation to the total quantum of land to be dedicated and the width of the creek corridor identified in the Contributions Plan. Generally Council does not support any variations to the Contributions Plan however this is a unique circumstance that threatens to stall development and significantly delay the delivery of a public creek corridor. In this instance the encroachment of the water management basin is relatively minor in nature. The proposed reduction in creek dedication is only 157m² or 4.7%. Subject to confirmation from all other referrals that a reduced creek width in this location will not cause any adverse flooding impacts to adjacent or downstream properties and the creek corridor will still function as intended, the proposed reduction can be supported by the Principal Development Contributions Officer subject to the imposition of conditions requiring an appropriate monetary offset. The monetary offset will be calculated based on the value of the land identified in the Contributions Plan at the original time of approval, being \$146.67, and adjusted with the applicable Consumer Price Index at the time of payment.

Notwithstanding the above, if Council staff were to support a reduced quantum of land dedication there may be delegation issues which should be considered. The Contributions Plan clearly identifies the area of creek land to be dedicated on the development site and is an adopted Council Policy. I understand that the EP&A Act provides Council staff no discretion in imposing a condition that has been calculated in accordance with a contributions plan. Advice has been sought to confirm that a resolution of Council can authorise the Applicant’s proposed variation to the standards in the Contribution Plan. Draft conditions of consent have been provided however they may be subject changes pending the outcomes of the advice.

Strategic Planning Conditions:

FEES / CHARGES / CONTRIBUTIONS

Section 94 Contribution - Creekline corridor on the property

Consent condition B1 is to be amended as follows:

The development is to be staged in the following manner:

Stage 1 – Excavation and demolition works, site works and services in part or whole, subdivision to create 11 Torrens Title residential lots, construction of temporary road 6.5m wide on proposed Lot 7 and two residue lots (Lots 12 and 13), with Lot 13 being the area 3,151m². ~~3,308m² (measured 25m from the centreline of Narrabeen Creek).~~

Stage 2A – Construction of temporary road 6.5m wide (on proposed Lot 16), internal access streets and section of Lorikeet Grove, water management facilities, drainage and subdivision of residue lot (Lot 12) to create 21 residential lots, 1 residue lot and 1 common lot under Community Title, and the dedication of Lorikeet Grove section and Narrabeen Creek corridor to Pittwater Council.

Stage 2B – Subdivision of residue lot to create 8 residential lots under Community title.

Stage 3 – Removal of the temporary road, 6.5m wide on Lots 7 and 16 and of the temporary turning bay for service vehicles.

Consent condition C19 is to be amended as follows:

- (i) The following is to be made for the provision of public infrastructure and services pursuant to s 94 of the *Environmental Planning and Assessment Act 1979*:
 - a. Payment of a ~~total~~ cash contribution of \$1,936,715.64. The cash component of the Development Contribution is to be paid prior to the issue of the Subdivision Certificate or 1 September 2016 (whichever is the earlier to occur):
 - b. Dedication of 3,151m² of creekline corridor reduced from 3,308 m² ~~of creekline corridor~~. The creekline corridor land dedication is to be effected prior to or on registration of the subdivision for Stage 2 in accordance with Condition E4. (Note: the creekline corridor land dedication has been deducted from the cash contribution which would otherwise be payable. The base (unimproved) valuation for the creekline corridor is \$146.67 per m² based on the current Section 94 Contributions Plan adopted 1 September 2008, Table 6.2, page 43, wherein the property is in Buffer Area 1).
- (ii) The proponent/applicant is to provide a bank guarantee:
 - a. For the full amount of the cash contribution of \$1,936,715.64;
 - b. In which the bank unconditionally pays the guaranteed sum to Council as requested by Council in writing not earlier than 12 months from the provision of the guarantee or completion of the work;
 - c. In which the bank must pay the guaranteed sum without reference to the applicant/proponent or landowner or other person who provided the guarantee, and without regard to any dispute, controversy, issue or other matter relating to the development consent or the carrying out of development;

- d. In which the guarantee shall not be cancelled until such time as the cash contribution is paid;
- e. In which the applicant/proponent is responsible for any charges associated with establishing or operating the bank guarantee.
- (iii) Interest shall accrue on any unpaid balance of the cash contribution identified above at the rate of 4% per annum, which interest shall accrue from the issue of the first construction certificate or 1 January 2016, whichever is the earlier to occur. The interest is to be paid at the same time as the payment of the cash contribution.
- (iv) In accordance with the Warriewood Valley Section 94 Contributions Plan No.15, the proponent/applicant may negotiate with Council for the direct provision of other facilities and services and dedication of land (other than the dedication of ~~3,151m²~~ ~~3,308 m²~~ of land stated above) in lieu of the cash contribution above (or any portion of that cash contribution) or deferral of payments through an agreement for Material Public Benefit under the Warriewood Valley Section 94 Contributions Plan No.15. Where an agreement for Material Public Benefit is sought regarding the payment of cash contributions, the agreement for material public benefit is to be finalised and signed by the proponent and Pittwater Council prior to the issue of the first construction certificate.
- (v) To account for the reduced creekline corridor land dedication in C19(i)b, payment of an additional cash contribution of \$23,027.19 is required. This contribution is to be paid prior to the issue of any Subdivision Certificate for Stage 2. Before payment the contribution will be adjusted by the latest CPI figures from the date of original consent, in accordance with the Warriewood Valley Contributions Plan Amendment 16 (as amended).

Consent condition E4 is to be amended as follows:

The dedication of ~~3,151m²~~ ~~3,308m²~~ of Narrabeen Creekline corridor (~~measured 25m from the centreline of Narrabeen Creek~~) is to be effected prior to or through the registration of the Subdivision Plan the subject of the Subdivision Certificate for Stage 2A. All structures and introduced/contaminated fill material within the creekline corridor land is to be removed prior to the creekline corridor land being dedicated to Council.