

Strategic Planning Referral Response

Application Number:	DA2024/1079
Proposed Development:	Community title subdivision into five (5) lots and civil works
Date:	24/10/2024
To:	Stephanie Gelder
Land to be developed (Address):	Lot 3 DP 1115877 , 53 B Warriewood Road WARRIEWOOD NSW 2102 Lot 3 DP 942319 , 53 Warriewood Road WARRIEWOOD NSW 2102 Lot 2 DP 1115877 , 53 A Warriewood Road WARRIEWOOD NSW 2102

Officer comments

INTRODUCTION

On 26 August 2024, Strategic and Place Planning received a referral request for application (DA2024/1079).

DA2024/1079 seeks consent for subdivision of 3 existing parcels under Community Title into 5 super lots, and civil works for the infrastructure (internal roads and water management infrastructure) for the subdivision.

SUBJECT SITE

The subject site consists of whole area of 53 Warriewood Road, Warriewood (Lot 3 DP 942319) (Council owned drainage reserve), 53A Warriewood Road, Warriewood (Lot 2 DP 1115877) and 53B Warriewood Road, Warriewood (Lot 3 DP 1115877).

All the subject sites are zoned R3 Medium Density Residential under Pittwater Local Environmental Plan (LEP) 2014 and are flood affected.

The subject sites are known as Buffer 1d (53 Warriewood Road), Buffer 1b (53A Warriewood Road) and Buffer 1c (53B Warriewood Road) in the Pittwater LEP 2014 and the endorsed Warriewood Valley Strategic Review Report.

The site fronts and is accessed from Warriewood Road, while a section of Narrabeen Creek is at the rear boundary.

The properties adjoining the subject sites on either side have been subdivided into individual allotments.

Lorikeet Grove is located along the outer 25 meters of the creekline corridor and joins Pheasant Place that runs from Warriewood Road at the site's southeastern boundary.

The site has approximately 78 metres of frontage along Warriewood Road.

A dwelling and shed exists on each allotment at 53A and 53B Warriewood Road, Warriewood.

CHRONOLOGY

Since 2014, several consents were issued for the subject site however these consents have since

been surrendered to Council.

The current proponents for this DA purchased 53A Warriewood Road and 53B Warriewood Road, Warriewood in 2021 and 2023 respectively.

PROPOSED DEVELOPMENT

DA2024/1079 seeks consent for a two-phase subdivision of the subject site.

Phase 1 includes subdividing the subject site to create two lots and a road reserve, namely:

- Lot 1 designated as a public reserve to be transferred to Council,
- Lot 2 will be a community title lot, and
- The road reserve containing Lorikeet Grove designated as a public road.

Phase 2 involves the subdivision of proposed Lot 2 (the community title lot) as follows:

- Lot 1: to contain the private internal road shown as Road 1 and Road 2
- Construction of the western side of already partially-constructed Pheasant Place (a private road)
- Lot 2: Residential allotment
- Lot 3: Residential allotment that will be subject to future DA.
- Lot 4: Residential allotment that will be subject to future DA.
- Lot 5: Residential allotment that will be subject to future DA.

ASSESSMENT OF DA

Strategic Commentary

An initial assessment of the two-phase subdivision based on Plan of Subdivision dated 17 April 2024 and Statement of Environmental Effects dated 23 August 2024, raises the following concerns:

A. Phase 1 Subdivision is a paper subdivision only and the submitted plans does not propose construction of development-enabling infrastructure.

Proposed Lot 1 denoted as 'Future Public Reserve' (3,980m²) is to be transferred to Council, and appears to show the land comprising the inner and outer creekline corridor land. Proposed Lot 2 shown in two parts is to be a community title lot, and is to be re-subdivided under Phase 2 of this DA.

1. Council is not prepared to accept:

a) all the land denoted as Lot 1 "Future Public Reserve" without a Planning Agreement in place. Council's Development Contributions Plan applying to this land only identifies the inner 25m creek line corridor land for purchase under that Contributions Plan.

b) the land showing the road reserve (Lorikeet Grove) without the section of Lorikeet Grove being constructed first.

2. The applicant is seeking a paper subdivision for Phase 1 only, which raises the following critical matters:

a) The Lot 1 'Future Public Reserve' is not acceptable to Council unless it is only containing the inner creekline corridor land, being the land measured 25m from the centreline of the creek, in accordance with the Warriewood Valley Contributions Plan.

Additionally, transferring the inner creekline corridor land to Council at this time ahead of this inner creek corridor being rehabilitated to contain the 1%AEP flood event may cause difficulty for the overall

development of the site progressing as the majority of the site remains flood affected land.

Additionally, Council's timeframe to undertake the rehabilitation of this section of inner creek line is anticipated to commence in FY2026/27 subject to budget and priorities; and may not suit the applicant's own development programming.

- b) A section of share path is required next to the creek on the north of the subject site which is not shown on submitted DA plans.
- c) Council is not accepting the land containing Lorikeet Grove without assurance that this section of Lorikeet Grove will be delivered by this development, ensuring that future residential development on this site has full vehicular ingress/egress connecting to the surrounding road network.
- d) The proposed lot 2 is a residential lot that is still affected by flooding. The creation of a residential lot should be free from flooding. It is recommended that a water management report be prepared that demonstrates that proposed lot 2 will be flood free.

B. Phase 2 seeks to subdivide proposed lot 2 (Community Title Lot) to create 4 Torrens Title lots, and the balance of the lot accommodating 2 new internal roads and western section of Pheasant Place (already a private road partially completed). The 4 Torrens Title lots are shown on the submitted plans as:

- Lot 2 (a residential lot located on the western side of Lorikeet Grove, with a site area of 421sqm)
- Lots 3, 4 and 5 are superlots for residential accommodation to developed in the future and have the following corresponding site areas of 2,338sqm, 2,082sqm and 4,190sqm.

The following concerns are raised to Phase 2:

- (a) As advised in points 1a) and 2a) above, Council is not accepting additional land beyond the inner 25m creek line corridor to the western edge of Lorikeet Grove. This needs to be part of proposed lot 2 (Community Title Lot).
- (b) Residential lot 2, 421sqm in site area, does not demonstrate it is outside of the outer 25m creek line corridor. As a residential lot, it is assumed it will contain a dwelling in the future and if within the outer 25m creek line is likely to negatively impact the aquatic and riparian vegetation, habitats and ecosystems in this creek corridor.
- (c) No water management report has been submitted to demonstrate that the development including residential lots 2, 3, 4 and 5 will be flood free. Any development of the site should comply with the requirements of the Pittwater LEP 2014 (PLEP) and Water Management Specifications, which include requirements for on-site detention, a maximum impervious area of 50% for the development site and the corresponding site cover for each proposed lot in same, as well as demonstrating how a rehabilitated inner 25m creek line can contain the 1% flood event and compliance with Clause 6.1 (1) objective (b) and Part 6.1 (4) of the PLEP.

The related DCP provisions for water management dictate that the site coverage, both at the sector level and for individual lots, must align with the specifications outlined in the water management report prepared for the

development. Compliance is essential during both development and construction phases to prevent potential water management impacts on adjacent or downstream properties.

(d) Vehicular access to and from residential lots 3, 4 and 5 is required however, there is no plan submitted with the DA. The roads need to demonstrate that they will connect to the adjacent road network including Pheasant Place, a private road under multiple ownerships.

As the proposal shows partial construction of Pheasant Place, owners consents will be required for this element of the development.

(e) No details have been provided regarding the ongoing management and maintenance of the internal roads and the water management facilities.

Council will not be responsible for ongoing management and maintenance of this development-enabling infrastructure.

(f) The future development of residential lots 3, 4 and 5 are the subject of a future DA.

Quantifying the likely dwelling numbers accommodated on these three residential lots will not be undertaken for the purpose of calculating development contributions for residential accommodation since this DA will not generate new dwelling numbers. That will be undertaken with the future consents for development of residential lots 3, 4 and 5 when the dwelling numbers for each lot are certain.

The applicant is to be advised that the permitted dwelling range for 53, 53A, 53B Warriewood Road Warriewood will need to be accommodated wholly on the residential lots proposed under phase 2. The total permitted dwelling range is 31 to 43 dwellings, and this cannot be varied under clause 4.6 of PLEP. Any future development on the residential lots 2, 3, 4 and 5 must as a sum total not be less than 31 dwellings or exceed 43 dwellings otherwise it is prohibited development. To this end, I refer to *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 application as submitted is deficient to allow a full assessment to demonstrate minimal impact is likely if this proposal proceeds. This application as submitted is not supported.

Development Contributions Response

Warriewood Valley Development 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.

Phase 1 shows a proposed lot 1 denoted as 'Future Public Reserve' that contains more than the inner 25m creek line corridor land. As Phase 1 is a paper subdivision only, Council will not accept the inner 25m creek line corridor if:

- there are no supporting plans for the creek line rehabilitation,
- it is not demonstrating that the 1% flood event will be wholly contained within a rehabilitated inner 25m creek line corridor.

Council will not accept any additional creek line land beyond the inner 25m creek line corridor land without a Planning Agreement since only the inner creek line corridor is in the Contributions Plan.

A section of the share path should be shown on the subject property, connecting to the share path on either side of the subject site as part of the DA plans.

Since this application is not proposing any dwellings and the SEE has advised that future DA's will be submitted for future residential development on residential lots 2, 3, 4 and 5, development contributions are calculated at this time. The applicant is therefore advised that the development contributions will be required as part of their future development of the residential lots 2, 3, 4 and 5.

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

RECOMMENDATION

1. This application is not supported due to deficiencies with the information provided for the DA.

2. The applicant is requested to provide the following additional information:

A. An updated subdivision plan showing:

- extent of inner 25m creek line corridor as the only section of creek line land to be dedicated to Council,
- the exact location of residential allotment (lot 2) in relation to inner and outer 25m creek line corridor,
- location of shared pathway demonstrating its connection to the approved pathway on either side (attached).

B. Owners consent from all the owners of Pheasant Place (private road).

C. Detailed design of internal roads (Road 1, Road 2, Lorikeet Grove and part of Pheasant Place).

D. Water management report, prepared in accordance with the Warriewood Valley Water Management Specifications, for the entirety of site, demonstrating that:

- the impervious area for the development site is modelled and that any new allotments complies with the modelled impervious area requirement;
- rehabilitation works of the creek line corridor to contain 1% flood event; and
- all residential lots will be flood free.

E. Details on maintenance schedule including funding for maintenance of the private infrastructure (water management facilities, outer 25m creek line corridor land, internal roads 1 and 2, and Pheasant Place) proposed as a part of this development including details in the event of conflict.

3. The applicant is advised that this site has a dwelling range that it must comply with under Clause 6.1(3) of the Pittwater Local Environmental Plan 2014 otherwise this is prohibited development.

4. When received, the updated subdivision plan and the rehabilitation plans for the inner 25m creek line corridor should be referred back to Strategic and Place Planning 3 for further consideration.

The proposal is therefore unsupported.

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

Responsible Officer.

Strategic Planning Conditions:

Nil.