

Strategic Planning Referral Response

Application Number:	DA2020/1533
Date:	02/06/2021
To:	Jordan Davies
Land to be developed (Address):	Lot 1 DP 1221920 , Dove Lane WARRIEWOOD NSW 2102

Officer comments

Updated Referral Comments (Issued 2 June 2021)

Introduction

This assessment is based on whether Strategic and Place Planning (S&PP) are satisfied with the additional details addresses the concerns initially raised by S&PP's response of 3 March 2021.

The original Strategic and Place Planning Referral dated 03/03/2021 (TRIM: 2021/165361) requested the following information:

1. Details of the proposed dwelling numbers and building footprint on Lots 1, 2 and 3 to ensure the future residential development of each of these lots addressing:
 - a. the site-specific water management and impervious area controls developed in conjunction with detention basin on proposed Lot 4, and
 - b. The distribution of a maximum 22 dwellings being accommodated across these three residential lots.
2. Details on the future ownership and maintenance of Lot 4 including the detention basin contained within it, given that this DA creates this lot and will service the three residential lots the subject of this DA.

Assessment of additional information

Advice below seeks to reconcile how the additional information has addressed S&PP original concerns:

1a. Proposed lots 1, 2 and 3 now show the building footprint of residential accommodation. Separate DA's for the residential accommodation on each of these lots is subject to future DA.

The subdivision is proposed to be Torrens Title and the applicant has now submitted an 88B Instrument. Concern is still raised on the ongoing maintenance and management of the water management facility; in particular as the lot containing the water management facility will form part of Lot 1, 2 and 3 and approach in the event of dispute between the 3 owners.

Legal advice should be sought on the 88B Instrument to specifically address dispute resolution and the maintenance of the water management facility for the life of the development.

1b. This development site is part of the former 204 Garden Street and 2, 2A Orchard Street Warriewood; and there is a remaining 22 new dwellings still to be realised. Proposed lots 1, 2 and 3 now show the building footprint of residential accommodation demonstrating there will be 22 dwellings across these 3 lots. Separate DA's for the residential accommodation on each of these lots is subject to future DA.

As this DA is not proposing any new dwellings on Lots 1, 2 and 3, development contributions are not

required/calculated at this time.

2. In addition to the discussion to 1a immediately above, there is not enough certainty regarding the future management of the detention basin. This proposal presents a risk to Council:

- a. If there were to be a dispute between the three owners who is the adjudicator?
- b. How is the basin managed after the 5 year agreement expires?
- c. How can the basin be managed effectively across the 3 allotments?

Given these specific risks and its implications on Council, S&PP are not supportive of this DA. It is acknowledged that it is up to the Assessing Officer to consider these matters among others.

Development Contributions

The Warriewood Valley Section 94 Contributions Plan Amendment 16 Revision 3 (the Plan) applies to all new developments in the Warriewood Valley Release Area. The Plan applies a levy to fund the infrastructure improvements required to support the future anticipated population in the release area. Nonetheless, section 2.5.1 of the Plan reads as follows:

Developments Involving Land Subdivision Only - Warriewood Valley S94 Contributions Plan

Where the land subdivision will create a lot to accommodate multiple dwellings being constructed on this lot, and the actual quantum of dwellings is unknown (i.e. not part of the development consent for the land subdivision), the development contribution is not to be applied to this lot at this time. The contribution must be applied at the time when Council consents to the actual number of dwellings to be constructed on this lot.

As this Development Application involves Land Subdivision only, development contribution is not to be required to be paid for this Development Application as the contribution can only be calculated when there is certainty on the quantity of new dwellings being approved by Council. It is understood that the residential development on proposed lots 1, 2 and 3 (being the lots being created by this DA) will be subject to a future DA(s).

RECOMMENDATION

The proposal is not supported due to the risks on Council regarding the uncertainty with the management of the water management facility. Legal advice should be sought on the 88B Instrument to specifically address dispute resolution and the maintenance of the water management facility for the life of the development.

There are no conditions (specific to S&PP). Nonetheless, the applicant should be advised of the following:

This DA is not subject to development contributions under the Warriewood Valley Section 94 Contributions Plan Amendment 16 Revision 3

Development contributions will be imposed on future consents for the construction of dwelling(s) on the three residential lots being created by this Development Application.

Original Referral Comments (Issued 2 March 2021)

Applicant's Description of the DA

The subject Development Application DA2020/1533, seeks development consent to subdivide the subject property into 4 Torrens Title lots. The applicant's Statement of Environmental Effects (SEE),

prepared by Willow Tree Planning states:

The primary objective of the proposal is to create appropriately sized residential lots (proposed Lots 1-3) which would be to facilitate future residential accommodation. Proposed Lot 4 will remain as a detention basin (existing) which will be utilised by proposed Lot 1-3. The detention basin was previously approved under DA N0379/14 (refer to Table 1 [in SEE]).

It is important to note that the future development and residential accommodation types for proposed Lots 1-3 are yet to be determined however, given the size and dimensions of these lots, it is considered reasonable to assert that these lots would be capable of catering to a range of residential accommodation typologies and are therefore suitable for the Site and its context...

Based on a review of the existing development and development consents across the Site and Section 901A, the following yield applies:

1. Stage 1 allotments – 6 dwellings
 2. Stage 3 allotments – 27 dwellings
 3. Stage 4 allotments – 3 dwellings [the subject DA].
- Total = 36 dwellings.

The forecast dwelling yield is therefore consistent with the yield contained with the Strategic Review and with Clause 6.1(3) of the PLEP2014.

Based on the submitted documents, the proposal is surmised as follows:

Lot 1 = 920.8m²

Lot 2 = 1330m²

Lot 3 = 1325m²

Lot 4 = 1203m² and containing the detention basin and is to service the 3 proposed lots

The Site

The subject property is a newly registered allotment that was subject of previously approved subdivisions (undertaken in three separate DA's) of the original parcels No. 204 Garden Street and 2, 2A Orchard Street Warriewood. The detention basin on proposed Lot 4 is an existing basin approved under consent N0379/14.

Access onto the 4 proposed lots will be from the newly constructed Dove Lane.

Assessment of the DA2020/1489

This DA is a paper subdivision to create 4 lots as there are no earthworks required to facilitate the subdivision.

Nonetheless, the SEE has erroneously stated this DA will result in 3 dwellings particularly given the size and dimensions of proposed Lots 1, 2 and 3. The overall subdivision/development of the parent lots (No. 204 Garden Street and 2, 2A Orchard Street Warriewood) is permitted up to 53 dwellings, therefore based on existing approvals there are up to 22 dwellings still to be realized.

These 22 dwellings could be spread across the proposed Lots 1, 2 and 3 (to be created by this DA).

I raise the following concerns:

(1) Proposed Lots 1, 2 and 3 will contain residential accommodation in the future and should be the subject of future DA (not a Complying Development Certificate pathway) for the following reasons:

- a) Each of the proposed lots is subject to site-specific water management and impervious area requirements developed for the overall development of the parent parcels (namely No. 204 Garden Street and 2, 2A Orchard Street Warriewood) that these new lots are to be created from.
- b) Clause 6.1 of Pittwater LEP details the permissible dwelling range for each sector/buffer area and is to be read in conjunction with the Warriewood Valley Strategic Review; wherein any proposal that results in exceeding the permissible dwelling numbers for same inherently acts as a prohibition. The Complying Development Certificate pathway however will need to consider the permissibility based on Clause 6.1 and not just the zoning table (see TRIM 2020/501044).

(2) The existing detention basin on proposed Lot 4 is inferred to only service proposed Lots 1, 2 and 3. Nonetheless, it is uncertain on the long-term ownership and ongoing maintenance regime of the detention basin and Lot 4.

Additional Information should be requested to specifically address the 2 above-mentioned matters:

Details of the proposed dwelling numbers and building footprint on Lots 1, 2 and 3 to ensure the future residential development of each of these lots addressing:

- the site-specific water management and impervious area controls developed in conjunction with detention basin on proposed Lot 4, and
- the distribution of a maximum 22 dwellings being accommodated across these three residential lots.

Details on the future ownership and maintenance of Lot 4 including the detention basin contained within it, given that this DA creates this lot and will service the three residential lots the subject of this DA.

Additionally, the applicant should be advised of the following:

The SEE has erroneously stated that this DA will result in 3 dwellings particularly given the size and dimensions of proposed Lots 1, 2 and 3. Proposed Lots 1, 2 and 3 are of a size and dimensions that can accommodate in excess of a single dwelling house on each.

The overall subdivision/development of the parent lots (No. 204 Garden Street and 2, 2A Orchard Street Warriewood) is permitted up to 53 dwellings, therefore based on existing approvals there are up to 22 dwellings still to be realized.

A maximum 22 dwellings can be distributed across proposed Lots 1, 2 and 3 (being the balance of permitted dwellings still to be accommodated on the overall development at former No. 204 Garden Street and 2, 2A Orchard Street Warriewood). Any more than 22 dwellings will exceed the maximum permitted dwelling range and will result in those dwellings being prohibited development.

Given this DA does not contemplate the actual dwelling numbers for Lots 1, 2 and 3, the development contribution amount payable will be imposed on future consents for the construction of dwelling(s) on each of the three residential lots being created by this DA.

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.