

ITEM 12.2 PUBLIC EXHIBITION OF DRAFT PLANNING AGREEMENT AT 16 MACPHERSON STREET, WARRIEWOOD

PURPOSE

The purpose of this report is to seek Council's endorsement to publicly exhibit a draft Planning Agreement for 16 Macpherson Street, Warriewood.

EXECUTIVE SUMMARY

- Council has received an Offer to Enter into a Planning Agreement with the developer of 16 Macpherson Street, Warriewood which involves the developer delivering infrastructure as Works-In-Kind, as the infrastructure proposed is identified in the Warriewood Valley Contributions Plan.
- A Development Application (DA) for the construction of 28 dwellings at 16 Macpherson Street, Warriewood was submitted concurrently with the Offer to Enter into Planning Agreement and was approved by the Land and Environment Court on 28 November 2024.
- Council's Contributions Panel has considered the Offer and determined there is a public benefit arising from the Offer, including both financial benefit to Council and broader community benefit arising from the delivery of the infrastructure by the developer at the time of the project being constructed.
- A draft Planning Agreement has been prepared and is now presented to Council for consideration.
- If Council agrees, the draft Planning Agreement and supporting documentation will be publicly exhibited in accordance with statutory requirements with the outcomes of the public exhibition reported to Council.

RECOMMENDATION

That:

1. Council place the draft Planning Agreement for 16 Macpherson Street, Warriewood and supporting documentation on public exhibition.
2. The outcomes of the public exhibition be reported to Council.

BACKGROUND

A Planning Agreement is a legal arrangement made between a Developer/Landowner and Council to facilitate the delivery of a public benefit. Public benefits may include the dedication of land at no cost to Council, the payment of a monetary contribution and/or the provision of infrastructure works.

Planning Agreements are voluntary and initiated by the developer.

The legal and procedural framework for Planning Agreements is set out in Division 7.1 of Part 7 of the *Environmental Planning and Assessment Act 1979* (the Act) and Division 1 of Part 9 of the *Environmental Planning and Assessment Regulation 2021*.

In June 2022, Council adopted its Planning Agreements Policy (Council’s Policy) and accompanying Guidelines to help guide developers on Council’s preferred approach to Planning Agreements. It identifies legal and procedural obligations to be satisfied by the developer, and details the criteria Council uses to assess an Offer to Enter into a Planning Agreement.

Council’s assessment of an Offer and progression of a Planning Agreement to execution is in accordance with legislative requirements, the Planning Agreements Practice Note (Department of Planning, Industry and Environment, February 2021) and Council’s Policy.

The site

The subject site is 16 Macpherson Street, Warriewood (Lot 4 DP 553816). A dwelling and operations relevant to Foleys Nursery are currently on site.

The subject site is rectangular in shape and contains a section of Narrabeen Creek as its rear boundary. It is located to the north of the Macpherson Street-Brands Lane intersection, see Location Map.

The subject site is zoned R3 Medium Density Residential under the Pittwater Local Environmental Plan (LEP) 2014. The site is identified as Sector 303 on the Pittwater LEP Urban Release Area Map and in the Warriewood Valley Strategic Review Report.

Location map



Development application (DA2023/0669)

On 31 May 2023, DA2023/0669 was lodged seeking consent to the demolition of the existing dwelling and nursery, construction of 28 dwellings, infrastructure, roadworks, tree removal, landscaping, community title subdivision, and the rehabilitation and dedication of the creek line corridor to Council. The DA was the subject of an appeal in the Land and Environment Court (the L&E Court) on a deemed refusal basis (DA not determined within 40 days).

During the L&E Court proceedings, the Court was aware of the Offer to Council. On 28 November 2024, the L&E Court approved the DA by way of a Deferred Commencement Consent. The Deferred Commencement condition requires a Planning Agreement to be in place between Council and the developer before the consent can operate.

The deferred commencement condition reads as follows:

Under section 88(1)(c) of the EP&A Regulation, the consent authority must provide the terms of all conditions and reasons for imposing the conditions other than the conditions prescribed under section 4.17(11) of the EP&A Act. The terms of the conditions and reasons are set out below.

DEFERRED COMMENCEMENT CONDITIONS**1. Planning Agreement**

The developer shall enter into a "Planning Agreement" with Northern Beaches Council pursuant to section 7.4 of the *Environmental Planning and Assessment Act 1979* to deliver work identified in the Warriewood Valley Contributions Plan and generally consistent with the developer's amended offer dated 15 November 2024 and associated documents and plans.

The Offer includes the following items of "Contribution Works" as referenced in the Contributions Plan and in accordance with Council's Voluntary Planning Agreement Policy, dedication of 1091m² land to Council for nil consideration and at no cost to Council and free of all encumbrances:

- a) Item 23 (Pedestrian and Cycleway Schedule) Shared Path Brands Lane
- b) Item 2.62B (Multi-functional Creek Line Strategy) Rehabilitation works of Narrabeen Creek at Sector 303
- c) Clause 5.2.2 – Creek line corridor land dedication at Sector 303

The Executed Planning Agreement is to be registered on the title of the land before this condition is satisfied. Upon execution, there is to be provision of a bank guarantee or bond to the satisfaction of Council for the total value of the contribution works.

Note: Please be advised that no decision as to whether Council will enter a Planning Agreement has been made and there is no representation that such a decision will be made until the draft Planning Agreement has been exhibited, assessed and determined by Council in accordance with the *Environmental Planning and Assessment Act 1979*.

Evidence required to satisfy the deferred commencement condition/s must be submitted to Council within two (2) years of the date of this consent, or the consent will lapse in accordance with Section 76 of the Environmental Planning and Assessment Regulation 2021. This evidence is to be submitted along with a completed 'Deferred Commencement Document Review Form' (available on Council's website) and the application fee, as per Council's Schedule of Fees and Charges.

The Court’s consent also incorporates conditions relating to the design of the shared path, and water management and flooding including the design of creekline corridor rehabilitation works to contain the 1% AEP flood event.

DISCUSSION

Offer to enter into a planning agreement

On 14 August 2023, an Offer to Enter into a Planning Agreement was lodged by Boston Blyth Fleming Planning Consultants, on behalf of Warrimac Pty Limited (the developer for 16 Macpherson Street, Warriewood).

The Offer proposes that the developer delivers on behalf of Council, key infrastructure items listed in the Warriewood Valley Contributions Plan (the Contributions Plan), namely:

- construction of the shared path along Brands Lane from Narrabeen Creek to Macpherson Street (Item 23 of the Pedestrian and Cyclist Network Strategy)
- rehabilitation works in the inner creekline corridor of Narrabeen Creek adjoining Sector 303 (Item 2.62B of the Multi-functional Creekline Strategy)
- dedication of the inner creekline corridor of Narrabeen Creek adjoining Sector 303 (1,091m²) (Item 303 of Multi-functional Creek Line Strategy (Land acquisition)).

The delivery of the infrastructure would result in a reduction in the cash contribution amount payable to Council as required under the Contributions Plan, given the delivery of some of the infrastructure detailed in the Contributions Plan.

On 22 February 2024, the Contributions Panel considered the Offer and determined there is a public benefit arising from the Offer.

On 15 November 2024, a revised Offer to Enter into a Planning Agreement was lodged to specifically reflect the value of the abovementioned infrastructure in 2024/2025 dollars. This updated Offer is now the subject for consideration and is Attachment 1.

Assessment of the offer

• **Infrastructure as ‘Works-in-Kind’**

As the infrastructure items offered are listed in the adopted Contributions Plan, delivery of the abovementioned infrastructure as a ‘Works-in-Kind’ Offer means the developer is seeking an offset in the total monetary contribution to be paid to Council. To this end, the Offer includes costing for the infrastructure in 2024/25 dollars as follows:

- share path – \$73,012
- creekline rehabilitation works – \$158,899
- creek land dedication of 1,091m² – \$175,696

The agreed value of the proposed infrastructure will be deducted from the total contributions amount required to be paid to Council.

• **Public benefit of the offer**

Under the adopted Contributions Plan, Council anticipated the creekline rehabilitation works (for this section of Narrabeen Creek) and the shared path to be delivered in FY2029/30 subject to development contributions being available. The Offer will now mean that this infrastructure will be delivered ahead of the planned timeframe and is delivered at the same time as the development that will benefit from it most.

The broader area of Warriewood Valley will also benefit from the early delivery of the creekline rehabilitation works as it is required to convey the 1% AEP flood event which will contribute to improving the flood risk in the area.

Further, the broader area will benefit from the early delivery of the shared path by improving connectivity with the established shared paths in Warriewood Valley for use by the community.

The early delivery of the proposed infrastructure also contributes to having Council-planned infrastructure for Warriewood Valley being completed.

The developer is responsible for initial maintenance of the rehabilitated section of inner creekline corridor land up to a 5 year period to ensure the vegetation planted is able to mature during that time. This section of creekline will be transferred into Council ownership well before the 5 year maintenance period expires.

Council will still receive a cash payment for development contributions of \$1,625,627 from the developer, as required by a condition of consent for DA2023/0669.

The draft Planning Agreement

The draft Planning Agreement was prepared by both parties and their legal representatives. It is noted that during progression of a draft Planning Agreement to execution, the developer has a caveat on the site as the developer is not yet the owner of the site. This is considered satisfactory for the purpose of progressing the Planning Agreement.

The Draft Planning Agreement has been agreed to by the developer and is at Attachment 2.

The draft Planning Agreement incorporates the following elements:

1. Timing of the developer’s obligations including appropriate inspections by Council staff and the dedication to Council of the inner 25m creekline corridor land following rehabilitation work.
2. Updated design drawings, submitted as part of the Development Application, for the construction of the shared path and creekline corridor rehabilitation works as well as the subdivision plan detailing the inner 25m creekline land dedication to Council.
3. Agreed value of the infrastructure items (in Table 1) to be delivered by the developer for the purpose of offsetting the total contributions amount of \$2,033,235.

Table 1: Agreed Value of Infrastructure

Infrastructure proposed to be delivered by Developer	Value (in 2024/25 dollars)
Construction of the shared path	\$73,012
Creekline rehabilitation works	\$158,900
Creekline land (inner 25m creekline corridor) of 1,091m ²	\$175,696
Total	\$407,608
Total value (rounded)	\$407,608

Council’s Contributions Panel has reviewed the draft Planning Agreement and is satisfied with the stated obligations and the value of the infrastructure items in the draft Agreement.

CONSULTATION

If Council agrees, the draft Planning Agreement and supporting documents will be publicly exhibited in accordance with the *Environmental Planning and Assessment Act 1979* and the Northern Beaches Community Participation Plan (Plan Making and Development Assessment). The Planning Agreement is required to be placed on public exhibition for a minimum of 28 days.

TIMING

If Council agrees, the public exhibition will commence following Council's decision.

The outcomes of the public exhibition will be reported back to Council for consideration

FINANCIAL CONSIDERATIONS

The recommendations of this report pose no negative financial impact to Council.

The draft Planning Agreement facilitates the delivery of infrastructure by the Developer, rather than Council, ahead of Council's delivery schedule.

The value of the Works-In-Kind infrastructure totals \$407,608 (in 2024/25 dollars).

The draft Planning Agreement does not exclude the developer from paying development contributions, as required by a condition of consent for DA2023/0669. It does however account for the value of the Works-in-Kind infrastructure and reduces the actual monetary contribution amount payable to Council to \$1,625,627 (that amount is indexed at time of payment).

All costs associated with the preparation and execution of this Planning Agreement will be borne by the developer.

GOVERNANCE AND RISK CONSIDERATIONS

The Offer has been considered by Council's Contributions Panel to ensure that there is a public benefit arising from the proposed Planning Agreement and to ensure Council's risk and liabilities are minimised if the infrastructure is delivered by the developer and transferred into Council ownership.

The preparation of the draft Planning Agreement has occurred in accordance with the legislative requirements of Division 7.1 of Part 7 of *Environmental Planning and Assessment Act 1979* and Division 1 of Part 9 of the Environmental Planning and Assessment Regulation 2021, the Planning Agreements Practice Note (Department of Planning, Industry and Environment, February 2021) and Council's Policy.

ENVIRONMENTAL CONSIDERATIONS

The proposed actions in this report will result in a beneficial environmental outcome by ensuring the rehabilitation of a section of Narrabeen Creek to facilitate conveyance of the 1% AEP flood event being contained within the creek and enhancing the biodiversity values of the riparian corridor.

SOCIAL CONSIDERATIONS

The recommendations in this report will have a positive social outcome for the Warriewood Valley community through identified infrastructure being delivered as Works-In-Kind infrastructure ahead of Council's anticipated delivery in FY2029/30.

LINK TO STRATEGY

This report relates to the Community Strategic Plan Outcomes and Goals:

- Protection of the environment – Goal 1 Our bushland, coast and waterways are protected for their intrinsic value.
- Housing, places and spaces – Goal 10 Our community has access to diverse and affordable housing options to meet their current and evolving needs.
- Good governance – Goal 19 Our Council is transparent and trusted to make decisions that reflect the values of the community.
- Partnership and participation – Goal 21 Our community is engaged in decision making processes.

Reporting team	Strategic & Place Planning
TRIM file ref	2024/758977
Attachments	⇒1 Offer to Enter Into a Planning Agreement with Northern Beaches Council dated November 2024 (Included In Attachments Booklet) ⇒2 Draft Planning Agreement (for exhibition) (Included In Attachments Booklet)