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<b>C12.7</b>	<b>Expanding Complying Development to Include Two Storey Medium Density Housing Type</b>
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**Meeting:** Sustainable Towns & Villages Committee

**Date:** 15 February 2016

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**COMMUNITY STRATEGIC PLAN STRATEGY:** Land Use & Development

**COMMUNITY STRATEGIC PLAN OBJECTIVE:**

- To effectively respond to state and regional Planning initiatives

**DELIVERY PROGRAM ACTION:**

- Monitor legislative and regulatory reforms relating to land use planning and respond and advocate on behalf of Council
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## **1.0 EXECUTIVE SUMMARY**

The Department of Planning and Environment (DP&E) in late November 2015 has placed on exhibition *“One Part of the ‘Missing Middle’ - Options for Low Rise Medium Density Housing As Complying Development – Volume 1 - Discussion Paper’ and Volume 2 Background Paper”* (the Discussion Paper) to seek feedback from the community and industry on the proposal to expand complying development provisions to incorporate dual occupancies, manor homes and townhouses and terraces up to a maximum of ten dwellings.

Please note that this exhibition is subsequent to the State Environmental Planning Policy (Exempt and Complying Development Codes) Amendment (Miscellaneous and Affordable Housing) 2015 which was released on 10 October 2015 and reported to Council on 21 December 2015.

State Environmental Planning Policy (Exempt and Complying Codes) 2008 (the Policy) was introduced in 2008 and has subsequently been expanded over the years to include houses and granny flats, commercial and retail shops and industrial development. Complying development is a combined planning and construction approval for straightforward development that can be determined through a fast track assessment by a Council or private certifier.

The Discussion Paper proposes to expand the Policy to permit medium density development in order to assist in the delivery of more housing, provide greater housing choice and better design outcomes for medium density development across the State.

The proposed amendments to the Policy seek to include a range of medium density developments, including:

- Dual occupancies (attached and traditional ‘duplex’ style) on a single lot with a minimum lot size of 400m<sup>2</sup>,
- Manor house developments of 3-4 apartments on a lot with a minimum lot size of 500m<sup>2</sup>.
- Town house or terrace style housing developments up to 10 dwellings with a minimum lot size of 600m<sup>2</sup>, and
- A combination of all development types resulting in 3-10 dwellings on the same lot.

The Discussion Paper does not set definitive controls, however a number of standards are proposed including minimum lot sizes, setbacks and parking standards.

The Discussion Paper is currently on exhibition with comments and submissions invited up to the 15 February 2016. Council has been granted an extension to the 17th. If introduced in full these changes would have major implications for the character of the Pittwater LGA by introducing medium density development via complying development into areas where this form of development is currently prohibited.

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## **2.0 RECOMMENDATION**

*That Council receive this report and endorse the staff submission in relation to the Discussion Paper 'Expanding complying development to include two storey medium density housing types', to the Department of Planning and Environment (DP&E).*

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## **3.0 BACKGROUND**

### **3.1 PURPOSE**

The purpose of this report is:

- Inform Council of the Discussion Paper '*Options for Low Rise Medium Density Housing as Complying Development – Discussion Paper*', specifically the issues and implications for Pittwater Council.
- To seek Council's endorsement of the submission.

### **3.2 HISTORY**

DP&E in late November 2015 has placed on exhibition "One Part of the 'Missing Middle' Options for Low Rise Medium Density Housing As Complying Development – Volume 1 - Discussion Paper' and Volume 2 Background Paper" to seek feedback from the community and industry on the proposal to expand complying development provisions to incorporate dual occupancies, manor homes and townhouses and terraces up to a maximum of ten dwellings.

This is the second review of the SEPP (Exempt and Complying Development Codes) 2008 undertaken by DP&E within the past three months. The SEPP (Exempt and Complying Development Codes) Amendment (Miscellaneous and Affordable Housing) 2015 was released on 10 October 2015 and reported to Council on 21 December 2015.

Complying development is a combined planning and construction approval for straightforward development that can be determined through a fast track assessment by a Council or private certifier. The Policy was originally introduced in 2008 with later changes and revisions expanding the Policy to cover a range of potential development options, including new houses and alterations and additions to an existing dwelling, retail and commercial shop fitouts and uses and industrial warehouses in defined locations and areas.

Complying Development cannot be carried out within the E4 and E3 zones, on heritage items or areas impacted by flooding (unless certified by an engineer to be outside the area impacted by flood hazards).

DP&E, through the Discussion Paper, is now considering the options to expand the Policy to permit small scale medium density development of up to 10 dwellings on a single lot in the R2 Low Density Residential (R2), or R3 Medium Density Residential (R3) zones.

- Dual occupancies (attached and traditional 'duplex' style) on a single lot with a minimum lot size of 400m<sup>2</sup>,
- Manor house developments of 3-4 apartments on a lot with a minimum lot size of 500m<sup>2</sup>,
- Town house or terrace style housing developments up to 10 dwellings with a minimum lot size of 600m<sup>2</sup>, and
- A combination of all development types resulting in 3-10 dwellings on the same lot.

The Discussion Paper sets an 8.5m height limit for the above developments; however it explores the opportunity to increase height to 9.5m to allow for three storeys.

If the proposal, as outlined in the Discussion Paper, were to proceed it would present a number of issues for Council as the proposed standards and controls are significantly different to Pittwater's current controls. Furthermore the proposal would permit the development of small apartment blocks and townhouses within the R2 Low Density Zone, which currently only allows single dwellings and dual occupancies.

### **3.3 POLICY IMPLICATIONS**

The Discussion Paper presents a number of significant policy implications for Council. If the proposal proceeds and medium density development is incorporated in SEPP (Exempt and Complying Development Codes) 2008, as complying development, this will override Council's local planning controls as contained in Pittwater Local Environmental Plan 2014 (PLEP 2014) and Pittwater 21 Development Control Plan (DCP 21). The outcome of the Policy change would result in higher densities, changing residential character and streetscape without community involvement. The Policy would ultimately undermine and erode not only Council's planning autonomy, but the community's vision and aspiration for their neighbourhood.

### **3.4 RELATED LEGISLATION**

The Discussion Paper and the amendments proposed seek to amend State Environmental Planning Policy (Exempt and Complying Development Codes) 2008. There may also be subsequent changes to the Standard Instrument (Local Environmental Plans) Amendment Order to incorporate the proposed additional medium density developments as mandatory uses permitted in Zones R2 and R3.

### **3.5 FINANCIAL ISSUES**

#### **3.5.1 Budget**

*The review of the 'Options for Low Rise Medium Density Housing As Complying Development – Discussion Paper' can be accommodated within the current budgetary allocations.*

If the proposed amendments as outlined in the Discussion Paper proceed, there maybe implications for Council revenue associated with Development Applications as a consequence of the potential reduction in the number of development applications for medium density development being required and subsequently received.

Increased population associated with an increase in medium density housing will have implications for existing resources and facilities.

### 3.5.2 Resources Implications

Work associated with the review of the *'Options for Low Rise Medium Density Housing As Complying Development – Discussion Paper'* can be accommodated within current budgetary allocations.

## 4.0 KEY ISSUES

It is recognized that there is an ever increasing demand for housing in Sydney to cater for the growth in population and to put downward pressure on the housing market. However, it is considered that this proposal goes too far beyond what would ordinarily be expected from complying development. The proposed broadening of low rise medium density housing as outlined in the Discussion Paper seriously erodes the strategic planning work and outcomes developed by Council. This work followed upfront, consultative, evidence based planning investigation across the Local Government Area (LGA) and, where relevant, at specific precincts or land release areas.

As with the broader Pittwater LGA, the land release areas also are subject to upfront consultative evidence based planning investigations that, in turn, set the future directions for Warriewood Valley and Ingleside.

The strategic review project for Warriewood Valley was a collaborative project with the then Department of Planning and Infrastructure (DPI), endorsed by the then Director-General of Planning and adopted by Council in 2013. The Ingleside Precinct Planning process, now underway with DP&E, is also an evidence-based, upfront consultation model aimed at ensuring certainty and transparency in the planning process. The proposal to allow medium density complying development in these land release areas will create uncertainty regarding anticipated density and make infrastructure planning all but impossible in the release area.

Incorporating medium density development into the Policy, with broad-brush homogeneous controls across the State without consideration of the criteria listed above will result in poor planning and design outcomes. Furthermore the proposal will create uncertainty regarding the future character of localities and erode the communities' involvement in how their neighbourhoods will evolve and grow. In essence, the proposed amendments will effectively remove community involvement on medium scale development that has the potential to significantly alter and change the streetscape and character of the localities.

The following issues have been identified as implications associated with the expansion of complying development to cover medium density housing options:

- Disregard for upfront evidence based planning
- Lack of consideration for hazards and impacts
- Impacts on infrastructure provision and Section 94 Contributions
- Community expectations and amenity; and
- Poor design outcomes

### 4.1 Role of District Plans and Local Housing Strategies

DP&E is currently preparing a North District Plan which will set out the future dwelling targets and strategies for centres, employment lands and regional open space. The Greater Sydney Commission will be responsible for finalizing the plan in conjunction with Council and the North District Commissioner.



Implementation of this plan would require Council to update housing strategies to be consistent with the District and Metropolitan plans. The proposal would undermine this intention by allowing for more dwellings to be constructed in lower density areas located further away from public transport, services and open space. It would also be considered more appropriate for Council to provide this mix within the housing strategy and investigate areas where it would be supported by the necessary infrastructure.

It is noted that previous State Environmental Planning Policies 25 (Residential allotment sizes) and 53 (Metropolitan Residential Development) allowed for dual occupancy and multi-dwelling housing in low density areas. However as each Council prepared their local housing strategy at the time, they became exempt from the policies. The State Environmental Planning Policy (Affordable Rental Housing Policy) 2009 was also amended in 2011 to remove the permissibility of townhouses and residential flat buildings from low density areas regarding the character impact on these areas

#### **4.2 Upfront evidence-based Planning**

The proposal as outlined in the Discussion Paper makes no consideration of evidence-based planning and proposes to allow medium density development in areas that have been planned and ultimately zoned for lower density development.

The objective of the Environmental Planning and Assessment Act 1979 is to allow for the orderly and economic development of land. The Policy does not satisfy this higher level objective and will lead to ad hoc development. Furthermore, the Act empowers Councils to set controls and policies in their Local Environmental Plan and Development Control Plans. These plans are generally set as zoned based planning controls and objectives developed to reflect the future desired local character and amenity of a locality as articulated by the community.

The proposal, essential ignores the detailed evidence based planning work undertaken by Council to inform and guide the development of Local Environmental Plans.

#### **4.3 Site Hazards and constraints**

Bushfire, flooding and geotechnical hazards are found across many allotments in Pittwater, due to the typography and local character of the area. Subsequently hazards are taken into account when assessing local development so as to avoid placing people and/or property at risk of harm. The proposal, as outlined in the Discussion Paper, seeks to increase residential densities via Complying Development which is not appropriately placed to accurately consider or cater for these scenarios, due to the standardised nature of the assessment process and codes, but more significantly it is a non-merit assessment process undertaken by Private Certifiers who are not equipped with the necessary training, skills or access to required data to undertake such assessments.

#### **4.4 Infrastructure provision and Section 94**

The Discussion Paper is silent and makes no consideration on the extra infrastructure required to support increased residential densities, or strategies on how to recoup the cost of providing such infrastructure.

Councils prepare Section 94 Plans, based on forecast population figures and a range of demographic indicators, to fund the development of the necessary hard and soft infrastructure required to support the fundamental needs of the community.

The proposal as outlined will have the potential to significantly increase residential densities without consideration of infrastructure requirements and provision.

Unplanned population growth will occur without the essential community infrastructure and services to support livable and sustainable communities.

#### **4.5 Role of Complying Development**

Complying Development was implemented to provide a quick approvals pathway for simple developments on a code based assessment, without any component of merit assessment. This assessment pathway allowed straightforward simple developments that satisfied the pre-determined codes requirements and did not pose any impacts to neighbours or the locality to be approved quickly.

The proposal seeks to substantially expand upon the original premise of Complying Development and this is of concern as it has the potential to significantly impact upon the amenity of adjoining dwellings. The proposed built form will allow greater site coverage, reduced setbacks and generally increased density on a site by site basis. The impacts of these changes include loss of privacy and amenity in low density residential areas. The proposed changes will alter the scale and density of localities and change street character without community involvement and consultation. Furthermore the proposal will contribute to the loss of vegetation, tree canopy cover and landscape areas, which may lead to biodiversity loss, increased run-off and exacerbation of heat island effects. The impact on car parking include the potential for a halving of resident parking spaces required and a reduction in visitor parking with a subsequent increase in demand for on-street parking.

The major concern is that medium density development is not considered a 'simple or straightforward' form of residential development. It inherently has a multitude of impacts that require merit based planning considerations, therefore development of this scale does not fit within the scope of Complying Development.

#### **4.6 Community Expectation and Amenity**

The proposal seeks to permit medium density development into areas currently recognised and appropriately zoned for low density residential development.

The NSW planning system seeks to deliver certainty and reduce land use conflict via the use of zones, with each zone establishing a range of objectives and permitted land uses.

The planning system has created certainty for the community and industry sectors alike. The proposal, as outlined, will severely erode certainty from a community perspective and undermine the intention and objectives of the low density residential zone.

The proposal will lead to significant change in the street character, density and scale of neighbourhoods without adequate consideration of a range of impacts or community involvement.

#### **4.7 Design Outcomes**

It is universally recognised that code assessment or prescriptive planning approaches do not necessarily deliver high quality design outcomes.

For quality design outcomes to be achieved, there needs to be adequate consideration given to the context and setting of the development, such as local character, site constraints and opportunities. Complying development is a standardised, code based assessment which unfortunately cannot adequately cater for site and locality variations. The lack of flexibility inherent in Complying Development subsequently contributes to its inability to cater for high quality design outcomes.

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## 5.0 ATTACHMENTS / TABLED DOCUMENTS

**Attachment 1** – Submission on Expanding Complying Development to Include Medium Density Residential

### **Tabled Documents**

- *One Part of the 'Missing Middle' – Options for Low Rise Medium Density Housing as Complying Development. Volume 1*
  - *Discussion Paper November 2015 and Volume 2 – Background Paper November 2015.*
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## 6.0 SUSTAINABILITY ASSESSMENT

### 6.1 GOVERNANCE & RISK

#### 6.1.1 Community Engagement

The purpose of this report is to inform Council of the proposed changes to Complying Development Codes.

DP&E has publicly released the Discussion Paper for consideration and the community has the opportunity to review, consider and provide comments on the potential impacts of the proposed changes.

As the proposed amendment is a State initiative, Council has not publicly exhibited or disseminated information through a formal community engagement process.

#### 6.1.2 Risk Management

There is no risk anticipated from the making of a submission.

Council's submission will outline Council's position on the proposal as outlined in the Discussion Paper.

### 6.2 ENVIRONMENT

#### 6.2.1 Environmental Impact

The proposed changes to the Policy may result in potential impacts upon the environment, specifically tree and canopy cover and reductions in landscape areas, as the proposed changes support higher densities and intensification in zones R2 and R3.

#### 6.2.2 Mitigation Measures

- The proposed changes will be significantly affected by climate change
- The proposed changes will significantly impact water use, and
- The proposed changes will significantly impact energy use and greenhouse gases

## 6.3 **SOCIAL**

### 6.3.1 **Address Community Need & Aspirations**

The NSW Governments proposal to expand Complying Development to cover medium density housing options will have a detrimental impact upon the quality of cultural, community and recreational services available to the community as a direct consequence of higher demand, due to increase in population, that was not envisaged and appropriately planned.

Population growth must be appropriately planned and coordinated to ensure the fundamental infrastructure requirements (including social infrastructure) are identified and delivered to service the needs and requirements of the growing population. The current proposal moves away from a coordinated evidence –based planning approach to population growth in favour of ad hoc processes.

The proposal also erodes the detailed local planning work undertaken by Council during the preparation of the Pittwater LEP 2014, Warriewood Valley and the current Ingleside Precinct Planning process. Community involvement was a pivotal part of the planning processes identified above and the community actively participated in articulating and setting their desires and aspirations for the future of their neighbourhoods. The proposal, as outlined in the Discussion Paper, undermines the communities established vision for their neighbourhoods and will create uncertainty in how localities will change and develop over time.

### 6.3.2 **Strengthening local community**

The proposal, if enacted, will have impacts upon the liveability and connectedness of our villages. The necessary infrastructure and community services including but limited to roads, open spaces and reserves will not be developed in accordance with population growth while funding measures will also be impacted through unexpected growth.

## 6.4 **ECONOMIC**

### 6.4.1 **Economic Development**

The proposed changes may create or support opportunities for local economic growth as a direct consequence of population growth and increased building activity.

Report prepared by  
Brendan Gavin, Assistant Strategic Planner  
Anne-Maree Newbery, Principal Officer Strategic Planning

Andrew Pigott  
**MANAGER, PLANNING & ASSESSMENT**

Melinda Hewitt, Deputy General Manager, Environmental Planning and Community  
 8:00am to 5:30pm Monday - Thursday, 8:00am to 5:00pm Friday  
 5 February 2016

Codes and Approval Pathways,  
 Department of Planning and Environment  
 GPO Box 39  
 Sydney NSW 2001

Dear Sir/Madam,

**Exhibition – One Part of the ‘Missing Middle’, Options for Low Rise Medium Density Housing as Complying Development.**

Pittwater Council welcomes the opportunity to comment on the exhibited Discussion Paper. While it is recognised that there is clear demand for increased housing supply across Sydney concerns are raised with approaches outlined in the Discussion Paper. The proposal is a significant change in the direction and intention of Complying Development. The proposal fails to consider a wide range of complex impacts and issues that arise from allowing medium density development to occur as Complying Development.

The proposal is a significant change in policy that reduces Council's ability to plan and manage housing growth and associated impacts efficiently and effectively. The proposal in the Discussion Paper contradicts the *Standard Instrument (Local Environmental Plan)* which established a range of residential zones to reflect density and each Council's strategic planning direction.

Other issues of concern include;

- The development and implementation of proper planning and management.
- The aims and objectives of The *Environmental Planning and Assessment Act 1979*, the *Standard Instrument (Local Environmental Plans) Order 2006*, the *Pittwater Local Environmental Plan 2014* and the *Pittwater 21 Development Control Plan*.
- Council's ability to manage 'Ageing in Place'.
- The lack of consideration for natural hazards and increased development in risk affected areas.
- Concurrence and referrals to State agencies for water cycle management, bushfire risk, traffic impacts, heritage and environmentally sensitive lands.
- Infrastructure provisions and S94 Contribution Plans.
- Community expectations and certainty associated with land zoning.
- Design considerations for irregular blocks and local character, and
- The potential impact on the land release areas of Warriewood and Ingleside.

These issues are discussed in further detail in this submission. Medium density development presents a wide range of complex and difficult issues that cannot be assessed against a generic range of controls that ignore local considerations, character and places extremely undue risk to life and property.

If you have any enquires about this matter please do not hesitate to contact Andrew Pigott, Manager – Planning and Assessment, on 9970 1163.

Yours sincerely,

Melinda Hewitt  
**DEPUTY GENERAL MANAGER – ENVIRONMENTAL PLANNING AND COMMUNITY**

## DETAILED SUBMISSION

### Proper planning and management

Pittwater Council has always taken an approach to development that is based on upfront planning with the community that respects the natural environment and character of the area. This has included catering for increased development and the setting of appropriate development controls to meet the objectives of the planning act. The changes as proposed in the Discussion Paper allow for the development of medium density residential under complying development, will negate the time and effort Council has invested in managing its jurisdiction.

The expansion of Complying Development for medium density residential development also presents a serious challenge to meeting the objectives of the *Environmental Planning and Assessment Act 1979* (EP&A Act). The objectives of the Act that are most impacted by the proposal are listed below. They include

- (a) to encourage:
  - (i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forest, minerals, water, cities, town and villages for the purpose of social and economic welfare of the community and a better environment,
  - (ii) the promotion and co-ordination of the orderly and economic use and development of land
  - (vi) the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats, and
- (c) to provide increased opportunity for public involvement and participation in environmental planning and assessment.

Land zones adopted across New South Wales reflect a range of considerations including environmental constraints, land capability and desired outcomes. The zones are based not only on objectives (a)(i) and (vi) of the EPA Act for the proper management and conservation of land, but the mandated zones from the *Standard Instrument(Local Environmental Plans) Order 2006* (SILEP). As this order specified a set number of zones and their objectives, Council has selected the appropriate zones to reflect areas capable of increased residential density and those not capable. Based upon the *Pittwater Local Planning Strategy* prepared and adopted in 2011 and DP&E's LEP Practice Note PN11-002, Council adopted the R2 Low Density Residential and the R3 Medium Density Residential zones under the new Pittwater Local Environmental Plan (PLEP 2014). This practice note states that the R2 Low Density zone 'typically features single detached dwellings and may be appropriate to include dual occupancy or some multi dwelling housing' with the R3 Medium Density zone to be used for higher density development. This zone based approach to density will be undermined by the introduction of a policy that set generic standards and permits medium density residential development with no consideration of its impact across New South Wales on regional differences and land capability.

Under the PLEP 2014, the permitted uses in each zone have been based on desired outcomes and land capability. Areas zoned R2 Low Density Residential permit dual occupancies on larger lots while areas zoned R3 Medium Density are capable of, and permit townhouses and residential flat buildings. The options proposed will erode the evidence based planning and management approach by undermining the established controls set by Council based on objective (a) of The Act. Furthermore the zoning provisions for permitted uses in each zone are ignored. This will see the potential for medium density residential development in areas that are traditionally established low density areas and are not well serviced. This will have consequences on the protection of the environment through the loss of undeveloped landscape areas and vegetation coverage.

Pittwater Council has a strong community consultation ethos and the community has expectations that Council will inform and involve them where changes are proposed for their neighbourhood. The proposal, as outlined in the Discussion Paper, effectively excludes the community from participating in the planning process, specifically in circumstances where changes to the existing local character and future amenity of the neighbourhoods is proposed. The communities' expectations of their neighbourhood and future directions could be rapidly changed without their direct participation or involvement.

Neighbours and the general community are excluded from the assessment process and are denied the opportunities to participate in the planning process. Aside from the mismatch between the objectives of the Act and intentions of the proposal, the community will be effectively removed from the process and lose the opportunity to raise valid planning concerns for consideration as currently exists through the local development process via a development application.

This proposal could lead to significant increases in residential yields that have not been adequately planned and catered for. Council's strategic plans and goals have been based on meeting the housing requirements as set by the relevant metropolitan and subregional or district plans. These plans have required increase housing supply in well located areas which has led to the identification of land capable of further intensive development and the setting of appropriate controls to guide development. It is also noted that Pittwater is currently exceeding its housing targets which has been acknowledged by the DP&E. The potential for dwellings beyond the established target have not been considered, including assessment of the impact of growth on existing constrained facilities. As it stands, the proposal could lead to a substantial increase in dwellings that have not been adequately planned or catered for in relation to infrastructure, community facilities and services which significantly fails to meet the objectives of the Act.

#### **Housing Typology Mix**

The proposal makes no consideration for the mix and size of dwellings, accessibility or adaptability. As there are no controls to deliver housing diversity, there is no guarantee that future development will provide the full range of residential typologies required. Both the State Environmental Planning Policy – 65 Design Quality of Residential Apartment Development and most Council development control plans require a mix and range of dwellings. These standards having been developed to provide certainty that medium density residential developments will cater for people at all stages of life or ability. Accessible and adaptable dwellings are also especially important for older residents or people with



disabilities. Furthermore, affordable housing has not been considered at all, outside of a generic 'more housing' platitude that ignores local market requirements.

### **Natural Hazards and Risk**

Land within Pittwater is also subject to numerous natural hazards that require proper consideration and management. Concern is raised in relation to the limited consideration of sites identified as being subject to geotechnical hazards.

Stormwater run-off and overland flooding is a large issue for Pittwater and is addressed and mitigated by range of planning controls. The proposal as outlined significantly erodes these established and effectiveness of these controls, while the potential for private certification of stormwater removes Council's ability to manage their environment and prevent risk.

### **Referrals, Concurrence and Heritage**

There are numerous referrals or concurrence required for medium density residential development that has not been considered in this proposal. These include referrals relating to bushfire hazards, traffic impacts, water cycle management and impacts on Aboriginal heritage.

- **Water Cycle Management**

Under the *Water Management Act 2000* the NSW Office of Water must be consulted for a number of reasons. This includes where development involves the pumping of water or drainage works under S89 and S90, or where building or works are proposed within 40ms of a creek, river, lake or lagoon as prescribed under S91. These referrals ensure that proper management of water reserves and the environment are considered during development. Pittwater is bounded on two sides by estuaries and lagoons and has numerous creeks throughout the area. In addition, many localities also have a high water table. Due to these factors, a large majority of developments in Pittwater are referred to the NSW Office of Water to ensure compliance. The proposal does not consider or address these or the need for appropriately experienced and qualified individuals to assess these impacts.

- **European Heritage**

Existing complying development provisions currently impact upon the significance of heritage items. The further expansion for medium density residential development further undermines the protection of both European and Aboriginal heritage, especially in relation to curtilage, location such as setting and views and the surrounding streetscape. Under complying development neighbouring properties or those within the vicinity are not obliged to consider or respect the integrity of the adjacent heritage item. The existing impacts on heritage items will only increase as the scale and scope of development permitted as complying development increases.

- **Aboriginal Heritage**

Aboriginal heritage is even more difficult to conserve and protect due to sensitive cultural needs of the Aboriginal community and the existing management system. The NSW Office of Environment and Heritage (NSW OEH) manages and regulates Aboriginal cultural

heritage and access to detailed and accurate information is difficult due to the historical listing procedures and precedents in which ground truthing of data was not undertaken. These factors contribute to a situation in which Private Certifiers will not be aware of the process required to identify registered sites or the limitations and inaccuracies with existing listings. Local development assessment via a development application will identify the potential for Aboriginal sites to occur on site and consider the relevant impacts upfront during the assessment so Aboriginal cultural heritage can be protected.

- Traffic impacts

The lack of consideration for consecutive approvals for multiple dwellings and their impacts is of concern. This issue becomes particularly apparent and lacking consideration when land north of Mona Vale is taken into consideration. Access is heavily reliant on Barrenjoey Road as the only classified and main road in the area, but it is mostly single lane in each direction. The cumulative impacts of extra dwellings and associated traffic will not be considered or adequately catered for. Given these factors, the proposal does not consider or adequately address potential impacts on local and state road networks.

#### **Infrastructure provisions and S94 Contribution Plans**

The proposal fails to consider the impact of population growth associated with complying development approvals and the pressure this places on existing infrastructure, facilities and services. Infrastructure planning is based on planned and predicted population growth. The proposal has the potential to significantly increase residential population, above anticipated levels, with no contributions to support the augmentation of existing infrastructure or the creation of new infrastructure to support the increased population. The outcome of unplanned growth is a reduction in sustainable and liveable communities.

- Parking provision

The proposed lowering of parking standards is not supported and ignores local factors. The state-wide approach adopted in this proposal ignores the outer suburban character of Pittwater (and many other LGAs) who have a high reliance on private transport due to a lack of viable public transport options. While lower parking standards may be appropriate in areas well serviced by public transport, such as inner city locations with access to rail or town centres within Pittwater, it ignores Pittwater's ineffective public transport options in more isolated areas. There is a significant gap between the standards of the Road and Maritime's Guide to Traffic Generating Development and the standards of the Pittwater Development Control Plan (DCP). Council's DCP has been based on providing the appropriate provision taking into consideration local characteristics. The lack of visitor parking is also of concern. Effectively this approach forces parking onto local streets leading to congested and tightly constrained streets reducing their efficiency. It is not appropriate to transfer parking provision off site and onto adjoining streets. These issues must be appropriately considered and managed on site. The proposal to manage the extra on-street parking demand through not issuing parking permits fails to consider the full range of issues contributing to parking concerns and is not supported.

- Section 94 Development Contribution Plans

Council's current Section 94 Plan is developed on a methodology which equates predicted population growth with the potential increase in demand for a range of infrastructure and community facilities. The proposal as outlined has the potential to significantly increase residential dwellings and thus population, beyond predicted population growth rates. The outcome is the S94 Plan does not make provisions or cater for increased population growth and dwelling yields, therefore infrastructure requirements and provision. If this proposal was to be adopted Council would be required to prepare and adopt a new S94 Plans based on higher dwelling densities and larger populations. If S94 plans are not comprehensively reviewed and updated local population growth will be out of pace with infrastructure demand and provision, the outcome being a reduction in liveability, community access to essential community services and facilities

**Role of Complying Development**

Medium density residential development is not considered a simple and straightforward development. These proposals present a range of complex issues and constraints that need to be considered and assessed; as outlined earlier in the submission, and therefore do not meet the premise of complying development. Given the range of issues associated with medium density residential development the most appropriate approval pathway is local development in which assessment is undertaken via a development application. Local development provides for community involvement and input into the planning process and supports referrals and concurrence requirements. Complying development is a non-merit approval systems developed for straight forward development proposals with limited impact. The nature of medium density residential development does not fit the principals of complying development.

Furthermore, complying development excludes community involvement and public participation in the planning system. Complying Development for minor proposals such as dwelling houses and secondary dwellings already generates concerns and complaints from the community. The proposal will remove the communities' right and ability to comment on medium density residential developments and disregards objective (C) of the *Environmental Planning and Assessment Act 1979* to increase the opportunities for the public to comment on planning matters and undermines the community's faith in the planning system.

**Community Expectation and Amenity**

Council has developed its planning controls, specifically zones, to the desires and aspirations of local community, whilst catering for population growth via dwelling targets. The paper as proposed, has usurped and eroded Council's planning role and its ability to develop and shape the LGA in-line with community expectations.

Council strongly opposes permitting medium density residential housing in the R2 Low Density Residential zone. This proposal conflicts with the communities' expectations of low density residential areas and is considered out of character for the established and environmentally constrained areas.

## **Design Outcomes**

The premise of complying development is based on standardised controls irrespective of local character and issues. This approach has the potential to contribute to poor design outcomes that do not reflect the surrounding environmental conditions and constraints and can lead to negative outcomes for neighbouring property. The potential for negative outcomes increases as the scale and scope of development permitted under complying development expands.

Steep and sloping land is not catered for under complying development. This is of high importance in Pittwater where poor design on sloping sites can lead to negative outcomes in relation to overshadowing, privacy and view loss. These matters are best addressed via merit-assessment. There is also no consideration for the amount of land excavation or filling required to provide developable land under the policy and its potential to decimate the character and amenity of streetscape and locality in general. Furthermore there is a high potential for severe consequences for neighbouring property, especially in landslip areas.

## **WARRIEWOOD AND INGLESIDE LAND RELEASES**

DP&E has actively participated with Council in the planning of the Warriewood and Ingleside release areas within Pittwater LGA. The evidence based strategies adopted have been developed in conjunction with the community and DP&E and were endorsed by the then Director-General of Planning in 2012. It is disconcerting that they could be seriously undermined by the proposal to extend complying development to medium density residential development.

The strategic review of the Warriewood Valley release area completed in 2012 established the anticipated development and future residential character for the release area, with the land being zoned R3 Medium Density Housing. The proposed changes will result in the following:

- Remove consideration of the dwelling ranges that currently apply to individual properties, which are based on the dwelling densities adopted for Warriewood Valley under the strategic review. The dwelling numbers could exceed the 2,451 dwellings anticipated by the strategic review that, in effect:
  - Alters the planned and agreed desired vision/residential character and environment of the release area.
  - Significantly increases the adopted dwelling density for the area (being 32 dwellings per developable hectare).
  - Increase the cumulative impacts of ad-hoc development above the planned 2,451 dwellings; and
  - Seriously undermine the infrastructure and servicing requirements commensurate for the total Warriewood Valley development being duly considered, identified and costed.

- If the proposed changes are agreed to, proposals up to 10 dwellings on the existing undeveloped parcels are likely without regard for development provisions developed for the area. The criteria to simply meet the minimum lot size of 600m<sup>2</sup> to facilitate complying development between 3 to 10 dwellings may result in a dwelling density of 50 dwellings per hectare (based on 3 dwellings on 600m<sup>2</sup>).

Complying development will also fail to consider a range of site specific and local issues. Complying development does not need to model or undertake 'whole of water cycle' management and rehabilitation of the creekline corridors including impervious areas and run-off calculation. This will be detrimental to the natural environment which is highly prized by the broader community and the subject of numerous industry awards. Other issues include the lack of consideration for the servicing of land or the impact of property below the flood planning level. Additionally the opportunity to require the proponent to upgrade Warriewood Road from a rural road to an urban road will be lost while the 25% target for adaptable housing provision for developments will not be realised, not meeting Council commitment to its 'Ageing in Place' strategy.

It is also reiterated that the precinct planning for Ingleside, led by the Department in conjunction with Council and UrbanGrowth NSW, is well underway. The precinct seeks to incorporate sustainability initiatives for a sustainable community that achieves Australian Best Practice under the GreenStar Communities Rating Tool and biodiversity certification under the NSW Threatened Species Conservation Act. To date, balancing the water cycle and natural environmental values with development aspirations is challenging without further complications from increased complying development proposals. For example, the shallow soils of the escarpment drain to a number of creeks and estuaries, including Pittwater. Post development flows from this release area must not result in flooding downstream catchments. If the proposal does proceed, the take-up rate of development under this system will result in unintended consequences including;

- Downstream flooding into Mona Vale, Warriewood Valley and the Warriewood Wetlands. Given that the water cycle modelling under the precinct planning for Ingleside will not have incorporated the additional loads resulting from the medium density complying development scenario, the downstream flooding undermines the creekline corridor rehabilitation works undertaken for the Warriewood Valley release area and impacts upon the Warriewood Wetland and Narrabeen Lagoon environments
- Undermines the opportunity for the planned sustainability initiatives to be incorporated at the lot and building scale, resulting in the Ingleside release failing to achieve Australian Best Practice recognition.

Ingleside, as with Warriewood Valley, is being planned with the NSW Government. The cumulative impacts of the release area development will be duly considered and where necessary, mitigation measures are being developed. The necessary infrastructure and servicing requirements commensurate with the development anticipated for each area is also underway.

Conversely, the proposal to include medium density complying development will result in significant increases in dwelling numbers and population in a locality that has not been planned for or duly considered. It simply places greater demands on infrastructure and

services that, to date, have not been qualitatively considered including the impacts of additional dwellings on proposed road upgrades.

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<b>C12.8</b>	<b>Outcome of Public Exhibition of Avalon Beach Bowling &amp; Recreation Club, Bowling Green Lane, Avalon - Proposed new consolidated lease for Clubhouse, Green No.2 and Green No.3</b>
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**Meeting:** Sustainable Towns and Villages Committee

**Date:** 15 February 2016

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**COMMUNITY STRATEGIC PLAN STRATEGY:** Corporate Management Strategy

**COMMUNITY STRATEGIC PLAN OBJECTIVE:**

- To provide the community with a broad range of quality natural and built assets in a sustainable manner to meet the needs of current and future generations.

**DELIVERY PROGRAM ACTION:**

- Review and manage Council lease portfolio.
- 

**1.0 EXECUTIVE SUMMARY**

**1.1 SUMMARY**

This report informs Council of the outcomes of the public exhibition of the draft consolidated lease agreement with Avalon Beach Bowling & Recreation Club (ABBRC) which incorporates the Clubhouse, Green No 2 and Green No 3.

The new consolidated lease agreement will be in line with the current lease agreements encompassing similar lease terms and the same expiry date of 10 August 2024. Green No 2 and Green No 3 will continue to be used by ABBRC as bowling greens for recreational purposes associated with the Club.

For clarification purposes only, a separate 12 month licence agreement will be issued for the Eastern Green, Green No.1, as per Council's resolution dated 20 April 2015 and subsequent ratification from the Club's Board Members. Under the licence agreement, ABBRC may continue to use Green No 1 until Council requires it for an alternative use giving Council the potential to derive a financial outcome and a broader community well-being benefit. Its future use will be determined as part of the Avalon Place Planning to commence in 2016/17.

The draft consolidated lease agreement with ABBRC which incorporates the Clubhouse, Green No 2 and Green No 3 was exhibited for 40 days from 17 December 2015 to 25 January 2016. During this period, two submissions were received.

This report recommends Council enter into the consolidated lease agreement with ABBRC which incorporates the Clubhouse, Green No 2 and Green No 3 following the completion of the contract for sale and the consolidation of Green 3 (Lot 2 Deposited Plan 517185) and Dunbar Park (Lot 6 Deposited Plan 1102075).

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## 2.0 RECOMMENDATION

1. *That Council note the outcomes of the public exhibition of the draft consolidated lease with Avalon Beach Bowling and Recreation Club for Green 3, Green 2 and the Clubhouse at Bowling Green Lane, Avalon.*
  2. *That as per Council's resolution dated 20 April 2015 and pursuant to the Act, Council will undertake the following soon after the completion of the contract for sale:*
    - *Consolidate Green 3 (Lot 2 DP 517185) and Dunbar Park (Lot 6 D P 1102075).*
    - *Reclassify Green 3 (Lot 2 DP 517185) from operational land to community land*
    - *Re-zone Green 3 from R2 Low Density Residential to RE1 Public Recreation.*
  3. *That simultaneously with the Consolidation of lots, Avalon Beach Bowling and Recreation Club will surrender both the Clubhouse Lease and Green 2 Lease and enter into a new consolidated lease for Green 3, Green 2 and the Clubhouse with Council as lessor and Avalon Beach Bowling and Recreation Club as lessee.*
  4. *That the General Manager be authorised to sign any documentation required to finalise the consolidated lease agreement with Avalon Beach Bowling and Recreation Club for Green 3, Green 2 and the Clubhouse, Bowling Green Lane, Avalon and to affix the common seal of Council if required.*
- 

## 3.0 BACKGROUND

### 3.1 PURPOSE

The purpose of this report is to inform Council of the outcomes of the public exhibition of the draft consolidated lease agreement with Avalon Beach Bowling & Recreation Club which incorporates the Clubhouse, Green No 2 and Green No 3.

To seek Councils approval to enter into the new consolidated lease agreement with ABBRC which incorporates the Clubhouse, Green No 2 and Green No 3 following the completion of the contract for sale and the consolidation of Green 3 (Lot 2 Deposited Plan 517185) and Dunbar Park (Lot 6 Deposited Plan 1102075).

### 3.2 BACKGROUND

At its meeting on 20th April 2015, Council resolved to purchase the No.3 Green from ABBRC - (Lot 2 DP 517185) at Bowling Green Lane, Avalon (refer to **Attachment 2**). Following completion of the contract for sale, Council will consolidate Green 3 (Lot 2 DP 517185) and Dunbar Park (Lot 6 DP 1102075), reclassify Green 3 from operational land to community land and re-zone Green 3 from R2 Low Density Residential to RE1 Public Recreation. The purchase of Green 3 ensures the community gain an asset in the centre of Avalon and provides ABBRC with a strategy to ensure the long term viability of the Club.

A total package of \$765,000 was agreed, subject to several terms and conditions including:

- Rental for the remaining 10 years of the lease agreement for both the Club House and the middle bowling green (Green No.2) to be waived.
- Pittwater Council agree to lease Green No.3 to Avalon Bowling Club on the same terms as the existing leases referred to above- i.e. waived for 10 years.



During the drafting process of the leases, it was determined a more suitable approach regarding the leasing is to surrender the current lease agreements simultaneously with the consolidation over the Clubhouse and Green No 2 and enter into a new single consolidated lease agreement with ABBRC incorporating the Clubhouse, Green No 2 and Green No 3 (Refer **Attachment 4**).

The new consolidated lease agreement will be in line with the current lease agreements encompassing similar lease terms and the same expiry date of 10 August 2024. For clarification purposes only, a separate 12 month licence agreement will be issued for the Eastern Green, Green No.1, as per Council's resolution dated 20 April 2015 and subsequent ratification from the Club's Board Members.

On 7 December 2015, Council endorsed the exhibition of the draft consolidated lease agreement with ABBRC which incorporates the Clubhouse, Green No 2 and Green No 3. (Refer to **Attachment 1**).

The draft consolidated lease agreement with ABBRC which incorporates the Clubhouse, Green No 2 and Green No 3 was exhibited for 40 days from 17 December 2015 to 25 January 2016. During this period, two submissions were received.

### **3.3 POLICY IMPLICATIONS**

This process is in line with the Property Management Policy- Policy No 200.

### **3.4 RELATED LEGISLATION**

Local Government Act 1993

### **3.5 FINANCIAL ISSUES**

#### **3.5.1 Budget**

- The new consolidated lease will attract only a nominal rental of \$1.00 per annum forming part of the package deal for the purchase of the Green No.3.
- As per Council's resolution dated 20<sup>th</sup> April 2015, the rental for the Club House, Green No.2 and Green No.3 will be waived until the expiry of the lease term in 2024. This is equivalent to a total savings to the Club of \$165,000 (inc GST).
- The \$500,000 purchase price for the green is to be paid over 10 years and this has been included in Council's Delivery Program & Budget.
- The \$100,000 for repairs and upgrades has been included in the 2015/16 Delivery Program & Budget

#### **3.5.2 Resources Implications**

- ABBRC will continue to maintain the Clubhouse and the Greens under the new consolidated lease agreement which is in line with arrangements in place under the current lease agreement.
- A single lease agreement will be easier for both parties to manage moving forward.

### **4.0 KEY ISSUES**

#### **4.1 Public Exhibition Process**

On 7 December 2015, Council endorsed the exhibition of the draft consolidated lease agreement with ABBRC which incorporates the Clubhouse, Green No 2 and Green No 3. It was exhibited for 40 days between 17 December 2015 and 25 January 2016.

In accordance with Council's Community Engagement Policy, a public notice was placed in the Manly Daily and on the Clubs notice board on 17 December 2015. The draft consolidated lease agreement with ABBRC incorporating the Clubhouse, Green No 2 and Green No 3 was also available electronically on Council's website and in hard copy at Mona Vale and Avalon Customer Service Centres and libraries.

#### 4.2 Submissions Received

Two submissions were received during the exhibition period.

A summary of the submissions and Council's response appears in Table 1 below:

**Table 1: Submission summary and response table**

Submission	Point of Concern	Response
Avalon Resident	Noise- noise from outdoor private functions can be disturbing and often continue after 11pm. Patrons leaving the Club and entering cars can be disturbing.	The issue of noise is covered under <i>Clause-6.4 (d) (iii) the Lessee must not .....Without the consent of the Lessor (which consent will not be withheld unreasonably)... play music or operate loud speakers that does not comply with Councils noise requirements.</i> Noise after this time will be a matter of compliance with the lease agreement and Councils requirements.
	Street Lighting- two street lights are out between Dunbar Park and the Bowling Club which are used to light the dual access way between Dunbar Park and the Pittwater Park retirement village.	Not related to the lease agreement. A Merit request ID: 542765 has been logged to have this matter attended to.
Aura Owners Corporation	Noise- excessive noise from events that carry on well after midnight.	The issue of noise is covered under <i>Clause-6.4 (d) (iii) the Lessee must not .....Without the consent of the Lessor (which consent will not be withheld unreasonably)... play music or operate loud speakers that does not comply with Councils noise requirements.</i> Noise after this time will be a matter of compliance with the lease agreement and Councils requirements.
	Unauthorised use of the Club after hours.	This issue of unauthorised use of the Club is covered under <i>Clause- 6.2 (h) The licensee must at its own cost.....take all reasonable steps to secure the premises against unlawful entry and Clause 6.3 The lessee must not do anything in relation to the premises which in the reasonable opinion of the lessor is (a) annoying, offensive or dangerous to other occupiers if the building, the land or to the owners or occupiers of the land or buildings in the vicinity of the premises.</i>

#### 4.3 Post exhibition amendments

While the above submissions have been considered, the points of concerns are covered in the proposed consolidated lease agreement and no further amendments are required.

## 5.0 ATTACHMENTS

**Attachment 1:** Councils Resolution of 7 December 2015

**Attachment 2:** Councils Resolution of 20 April 2015

**Attachment 3:** Aerial Photograph of Consolidated Lease Area

**Attachment 4:** Draft Consolidated Lease

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## **6.0 SUSTAINABILITY ASSESSMENT**

### **6.1 GOVERNANCE & RISK**

#### **6.1.1 Community Engagement**

- The new consolidated lease agreement was placed on public exhibition for a period of 40 days providing the community with an opportunity for review and comment.
- The Club have been kept up to date regarding the preparation of relevant documentation.
- It has been expressed to Council that the ABBRC views are representative of their members and their local community.

#### **6.1.2 Risk Management**

- The proposed consolidated lease agreement will provide a level of certainty to the Club and will assist in maintaining its membership level and ability to carry out capital improvements to the Clubhouse.
- Council's Solicitor has been engaged to draft relevant documentation.
- ABBRC have also engaged a Solicitor for their representation.
- A registered Surveyor has been engaged to prepare a survey plan for the proposed consolidated lot, and the new consolidated lease area comprising the Club House, Green No 2 and Green No 3.

### **6.2 ENVIRONMENT**

#### **6.2.1 Environmental Impact**

Nil

#### **6.2.2 Mitigation Measures**

Nil

### **6.3 SOCIAL**

#### **6.3.1 Address Community Need & Aspirations**

- The purchase of this green ensures the community gain an asset in the centre of Avalon and provides ABBRC with a strategy to ensure the long term viability and recreational benefit to the community.
- A single lease agreement will ensure one document will encompass the current arrangements with the inclusion of Green No.3 and secure the Clubs tenure.

#### **6.3.2 Strengthening local community**

- The new consolidated lease supports ABBRC to be an integral part of the local community and enhance the feeling of connectedness.

### **6.4 ECONOMIC**

#### **6.4.1 Economic Development**

- The agreement to purchase Green No.3 from ABBRC supports the on-going operation and longevity of the Club.

Report prepared by  
Bridget Bolewski- Senior Property Officer

Arianna Henty  
**MANAGER, COMMERCIAL PROPERTY & PROJECTS**



## **Action Item**

**SUBJECT: Avalon Beach Bowling & Recreation Club, Bowling Green Lane, Avalon – Proposed new consolidated lease for Clubhouse, Green No.2 and Green No.3**

**Meeting**

Connecting Communities Committee

**Date**

7 December 2015

### **COMMITTEE RECOMMENDATION**

1. That a new consolidated lease agreement with Avalon Beach Bowling & Recreation Club which incorporates the Clubhouse, Green No 2 and Green No 3 be entered into.
2. That the draft consolidated lease be placed on Public Exhibition for 40 days and a report be brought back to Council on the outcomes.
3. That, upon settlement, the reclassification of Green No.3 (Lot 2 DP 517185) from Operational to Community be placed on Public Exhibition for 28 days and a report be brought back to Council on the outcomes.

(Cr Griffith / Cr Grace)

## **Action Item**

**SUBJECT: Avalon Beach Bowling & Recreation Club, Bowling Green Lane, Avalon - Purchase of Green 3 by Council**

**Meeting:** Sustainable Towns and Villages Committee

**Date:** 20 April 2015

### **COMMITTEE RECOMMENDATION**

1. That Council purchase Green No.3 (Lot 2 DP 517185) Bowling Green Lane, Avalon in line with Avalon Beach Bowling & Recreation Club's proposal comprising a total package of \$765,000 broken down as follows:
  - a) Rental for the remaining 10 years of the lease agreement for both the Club House and the middle bowling green (Green No.2) to be waived- equivalent to a total savings to the Club of \$165,000 (inc GST).
  - b) \$500,000 for the purchase of Green No.3 to be paid over 10 years in \$50,000 annual payments.
  - c) \$100,000 allocated to Club House repairs and upgrades in the 2015/2016 financial year.

Terms and conditions as follows:

- Pittwater Council agree to lease Green No.3 to Avalon Bowling Club on the same terms as the existing leases referred to above- i.e. waived for 10 years.
  - Avalon Bowling Club relinquishes all rights to the Eastern Green (Green No.1) to Pittwater Council. However the Club retains the rights to use this Green until Council requires it for alternative uses.
  - Pittwater Council retains the responsibility for any future repairs or replacement of the asbestos roof, barges, guttering and down pipes.
  - Pittwater Councils retains responsibility for the provision of future disabled access to the building should State or Local Government regulate access.
  - Pittwater Council retains responsibility for any other Government regulations that may be enacted that require structural changes to the building.
  - Approval from the Club's solicitor of satisfactory legal documentation.
  - Any agreement between Council and the Board ratified by Club Members.
2. That this purchase be included in the 2015/2019 Delivery Program and Budget.
  3. That the General Manager be authorised to complete the purchase transaction and execute relevant documentation under the common seal of Council.
  4. That upon acquisition by Council, the subject land be classified as Community Land, the 2,390m2 be added to Council's Open Space Strategy and Inventory, and be incorporated into the Dunbar Park Plan of Management.
  5. That the terms and conditions be administered in accordance with Recommendation 1 above.

(Cr Grace / Cr Townsend)



Approximate Proposed Consolidated Lease Area



Form: 07L  
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 Matthews Folbigg Pty Limited

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 Real Property Act 1900

Leave this space clear. Affix additional pages to the left-hand corner.

**PRIVACY NOTE:** Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

**STAMP DUTY**

Office of State Revenue use only

**(A) TORRENS TITLE**

Property leased: if appropriate, specify the part or premises

Part of Lot 7 in Deposited Plan ##### being the Clubhouse, Western and Middle Green forming part of the Avalon Beach Bowling Club premises situated at 7 Bowling Green Lane, Avalon Beach NSW 2107

**(B) LODGED BY**

Document Collection Box	Name, Address or DX, Telephone and Customer Account Number if any	CODE
307V	Acc. No. 123198L Matthews Folbigg Pty Limited DX 8233 PARRAMATTA Tel: 9635 7966 Reference (optional): DTS:152009	L

**(C) LESSOR**

PITTWATER COUNCIL (ABN 61 340 837 871)

The lessor leases to the lessee the property referred to above.

**(D)**

Encumbrances (if applicable):

**(E) LESSEE**

AVALON BEACH BOWLING & RECREATION CLUB LTD (ACN 000 244 146)

**(F)**

**TENANCY:**

**(G) 1. TERM**

**2. COMMENCING DATE**

**3. TERMINATING DATE** 10 August 2024

4. With an **OPTION TO RENEW** for a period of N.A.  
 set out in clause N.A. of N.A.

5. With an **OPTION TO PURCHASE** set out in clause N.A. of N.A.

6. Together with and reserving the **RIGHTS** set out in clause N.A. of N.A.

7. Incorporates the provisions or additional material set out in **ANNEXURE(S)** "A" hereto.

8. Incorporates the provisions set out in N.A.  
 No. N.A.

9. The **RENT** is set out in clause 2 of Annexure "A"

DATE ..... / ..... / .....

(H) The seal of PITTWATER COUNCIL (ABN 61 340 837 871) was hereunto affixed in the presence of authorised officers of the Council who certify this dealing to be correct for the purposes of the Real Property Act 1900.

Council's seal:

Signature of authorised officer:

Signature of authorised officer:

Name of authorised officer:

Name of authorised officer:

Position of authorised officer:

Position of authorised officer:

**Note: where applicable, the lessor must complete the statutory declaration below**

Certified correct for the purposes of the Real Property Act 1900 and executed on behalf of the company named below by the authorised person(s) whose signature(s) appear(s) below pursuant to the authority specified.

Company: AVALON BEACH BOWLING & RECREATION CLUB LTD (ACN 000 244 146)

Authority: Section 127(1) of the Corporations Act 2001

Signature of authorised person:

Signature of authorised person:

Name of authorised person:

Name of authorised person:

Office held:

Office held:

**(I) STATUTORY DECLARATION #**

I, ..... of .....

solemnly and sincerely declare that -

1. The time for the exercise of option to **renew/purchase** in expired lease No. .... has ended; and
2. The lessee under that lease has not exercised the option.

I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Oaths Act 1900 and I certify this lease correct for the purposes of the Real Property Act 1900.

Made and subscribed at ..... in the State of New South Wales on .....

in the presence of ..... of .....

☐ Justice of the Peace (J.P. Number ..... ) ☐ Practising Solicitor

☐ Other qualified witness [specify] .....

\*\* who certifies the following matters concerning the making of this statutory declaration by the person who made it:

1. I saw the face of the person OR I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person has a special justification for not removing the covering; and
2. I have known the person for at least 12 months OR I have confirmed the person's identity using an identification document and the document I relied on was ..... [Omit ID No.]

Signature of witness: ..... Signature of applicant: .....

# As the services of a qualified witness cannot be provided at lodgment, the statutory declaration should be signed and witnessed prior to lodgment. \*\* If made outside NSW, cross out witness certification. If made in NSW, cross out the text which does not apply.

\* s117 RP Act requires that you must have known the signatory for more than 12 months or have sighted identifying documentation.

ALL HANDWRITING MUST BE IN BLOCK CAPITALS

Page 2 of 22

Number additional pages sequentially



This is the Annexure "A" referred to in the Lease between PITTWATER COUNCIL (ABN 61 340 837 871) ("Lessor") and AVALON BEACH BOWLING & RECREATION CLUB LTD (ACN 000 244 146) ("Lessee")

Dated the            day of

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1. **DEFINITIONS AND INTERPRETATIONS**

1.1. In this Agreement unless the contrary intention appears:

"**Accounting Period**" means either the calendar or financial year on which basis the Lessor's accounts are kept.

"**Associate**" has the meaning given to that term in the Corporations Law.

"**Building**" means the building known as the Avalon Beach Bowling and Recreation Clubhouse measuring an area of approximately 218.5m<sup>2</sup> which forms part of the Premises and any other building and/or structures owned or controlled by the Lessor in connection with the Building existing now or which may be erected after the Commencing Date.

"**Common Areas**" means those parts of the Building which are allocated by the Lessor for use by the Lessee, or its employees customers and the public including but not limited to roads, car parks, ramps, stair ways, walk ways, path ways, corridors, entrance ways, exits, courts, foyers, toilets, wash rooms, recreational areas and storage areas.

"**Environment**" includes all aspects of the surroundings of human beings including:

- (a) the physical factors of those surroundings, such as the land, the water and the atmosphere;
- (b) the biological factors of those surroundings, such as the animals, plants and other forms of life; and
- (c) the aesthetic factors of those surroundings, such as their appearance, sounds, smells, tastes and textures.

"**Environmental Law**" means any law, State or Federal, which in any way regulates the use of or dealing with land and/or relates to the protection of the environment, persons and/or property from pollution caused by such use or dealing or otherwise.

"**GST**" has the meaning given to it in A New Tax System (Goods and Services Tax) Act 1999 (C'wealth).

"**Item**" refers to the item in the Reference Schedule being the item number identified in the relevant clause.

"**Land**" means the whole of Lot 7 in Deposited Plan ##.

"**Lessee**" includes the Lessee referred to on the cover page of this Lease and its approved assigns and where appropriate, its employees, agents, contractors and invitees.

"**Lessee's Property**" means all the Lessee's fixtures, goods, plant and equipment brought on to the Premises.

"**Lessor**" includes the Lessor referred to on the cover page of this Lease and its assigns and where appropriate its employees and agents.

"**Lessor's Property**" means the all the Lessors fixtures plant and equipment erected upon or forming part of the Building or Premises.

**"Lessor's Outgoings"** means the outgoings, costs and expenses assessed, charged, imposed, levied, paid or payable by the Lessor in relation to the Building or the Land and in particular but without limiting the generality of the foregoing shall include any council rates and charges, water and sewerage rates and charges, land tax and insurance premiums including all other rates, taxes, levies, premiums, costs, charges or other reasonable expenses attributable to the operation, maintenance and repair for the Land, Premises or the Building.

**"Plan"** means the draft identification plan attached to this Lease will be updated and replaced with formal plan once surveyed.

**"Premises"** means the Property Leased referred to on the cover page of this Lease and includes the Building and the Lessor's fixtures, goods, plant and equipment in, on or affixed to the premises or the Building.

**"Redecorate"** includes repainting, revarnishing repapering and recarpeting to the reasonable satisfaction of the Lessor, all parts of the Premises which were painted, varnished, papered or carpeted at the Commencing Date.

**"Reference Schedule"** means the Reference Schedule of this Lease.

**"Term"** means the Term referred to on the cover page of this Lease and any holding over period under this Lease.

**"Western and Middle Green"** means those parts of the Premises known as Green no's 2 and 3 forming part of the Premises leased as is more particularly identified on the Plan attached subject to final survey.

- 1.2. The implied covenants and powers otherwise implied by virtue of Section 84 and 85 of the Conveyancing Act 1919 are expressly negated.
- 1.3. In this Lease;
  - (a) words denoting the singular include plural and vice versa; and
  - (b) headings are for convenience only and do not affect interpretation.
- 1.4. If, under the provisions of this Lease or under any notice or demand served pursuant to the provisions of this Lease anything is required to be done on a day which is not a business day, then the day for compliance is deemed to be the business day immediately following that day.
- 1.5. If there are two (2) or more lessors, two (2) or more lessees or two (2) or more guarantors under this Lease (including while the Lease or the reversion is held by legal personal representatives, successors or assigns), each of them is jointly and severally liable under this Lease.
- 1.6. If either under the common law or by force of legislation, any provision of this Lease is or becomes legally ineffective then that provision is to be severed from the Lease which is otherwise to remain effective.
- 1.7. The provisions of this Lease are governed by and to be construed in accordance with, the laws of the State of New South Wales.
- 1.8. This Lease contains the whole of the agreement between the Lessor and the Lessee relating to the Premises and the lease of the Premises by the Lessor to the Lessee.

**2. RENT**

- 2.1. The Lessee must pay to the Lessor, without deduction or set-off, the Annual Rent specified in Item 1 ("Rent").
- 2.2. The first Rent is due on the Commencing Date and all subsequent anniversary dates until the expiry of this agreement.

**3. RENT REVIEW**

Not Applicable.

**4. PAYMENT OF OUTGOINGS**

- 4.1. The Lessee is to pay for:
- (i) separately metered services to the Premises and Building including but not limited to telephone, gas, electricity and water, sewage and drainage charges; and
  - (ii) 100% of Lessor's Outgoings.

**5. OTHER PAYMENTS**

- 5.1 The Lessee must also pay to the Lessor:
- (a) Fifty per centum (50%) of the Lessor's reasonable costs and disbursements in connection with this Lease;
  - (b) interest on any money payable by the Lessee to the Lessor if more than fourteen (14) days overdue at the rate prescribed from time to time under Section 101 of the Civil Procedure Act, 2005 (as amended) or any succeeding legislation, at the date of demand, from the due date to the date of payment;
  - (c) the Lessor's reasonable costs and disbursements of considering any application by the Lessee for Lessor's consent (whether or not given) and on any surrender of the Lease;
  - (d) the Lessor's reasonable costs and disbursements in connection with a default by the Lessee under this Lease including, but not limited to, enforcement costs;
  - (e) the costs to the Lessor of obtaining any mortgagee's consent to this Lease and/or to any request for the Lessor's consent requiring the consent of any mortgagee; and
  - (f) at the same time as rent and other payments hereunder are payable under this Lease, any GST payable or collectable by the Lessor as a result of the imposition on the Lessee of the obligation to pay rent and such other payments under this Lease.

**6. USE OF THE PREMISES**

- 6.1. The Lessor makes no warranty as to the suitability of the Premises for the Use of the Premises specified in Item 4.
- 6.2. The Lessee must at its own cost:
- (a) use the Premises only for the Use of the Premises specified in Item 4;
  - (b) open for business at times usual for a business of the kind conducted by the lessee.
  - (c) comply with Lessor's Dunbar Park Plan of Management (as amended from time to time);
  - (d) comply with all laws and requirements of any relevant authority regulating the Use of the Premises including obtaining (and where relevant maintaining) any required consent(s) or licence(s);
  - (e) keep the Premises clean and free of vermin;
  - (f) notify the Lessor as soon as practicable of any contagious illnesses or structural defects requiring the urgent attention of the Lessor; and
  - (g) erect signs prohibiting smoking when requested to do so by the Lessor;
  - (h) take all reasonable steps to secure the Premises against unlawful entry.
- 6.3. The Lessee must not do anything in relation to the Premises which in the reasonable opinion of the Lessor is:
- (a) annoying, offensive or dangerous to other occupiers of the Building, the Land or to the owners or occupiers of land or buildings in the vicinity of the Premises;
  - (b) illegal; and/or
  - (c) liable to void any insurance in respect of the Premises or the Building or increase any insurance premium.
- 6.4. The Lessee must not:
- (a) use the toilet, sinks and drainage for any purpose other than that for which they were constructed;
  - (b) hold any auction, bankrupt, liquidation or fire sale on the Premises;
  - (c) overload the floors, walls or any service to the Premises;
  - (d) without the consent of the Lessor (which consent will not be withheld unreasonably);
    - (i) alter or carry out works to the Premises;
    - (ii) erect signs, notices, advertisements within or upon the Premises; or
    - (iii) play music or operate loud speakers that does not comply with Councils noise requirements.

**7. LESSOR'S COVENANT AND RESERVATIONS**

7.1. So long as the Lessee is not in breach of this Lease and subject to the rights of entry reserved under this Lease, the Lessee may occupy the Premises for the Term without interruption or disturbance by the Lessor.

7.2. The Lessor reserves the right to:

- (a) use the roof and/or external walls of the Building, including for the purposes of erecting and displaying advertisements and other signs;
- (b) name and design a logo for the Building and change these at any time;
- (c) pass services through, over, under or around the Premises and to access the Premises for the purpose of installing, maintaining, repairing and/or replacing those services;
- (d) deal with the Land including, but not limited to, the granting of easements or covenants;
- (e) convert the title of the Land to Strata Title or to subdivide the Land by way of a stratum subdivision;
- (f) carry out any building work or alterations to the Premises or the Building or on the Land (including alterations and re-development);
- (g) change the direction of flow or pedestrian access into, out of or through the Land;
- (h) change or vary car parking arrangements and car parking fees;
- (i) exclude or remove any person from the Land,

and the Lessee must do all that is reasonably necessary to enable the Lessor to exercise the rights reserved in this sub-clause including, but not limited to, the signing of consents.

7.3. In exercising any of its rights pursuant to clause 7.2 the Lessor must first consult with the Lessee as to the manner in which that right is or those rights are to be exercised, and in exercising any such rights must take reasonable endeavours to minimise any disruption which may be caused by the exercise of that right or those rights to the Lessee's business operation.

**8. REPAIRS**

8.1. The Lessor must:

- (a) use all reasonable endeavours to maintain essential services, if any, supplied to the Premises by the Lessor but will not be liable to the Lessee for any failure in essential services whatsoever, unless caused by the negligence, wilful act or omission of the Lessor; and
- (b) maintain in a state of good condition and serviceable repair the roof, ceiling, the external walls and external walls and associated door jambs, and floors of the property and must fix structural defects;
- (c) subject to clauses 8.2 and 8.3, maintain in a structurally sound condition the Premises and the Building;
- (d) keep and maintain and appropriate buildings insurance for the Building.

8.2. The Lessee must:

- (a) keep the Premises and Building in a good state of repair (fair wear and tear and structural repairs excepted) having regard to its condition as at the Commencing Date and comply with any notice served on the Lessee by the Lessor requiring the Lessee to carry out any repairs being the responsibility of the Lessee within, fourteen (14) days of the date of service;
- (b) maintain the Building forming part of the Premises; and
- (c) redecorate the Building and Premises on the dates specified in Item 5.

8.3. Notwithstanding the provisions of sub-clause 8.1(b)(ii), the Lessee must perform any structural work required to the Building and Premises arising from the Use of the Premises (and following damage caused by a negligent or wilful act or omission of the Lessee) at the Lessee's cost but only in accordance with the written directions of the Lessor, and must not otherwise perform any structural works.

8.4. If the Lessee fails to do any work that the Lessee must do, the Lessor can give the Lessee a notice in writing stating what the lessee has failed to do. After the notice is given, the lessee must:

- (a) do the work immediately if there is an emergency
- (b) do the work prompt and diligently in any other case

If the Lessee does not do the work, the Lessor can do it and the Lessee must reimburse the Lessor for the cost of work.

8.5 The Lessee must not make any structural alterations to the property. Any alterations require the lessors consent in writing (but the lessor cannot withhold consent unreasonably).

**9. AIRCONDITIONING**

9.1. The Lessee agrees to be responsible for the repair and maintenance of any air conditioning plant and equipment erected within, forming part of and servicing the Building provided that the Lessee will not carry out any major repairs to such plant and equipment without first having notified the Lessor and complied with the Lessor's reasonable directions.

**10. RIGHT OF ENTRY**

10.1 The Lessor enter the Premises and the Building:

- (a) at all reasonable times, on first providing reasonable notice:
  - (i) to perform any obligation of the Lessor under this Lease;
  - (ii) to inspect the Premises; and
  - (iii) to show the Premises to prospective purchasers and/or lessees and in this regard to erect "For Sale" signs at any time and "To Let" signs no earlier than six (6) months before the "Terminating Date".
- (b) at any time:

- (i) in the case of an emergency; or
- (ii) to rectify any default by the Lessee including, but not limited to, any failure by the Lessee to comply with a notice served under sub-clause 8.2(a), the cost of which rectification will become immediately payable by the Lessee to the Lessor.

#### **11. DEALINGS WITH THE INTEREST OF PARTIES UNDER THIS LEASE**

- 11.1. The Lessor may assign or transfer its interest under this Lease to any third party, at any time, at which time the Lessor will be released from any obligation to the Lessee under this Lease.
- 11.2. The Lessee must not sub-let, grant a license or concession in respect of, or part with possession of any part of the Premises, or transfer, assign, mortgage, charge or otherwise encumber the Lessee's interest under this Lease without the written consent of the Lessor which consent may be withheld at the Lessor's absolute discretion.
- 11.3. The Lessee has must pay in connection with any consent the lessors reasonable legal costs, the reasonable costs of obtaining mortgagees consent, the stamp duty and registration fee for the transfer.
- 11.4. For the purposes of this clause, the Lessee, if a company, is deemed to have transferred or assigned its interest where there has been an effective change in the ownership and/or control of the Lessee.

#### **12. INSURANCE**

- 12.1. The Lessee must effect and maintain the following insurance policies in respect of the Premises noting the Lessor's interest in such policies:
  - (a) public liability insurance in an amount for each accident or incident, not less than the sum specified in Item 6, or such other sum as the Lessor may specify by notice in writing to the Lessee;
  - (b) plate glass;
  - (c) workers compensation covering all workers with a common law extension or endorsement in an amount approved by the Lessor; and
  - (d) any other insurance reasonably required by the Lessor.
- 12.2. The Lessee must produce to the Lessor evidence of the currency of the insurances effected in accordance with sub-clause 12.1, upon renewal annually.
- 12.3. The lessee must notify the Lessor immediately is an insurance policy required by this lease is cancelled.
- 12.4. The insurance policies effected pursuant to this clause must note the interest of the Lessor in the insurance so effected.



**13. DEFAULT**

13.1. The Lessor may terminate this Lease and/or take or demand possession of the Premises if:

- (a) the Lessee repudiates the Lease;
- (b) the Lessee breaches an Essential Term of this Lease as defined under sub-clause 13.2;
- (c) the Lessee fails to comply with a term of this Lease which is not an Essential Term, where the failure to comply:
  - (i) can be remedied but is not remedied within a reasonable time of receipt of a written request from the Lessor;
  - (ii) cannot be remedied but can be compensated for and the Lessee fails to pay compensation within a reasonable time of a request for compensation; or
  - (iii) cannot be remedied or compensated for; or
- (d) a receiver, receiver and manager, administrator, provisional liquidator or liquidator is appointed in respect of the Lessee or any of its property.

13.2. "Essential Term" includes:

- (a) Clause 2 – the payment of Rent within fourteen (14) days (even if late payment is accepted);
- (b) Clause 4 – the payment of Outgoings;
- (c) Clause 6 – the Use of the Premises;
- (d) Clause 8 – the Lessee's obligation to effect repairs to the Premises;
- (e) Clause 11 – the provisions relating to dealings with the Lessee's interest under this Lease;
- (f) Clause 12 – the Lessee's obligations to effect and maintain policies of insurance; and
- (g) Clause 24 – environmental compliance.

13.3. In the case of a breach by the Lessee of an Essential Term then, in addition to the rights of the Lessor under sub-clause 13.1, the Lessor can recover damages for any loss suffered in respect of the Term, subject to any obligation on the Lessor to mitigate such loss.

13.4. If the Lessee is in default under this Lease including the breach of an Essential Term, then any demand of or acceptance from the Lessee by the Lessor of any late payment of Rent, percentage of Lessor's Outgoings or Increases in Lessor's Outgoings or any other money due by the Lessee to the Lessor under this Lease does not:

- (a) constitute a waiver of the Lessee's obligations to make these or any future payments; or
- (b) prevent the Lessor from exercising its rights under this Lease, including of enforcement and termination.

**14. INDEMNITY**

14.1. The Lessee indemnifies the Lessor in respect of:

- (a) any liability or loss arising out of and any costs incurred at any time whatsoever as a result (directly or indirectly) of a breach of any term or condition of this Lease by the Lessee;
- (b) any claim, demand or liability for any loss or damage to anything or any injury to or death of any person occurring on or near the Premises, unless caused by the negligence or a wilful act or omission of the Lessor; and
- (c) any service being not available, being interrupted or not working properly or any plant and equipment of the Lessor not working properly or in the need or want of repair.

14.2. The Lessee occupies, uses and keeps the Premises at the risk of the Lessee and releases, to the extent permitted by Law the Lessor, the Lessor's employees and agents from any liability or obligation to the Lessee (or any person claiming through the Lessee) in respect of any accident, damage, loss (including financial loss), death, injury, costs or expenses occurring in, or outside, the Premises arising by reason of the grant of this Lease, or out of or in connection with the possession or use of the Premises by the Lessee unless caused by the negligence or wilful act or omission of the Lessor.

14.3. The provisions of this clause will continue to apply notwithstanding the expiry or earlier termination of this Lease.

**15. DAMAGE**

15.1. If the Premises or the Building are damaged the Lessee is not liable to pay to the Lessor Rent or other money otherwise payable under this Lease (or a proportion of Rent or other money otherwise payable under this Lease) attributable to any period in which the Premises cannot be used or are inaccessible due to that damage, unless that damage was caused by the negligence or a wilful act or omission of the Lessee.

15.2. If the Lessor notifies the Lessee in writing that it does not intend to repair the damage to the Premises, either party may terminate this Lease by seven (7) days notice in writing.

15.3. If the Lessor fails to repair the Premises within a reasonable time of the Lessee requesting it to do so in writing, the Lessee may terminate this Lease by seven (7) days notice in writing.

15.4. The provisions of sub-clause 15.1 do not prevent the Lessor from recovering any loss or damages from the Lessee in respect of any damage to which this clause applies.

15.5. This clause does not oblige the Lessor to restore or reinstate the Building or the Premises or any part of the Building or Premises.

**16. OPTION**

Not Applicable.

**17. RIGHTS ON EXPIRY OR TERMINATION**

- 17.1. If, with the consent of the Lessor, the Lessee remains on the Premises after the Termination Date, the Lessee will do so on a monthly tenancy on the same terms and conditions of this Lease ("the Monthly Tenancy") which may be terminated by either party by one (1) month's notice in writing.
- 17.2. Under the Monthly Tenancy the Lessee must pay the same Rent and Lessor's Outgoings or percentage of Increases in Lessor's Outgoings in the same manner as was payable immediately prior to the expiration or termination of this Lease.
- 17.3. If on expiry or termination of this Lease the Lessee does not become a tenant under clause 16 or sub-clause 17.1, then the Lessee must vacate the Premises and remove the Lessee's Property from the Premises.
- 17.4. If the Lessee fails to remove the Lessee's Property in accordance with the requirements of this clause, it becomes the property of the Lessor who may keep it or dispose of it after 30 days and recover from the Lessee the cost of such removal or disposal.

**18. COMMON AREAS**

- 18.1. In respect of the Common Areas and any part of them, the Lessor may:
- (a) resist access to particular lessees or classes of persons;
  - (b) restrict or prohibit access during certain hours or days; and/or
  - (c) close them temporarily for the purpose of repair, renovation or service.
- 18.2. In respect of the car park or car parks (if any) forming part of the Common Areas:
- (a) the Lessor is entitled to charge for the parking of motor vehicles by customers and members of the public;
  - (b) the Lessee must provide to the Lessor the names of each of its employees and the make, colour and registration number of the motor vehicles used by them and changes of any of those particulars within seven (7) days from date of request or any change to those particulars; and
  - (c) the Lessee and its employees may only park motor vehicles in the areas specifically reserved.

**19. RULES AND REGULATIONS**

- 19.1. The Lessor may from time to time promulgate rules and regulations not inconsistent with or in derogation of the rights of the Lessee hereunder relating to:
- (a) the use safety care and cleanliness of the Premises or the Land;
  - (b) the preservation of good order therein;
  - (c) the comfort of persons lawfully using the same;
  - (d) the location and storage of garbage and refuse pending its removal;
  - (e) the policing and regulating of traffic and the parking of motor vehicles on the Premises or the Land;

- (f) the external appearance of the Premises and the Land.

Any such rules and regulations not inconsistent with or in derogation of the rights of the Lessee may from time to time be repealed amended or added to at the discretion of the Lessor and upon notice in writing thereof under the hand of the Lessor or its authorised agent being given to the Lessee shall be and become as binding upon the Lessee as if the same were expressly set forth herein as covenants on the part of the Lessee.

**20. GUARANTEE AND INDEMNITY**

Not Applicable.

**21. POWER OF ATTORNEY**

21.1. The Lessee appoints the Lessor as the Lessee's attorney.

21.2. This power of attorney is:

- (a) irrevocable by the Lessee;
- (b) granted by the Lessee for valuable consideration to secure performance of the Lessee's Obligations under this Lease and the Lessor's proprietary interest as Lessor; and
- (c) exercisable by the Lessor when the Lessee is in default under this Lease.

21.3. This Power of Attorney is limited to permit the Lessor to take any action to protect the Lessor's interest under this Lease and in the Building, the Premises and the Land and to comply with any obligations of the Lessee under this Lease.

**22. ENVIRONMENTAL COMPLIANCE**

22.1. The Lessee warrants that the Use of the Premises complies and will continue during the Term to comply with, any Environmental Law or the requirements of any statutory authority relating to environmental matters that apply to the Use of the Premises.

22.2. The Lessee will do such things and execute such documents as are required to maintain and/or renew any licences, authorisations or approvals relating to the compliance referred to in sub-clause 22.1.

22.3. If any statutory authority issues a notice to the Lessee during the Term in respect of any environmental matter, the Lessee must comply with the requirements of that notice within the time specified, at the Lessee's expense.

22.4. The Lessee must notify the Lessor within forty-eight (48) hours of the Lessee becoming aware of any breach of sub-clause 22.1 or of the receipt of any notice referred in sub-clause 22.3.

22.5. In ensuring the Lessee is meeting its obligations pursuant to this clause, the Lessee agrees to carry out, at the Lessee's cost, environmental assessments and audits ("the Audits") (the terms of reference for which are to be prescribed or approved by the Lessor) when so requested by the Lessor, but not within the first twelve (12) months of the Term and not more than every three (3) years.

22.6. The Lessee must remedy any failure to comply with any environmental law, remediate any area of the Premises the Building and/or the Land, or make good any damage caused to any person or property disclosed by the Audits or otherwise, as soon as is reasonably practicable.

**23. NOTICE**

Any notice direction or request hereunder to be given to the Lessee may be served upon the Lessee at the Premises in any manner mentioned in Section 170 of the Conveyancing Act 1919 and may be signed on behalf of the Lessor by its managing agent, solicitor, attorney or by a director, associate director, manager or secretary of the Lessor and any notice so signed shall be conclusive evidence as to its execution and of the authority of the person whose name appears therein to sign the same.

**24. DISPUTE RESOLUTION**

24.1. All disputes or differences arising out of this Lease will be resolved in accordance with this clause 24, unless:

- (a) a party is seeking urgent interlocutory relief or a remedy where a delay in commencing proceedings in Court could prejudice the party's entitlement to seek that remedy;
- (b) an incident has arisen that requires urgent resolution which mediation might not resolve; or
- (c) the process in the remainder of this clause 24 has been exhausted.

**24.2. Notice of Dispute**

Either party may at any time, notify the other party in writing that there is a dispute or difference concerning any matter in this Lease. That Notice must:

- (a) identify the subject matter of the dispute;
- (b) identify the relevant provisions of this Lease;
- (c) annex copies of any correspondence, or background material and information relevant to that dispute; and
- (d) contain any particulars of quantification of the dispute.

**24.3. Parties to Confer**

The parties must, within twenty-one (21) days of the service of the Notice, meet in an attempt to discuss, and to reach a mutually acceptable decision, on the matter of the dispute.

**24.4. Referral to Mediation**

If:

- (a) the matter in dispute is not settled within ten (10) business days of the meeting referred to in the preceding paragraph, or such later date as the parties may agree; or
- (b) either party refuses to attend a meeting in accordance with clause 24.3; then
- (c) the difference or dispute must be the subject of a mediation administered by the Australian Commercial Dispute Centre ("ACDC") conducted and held in accordance with the mediation rules of the ACDC in force at the time of the appointment of a mediator.

- 24.5. The mediator will be appointed:
- (a) by the parties, from a panel suggested by the ACDC within twenty-eight (28) days of the referral of the difference or dispute for mediation; or
  - (b) if a mediator is not appointed by agreement within that period, by the Secretary-General of the ACDC at the request of either party.
- 24.6. The costs of and associated with formal mediation before a mediator under this clause are to be paid by the parties to the mediation in such proportions as they may agree among themselves or, failing agreement, in equal shares.
25. **GENERAL**
- 25.1. **Entire Agreement**
- This Lease is the entire agreement between the parties on the subject matter. All representations, communications and prior agreements with respect of the subject matter are merged in, and superseded by, this Lease.
- 25.2. **Survival Indemnities**
- Each indemnity in this Lease is a continuing obligation, which is independent from the other obligations of the indemnifying party, and which survives termination of this Lease.
- 25.3. **No Waiver**
- No failure or delay by another party in exercising any right, power or remedy under this Lease will operate as a waiver of any breach of default by the other party. A single, or partial, exercise of any right, power or remedy does not prevent any further, or other, exercise of any right power or remedy.
- 25.4. **Agent**
- The Lessor may by notice in writing appoint any person to act as its agent in relation to all or any of the rights and functions of the Lessor under this Lease.
26. **GST**
- If GST or similar value added tax is imposed on any supply under or in accordance with this Lease, the amount payable for that supply is increased by the amount of that GST. The party seeking payment must provide a GST tax invoice (or any other thing required under any legislation) in the form required, and in the time provided for, by the relevant legislation.
27. **LIQUOR COVENANTS**
- 27.1. The Lessee shall not sell, dispose of, or otherwise encumber any liquor licence or licences ("Liquor Licence") used in connection with the business carried on by the Lessee at the Premises.
- 27.2. The Lessee must at its own cost and expense do all acts and things necessary for keeping current the Liquor Licence, including the making of applications for reinstatement if necessary, and must not, without the prior written consent of the Lessor, part with possession of or in any way encumber the Liquor Licence and must on demand produce on the Premises the Liquor Licence for inspection by the Lessor or by any person duly authorised on the Lessor's behalf.

- 27.3. The Lessor shall not be responsible for the Liquor Licence or the operation of the Lessee's business.

**28. LESSEE'S ADDITIONAL OBLIGATIONS**

- 28.1. The Lessee must provide the Lessor as soon as possible annually in accordance with the Lessor's financial year with a copy of the Lessee's annual report including audited or signed financial statements showing income and expenditure and gross turn-over, membership renewals and green fees.
- 28.2. The Lessee must not:
- (a) store or use flammable, volatile or explosive substances on the Premises except LPG for barbecues and fuel for lawnmowers and associated equipment;
  - (b) do anything in or around the Premises which, in the Lessor's reasonable opinion, may be annoying, dangerous or offensive; and
  - (c) do anything to overload the services nor use the services for anything other than their intended purpose.
- 28.3. **Community Net Benefits**
- (a) The Lessee shall provide an appropriate level of bowling skills training and development to residents of the Pittwater local government area by voluntary and/or commercial means.
  - (b) The Lessee shall develop in collaboration with the Lessor a 5-year rolling capital improvement schedule for the Western and Middle Green. The schedule must be prepared each year and the Lessee shall use its best endeavours to carry out all scheduled capital improvements to the Western Green and all scheduled improvements to the Western Green which appear on the schedule or as mutually agreed by the Lessee and Lessor at the time of such review. Capital improvements include (but are not limited to):
    - (i) Annual renovation of the Western Green, including annual scarifying, coring and rubbing in of top dressing material;
    - (ii) Enlarging the ditches;
    - (iii) Retaining walls;
    - (iv) Shade awnings;
    - (v) Drainage;
    - (vi) Turf surfaces;
    - (vii) Greenkeepers sheds;
    - (viii) Seating.
  - (c) The Lessee shall keep a record of the cost of all capital improvements carried out by it each year, including person hours, whether paid or unpaid, in respect of the Western and Middle Green and provide a copy to the Lessor annually.

- (d) The Lessee shall develop in collaboration with the Lessor a 5 year rolling maintenance schedule for the Western Green. Such schedule must be reviewed each year and the Lessee shall use its best endeavours to carry out all scheduled maintenance to the Western and Middle Green which appears on the schedule. Maintenance includes, but is not limited to, repairs, painting, fittings and fixtures, greens, grounds and landscaping, fences and gutters. The Lessee shall be responsible for all repairs (including emergency repairs) to all electrical and plumbing fittings, which includes (but is not limited to) cleaning and keeping free of all drains and waste pipes and provided that the Lessee shall be liable for damage of whatever nature resulting from an act, default or neglect of the Lessee and its servants or agents.
- (e) The Lessee shall keep a record of the cost of all repairs, maintenance, improvements and associated expenses paid by it each year, including person hours, whether paid or unpaid, in respect of the Western and Middle Green, and provide a copy to the Lessor annually.
- (f) The Lessee shall conduct training programs for seniors, youth development and other community groups and keep a record of the cost of such training programs and provide a copy to the Lessor annually.

28.4. The Lessee shall:

- (a) Provide the Lessor with the names and contact details of the members of its management committee and promptly advise the Lessor of any changes;
- (b) Comply on time with all laws, regulations and requirements of authorities in connection with the Premises, the Lessee's activities, the Lessee's Property and the use or occupation of the Premises (including obtaining all permits);
- (c) Inform the Lessor of damage to a value of more than \$5,000 to the Premises or of a faulty service immediately after it becomes aware of same; and
- (d) Promptly, when asked by the Lessor, do anything necessary to enable the Lessor to exercise its rights under this Lease.

28.5. The Lessee may not refuse or decline an application for membership without reasonable cause.



Annexure A – Plan

Approximate Proposed Consolidated Lease Area



## REFERENCE SCHEDULE

<b>ITEM 1</b>	<b>ANNUAL RENT</b> <i>(Clause 2)</i>
	\$1 payable upon each anniversary date
<b>ITEM 2</b>	<b>EQUAL MONTHLY INSTALMENTS</b> <i>(Clause 2)</i>
	Not Applicable
<b>ITEM 3</b>	<b>RENT REVIEW</b>
	Not Applicable
<b>ITEM 4</b>	<b>USE OF THE PREMISES</b> <i>(Clause 6)</i>
	Licensed community Bowling and Recreational club and all incidental uses
<b>ITEM 5</b>	<b>DATES FOR REDECORATION</b> <i>(Sub-Clause 8.2(c))</i>
	Upon the expiry or sooner determination of this Lease or otherwise in consultation with Council
<b>ITEM 6</b>	<b>PUBLIC LIABILITY INSURANCE</b> <i>(Clause 12)</i>
	\$20,000,000
<b>ITEM 7</b>	<b>OPTION</b>
	Not Applicable

## EXECUTION

Executed by the General Manager on behalf of  
**PITTWATER COUNCIL (ABN 61 340 837 871)**  
pursuant to a delegation dated  
under section 377 of the *Local Government Act*  
1993 (NSW):

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
General Manager

\_\_\_\_\_  
Name of Witness [BLOCK LETTERS]

\_\_\_\_\_  
Name of General Manager [BLOCK LETTERS]

\_\_\_\_\_  
Address of Witness

Executed by **AVALON BEACH BOWLING &  
RECREATION CLUB LTD (ACN 000 244 146)** in  
accordance with section 127(1) of the  
*Corporations Act 2001* (Cth) in the presence of:

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director/Secretary

\_\_\_\_\_  
Name [BLOCK LETTERS]

\_\_\_\_\_  
Name [BLOCK LETTERS]

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## **Council Meeting**

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### **13.0      Adoption of Leading and Learning Committee Recommendations**

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### **14.0      Adoption of Sustainable Towns and Villages Committee Recommendations**

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