

Agenda

Council Meeting

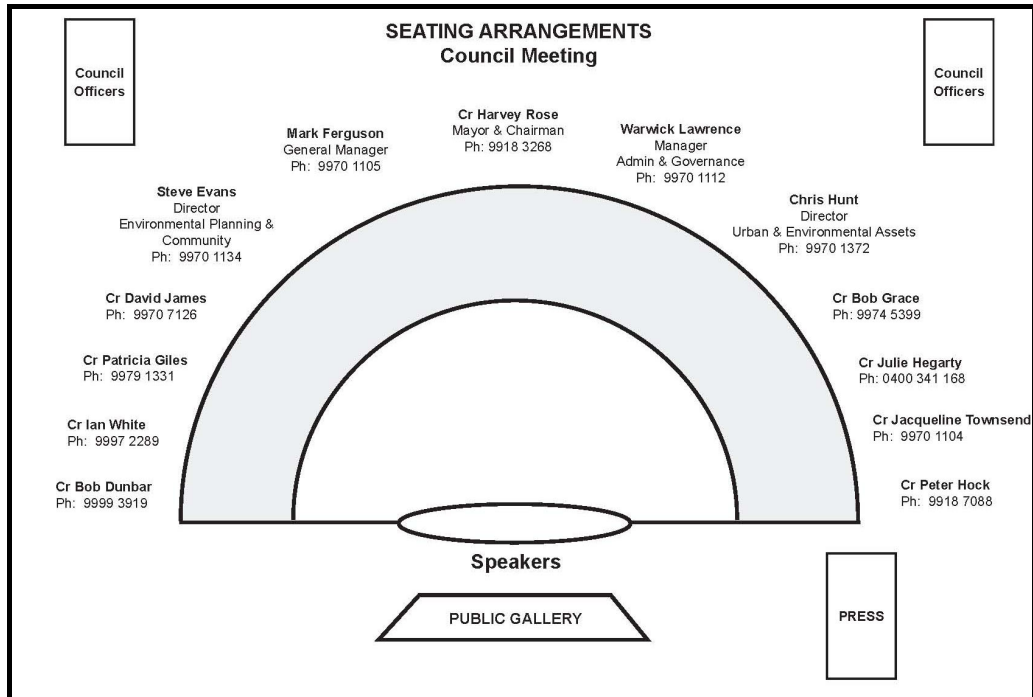
Notice is hereby given that a Council Meeting of Pittwater Council will be held at Mona Vale Memorial Hall on

18 October 2010

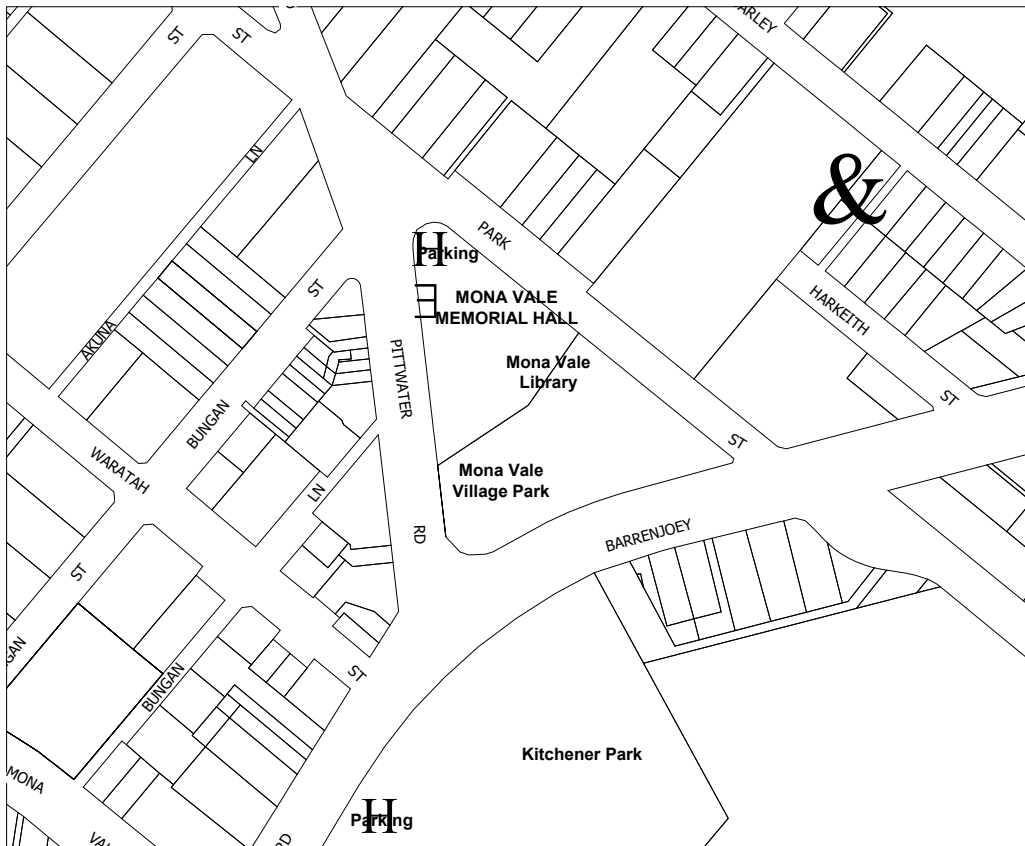
Commencing at 6.30pm for the purpose of considering the items included on the Agenda.

Mark Ferguson
GENERAL MANAGER

Seating Arrangements



Meeting Location



All Pittwater Council's Agenda and Minutes are available on the Pittwater website at www.pittwater.nsw.gov.au

Council Meeting

Acknowledgement of Country

Pittwater Council honours and respects the spirits of the Guringai people.
Council acknowledges their traditional custodianship of the Pittwater area

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**The Senior Management Team
has approved the inclusion of
all reports in this agenda.**

Council Meeting

1.0 Public Forum

Statement of Respect

Pittwater Council promotes and strives to achieve a climate of respect for all and endeavours to inspire in our community shared civic pride by valuing and protecting our unique environment, both natural and built, for current and future generations

GUIDELINES FOR RESIDENTS - PUBLIC FORUM

Objective

The purpose of the Public Forum is to gain information or suggestions from the community on new and positive initiatives that Council can consider in order to better serve the Pittwater community.

- The Public Forum is not a decision making forum for the Council;
- Residents should not use the Public Forum to raise routine matters or complaints. Such matters should be forwarded in writing to Council's Customer Service Centres at Mona Vale or Avalon where they will be responded to by appropriate Council officers;
- There will be no debate or questions with, or by, councillors during/following a resident submission;
- Council's general Meeting procedures apply to Public Forums, in particular, no insults or inferences of improper behaviour in relation to any other person/s is permitted;
- No defamatory or slanderous comments will be permitted. Should a resident make such a comment, their submission will be immediately terminated by the Chair of the Meeting;
- Up to 20 minutes is allocated to the Public Forum;
- A maximum of 1 submission per person per Meeting is permitted, with a maximum of 4 submissions in total per Meeting;
- A maximum of 5 minutes is allocated to each submission;
- Public Submissions will not be permitted in relation to the following matters:
 - Matters involving current dealings with Council (eg. development applications, contractual matters, tenders, legal matters, Council matters under investigation, etc);
 - Items on the current Council Meeting agenda;
- The subject matter of a submission is not to be repeated by a subsequent submission on the same topic by the same person within a 3 month period;
- Participants are not permitted to use Council's audio visual or computer equipment as part of their submission. However, photographs, documents etc may be circulated to Councillors as part of the submission;
- Any requests to participate in the Public Forum shall be lodged with Council staff by 12 noon on the day of the Council Meeting. To register a request for a submission, please contact Warwick Lawrence, phone 9970 1112.

2.0 Resident Questions

GUIDELINES FOR RESIDENTS -

RESIDENT QUESTION TIME

Objective

The purpose of Resident Question Time is to provide the community with a forum to ask questions of the elected Council on matters that concern or interest individual members of the community.

- Resident questions are to be handed up on the form located at the back of the Meeting room to Council staff in attendance at the Meeting prior to the commencement of the Meeting;
- A period of up to 10 minutes is allocated to Resident Question Time. A limit of 2 resident questions per person per Meeting is permitted;
- Residents are asked to keep their questions precise to allow the opportunity for clear responses. Questions may be taken on notice depending on the complexity of the question and the need to refer to relevant Council documents;
- There will be no debate or questions with, or by, councillors during/following a resident question;
- No defamatory or slanderous questions will be permitted. Should a resident make such a comment, their question will be immediately terminated by the Chair of the Meeting;
- Questions will not be permitted in relation to the following matters:
Matters involving current dealings with Council (eg. development application, contractual matters, tenders, legal matter, etc);
- Council's general Meeting procedures apply to Resident Question Time, in particular, no insults or inferences of improper behaviour in relation to any other person/s is permitted.

Mark Ferguson
GENERAL MANAGER

3.0 Apologies

Apologies must be received and accepted from absent Members and leave of absence from the Council Meeting must be granted.

4.0 Declarations of Pecuniary and Conflict of Interest including any Political Donations and Gifts

Councillors are advised of the following definitions of a "pecuniary" or "conflict" of interest for their assistance:

* Section 442 of the Local Government Act, 1993 states that a "pecuniary" interest is as follows:

"(1) **[Pecuniary interest]** A Pecuniary interest is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person or another person with whom the person is associated.

(2) **[Remoteness]** A person does not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision the person might make in relation to the matter."

Councillors should reference the Local Government Act, 1993 for detailed provisions relating to pecuniary interests.

* Council's Code of Conduct states that a "conflict of interest" exists when you could be influenced, or a reasonable person would perceive that you could be influenced by a personal interest when carrying out your public duty.

Councillors are also reminded of their responsibility to declare any Political donation or Gift in relation to the Local Government & Planning Legislation Amendment (Political Donations) Act 2008.

* A reportable political donation is a donation of:

- \$1,000 or more made to or for the benefit of the party, elected member, group or candidate; or
- \$1,000 or more made by a major political donor to or for the benefit of a party, elected member, group or candidate, or made to the major political donor; or
- Less than \$1,000 if the aggregated total of the donations made by the entity or person to the same party, elected member, group, candidate or person within the same financial year (ending 30 June) is \$1,000 or more.

5.0 Confirmation of Minutes

"Councillors are advised that when the confirmation of minutes is being considered, the only question that can arise is whether they faithfully record the proceedings at the meeting referred to. A member of a council who votes for the confirmation of the minutes does not thereby make himself a party to the resolutions recorded: **Re Lands Allotment Co (1894) 1 Ch 616, 63 LJ Ch 291.**"

Minutes of the Council Meeting held on 5 October 2010.

6.0 Business by Exception (All items on the Agenda)

Items that are dealt with by exception are items where the recommendations contained in the reports in the Agenda are adopted without discussion.

7.0 Public Addresses

Statement of Respect

Pittwater Council promotes and strives to achieve a climate of respect for all and endeavours to inspire in our community shared civic pride by valuing and protecting our unique environment, both natural and built, for current and future generations.

The following guidelines apply to any person addressing a Council / Committee meeting in relation to an item on the Council / Committee meeting agenda:

1. *A member of the public may be granted leave to address a meeting of Council or a Committee, where such a request is received by the General Manager no later than 3.00pm on the day of the meeting. This is subject to:*
 - (a) *A maximum of up to four speakers may address on any one item, with a maximum of two speakers in support of the recommendation in the report, and two speakers in opposition.*
 - (b) *A limitation of three minutes is allowed for any one speaker, with no extensions.*
 - (c) *An objector/s to a development application is to speak first with the applicant always being given the right to reply.*

Exceptions to these requirements may apply where:

- (a) *The Meeting specifically requests that a person be interviewed at a meeting.*
 - (b) *The Meeting resolves that a person be heard at the meeting without having given prior notice to the General Manager*
2. *Once a public/resident speaker has completed their submission and responded to any Councillor questions, they are to return to their seat in the public gallery prior to the formal debate commencing.*
3. *No defamatory or slanderous comments will be permitted. Should a resident make such a comment, their address will be immediately terminated by the Chair of the meeting.*
4. *Council's general meeting procedures apply to Public Addresses, in particular, no insults or inferences of improper behaviour in relation to any other person is permitted.*
5. *Residents are not permitted to use Council's audio visual or computer equipment as part of their address. However, photographs, documents etc may be circulated to Councillors as part of their address.*

8.0 Mayoral Minutes - Nil

9.0 Council Meeting Business - Nil

Governance Committee

10.0 Governance Committee Business

C10.1 Investment Balances for the Month of September 2010

Meeting: Governance Committee

Date: 18 October 2010

STRATEGY: Business Management

ACTION: To Provide Effective Investment of Council's Funds

PURPOSE OF REPORT

To advise on the status of Council's Investment Balances for the Month of September 2010

1.0 BACKGROUND

- 1.1 As provided for in Regulation 212 of the Local Government (General) Regulation, 2005, a report listing Council's investments (see Attachment 1) must be presented.

2.0 ISSUES

2.1 MONTHLY RETURNS

Investment return for the month of September 2010.

Term deposits interest income:	\$	125,407
Tradable CDO/FRNs interest income:	\$	30,227
Tradable CDO/FRNs capital movement:	\$	<u>9,915</u>
Net investment income for the month of September 2010	\$	165,549

YEAR TO DATE RETURN

Investment return year to date September 2010.

Term deposits interest income:	\$	300,402
Tradable CDO/FRNs interest income:	\$	43,565
Tradable CDO/FRNs capital movement:	\$	<u>54,226</u>
Net investment return year to date:	\$	398,193

Projected investment return budget for financial year. \$ 1,080,000

2.2 PERFORMANCE OF COUNCIL'S PORTFOLIO FOR THE LAST FIVE YEARS

Annual returns of Council's portfolio for the last five years:

Year to	Net Return	Return on average funds invested
June 2007	\$1,221,246	6.6%
June 2008	\$ 594,815	2.3%
June 2009	\$ 534,575	2.4%
June 2010	\$1,364,315	6.1%
September 2010	\$ 398,193	6.7%
Projected Budget	\$1,080,000	5.5%

Note: Net investment return includes interest income and capital movements.

RESPONSIBLE ACCOUNTING OFFICER CERTIFICATION

The Responsible Accounting Officer certifies that all investments have been made in Accordance with Section 625 of the Local Government Act, 1993 the Local Government (General) Regulations, and Council's Investment Policy (No 143).

3.0 SUSTAINABILITY ASSESSMENT

3.1 Supporting & Connecting our Community (Social)

3.1.1 The Report will have no impact on this strategy

3.2 Valuing & Caring for our Natural Environment (Environmental)

3.2.1 The Report will have no impact on this strategy

3.3 Enhancing our Working & Learning (Economic)

3.3.1 The Report will have no impact on this strategy

3.4 Leading an Effective & Collaborative Council (Governance)

3.4.1 The Report will have no impact on this strategy

3.5 Integrating our Built Environment (Infrastructure)

3.5.1 The Report will have no impact on this strategy

4.0 EXECUTIVE SUMMARY

4.1 The net investment return as at 30 September 2010 is a gain of \$ 398,193

RECOMMENDATION

That the information provided in the report be noted, including the year to date (September) net investment return of \$ 398,193

Report prepared by
David Miller, Project Accountant

Mark Jones
CHIEF FINANCIAL OFFICER

Investment Information:**Types of Investments**

At Call refers to funds held at a financial institution and can be recalled by Council either same day or on an overnight basis.

A **Term Deposit** is a short term deposit held at a financial institution for a fixed term and attracting interest at a deemed rate.

A **Bank Bill** is a short term investment issued by a bank representing its promise to pay a specific sum to the bearer on settlement. The amount payable to Council at maturity is the face value which represents the purchase price and interest earned.

A **Floating Rate Note** is a longer term investment issued by a financial institution with a variable interest rate. The adjustments to the interest rate are usually made every three months and are tied to a certain money-market index such as the BBSW.

A **Floating Rate CDO** or Collateralised Debt Obligation is an investment backed by a diversified pool of one or more classes of debt. These investments are for longer terms and offer a higher rate of interest. Credit Ratings are assigned to these investments as detailed in the investment balances listing.

Credit Rating Information

Credit ratings are generally a statement as to the institutions credit quality.

Ratings ranging from BBB- to AAA (long term) are considered investment grade.

A general guide as to the meaning of each credit rating is as follows:

AAA	<i>Extremely strong capacity to meet financial commitments (highest rating)</i>
AA	<i>Very strong capacity to meet financial commitments</i>
A	<i>Strong capacity to meet financial commitments, but somewhat more susceptible to adverse economic conditions and changes in circumstances</i>
BBB	<i>Adequate capacity to meet financial commitments with adverse economic conditions or changing circumstances more likely to lead to a weakened capacity of the obligor to meet its financial commitments</i>
BB	<i>Less vulnerable in the near term, but faces major ongoing uncertainties and exposures to adverse business, financial, and economic conditions</i>
B	<i>More vulnerable to non-payment than obligations rated 'BB', but the obligor currently has the capacity to meet its financial commitment on the obligation</i>
CCC	<i>Currently vulnerable, and is dependent upon favourable business, financial, and economic conditions to meet its financial commitments</i>
CC	<i>Currently highly vulnerable</i>
C	<i>Highly likely to default</i>
D	<i>Defaulted</i>

The **Bank Bill Swap Rate (BBSW)** is the average mid rate, for Australian Dollar bills of exchange, accepted by an approved bank, having regard to a designated maturity.

Note: Council's CBA Floating Rate CDO and Longreach CDO are shown at face value, less any crystallised losses, as required by international accounting standards as they were purchased on a hold to maturity basis, unlike Council's CDOs within the ex - Lehman Bros portfolio that are considered tradable.

Current market values of these CDOs are:- CBA Floating Rate CDO is \$ zero and
Longreach CDO \$419,750

C10.2 Legal Expenditure for the Month of September 2010

Meeting: Governance Committee

Date: 18 October 2010

STRATEGY: Business Management

ACTION: To produce monthly, quarterly and annual budgets and statements

PURPOSE OF REPORT

To advise on the status of Council's Legal Expenditure for the period ending 30 September 2010.

1.0 BACKGROUND

- 1.1 In providing Council with an accurate picture of Pittwater's Legal Expenditure, current data and a graphical representation of Council's Legal Expenditure are presented.

2.0 ISSUES

- 2.1 Gross Annual Legal Budget for 2010/11: \$ 900,000

Gross Legal Expenditure Breakdown:

- Total Solicitor Fees at 30/09/10: \$ 124,651
- Total Other Associated Expenditure at 30/09/10: \$ 123,875

Total Gross Legal Expenditure at 30/09/10: \$ 248,526

Year to Date Budget for Legal Expenses at 30/09/10: \$ 224,911

3.0 SUSTAINABILITY ASSESSMENT

3.1 Supporting & Connecting our Community (Social)

- 3.1.1 The Report will have no impact on this strategy

3.2 Valuing & Caring for our Natural Environment (Environmental)

- 3.2.1 The Report will have no impact on this strategy

3.3 Enhancing our Working & Learning (Economic)

- 3.3.1 The Report will have no impact on this strategy

3.4 Leading an Effective & Collaborative Council (Governance)

- 3.4.1 The Report will have no impact on this strategy

3.5 **Integrating our Built Environment (Infrastructure)**

3.5.1 The Report will have no impact on this strategy

4.0 **EXECUTIVE SUMMARY**

The Gross Legal Expenditure to 30 September 2010 is \$ 248,526 which slightly exceeds the Year to Date Budget for 2010/11.

RECOMMENDATION

That the information provided in the report be noted.

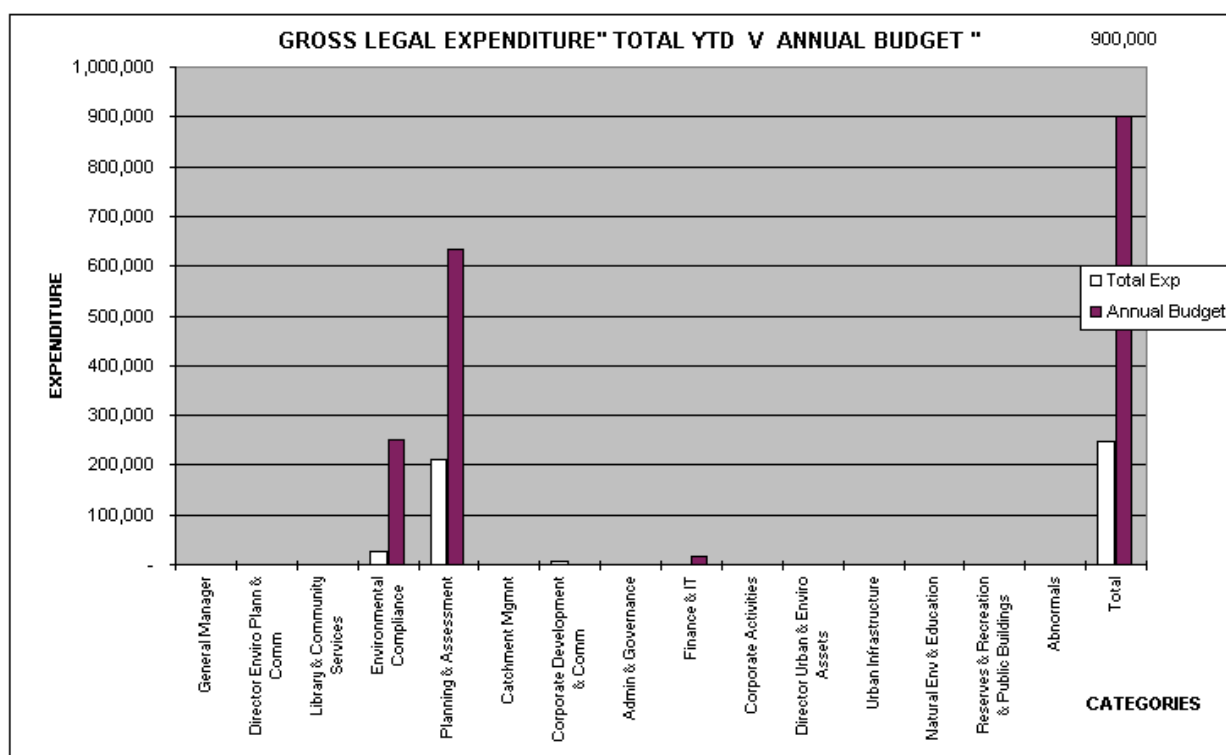
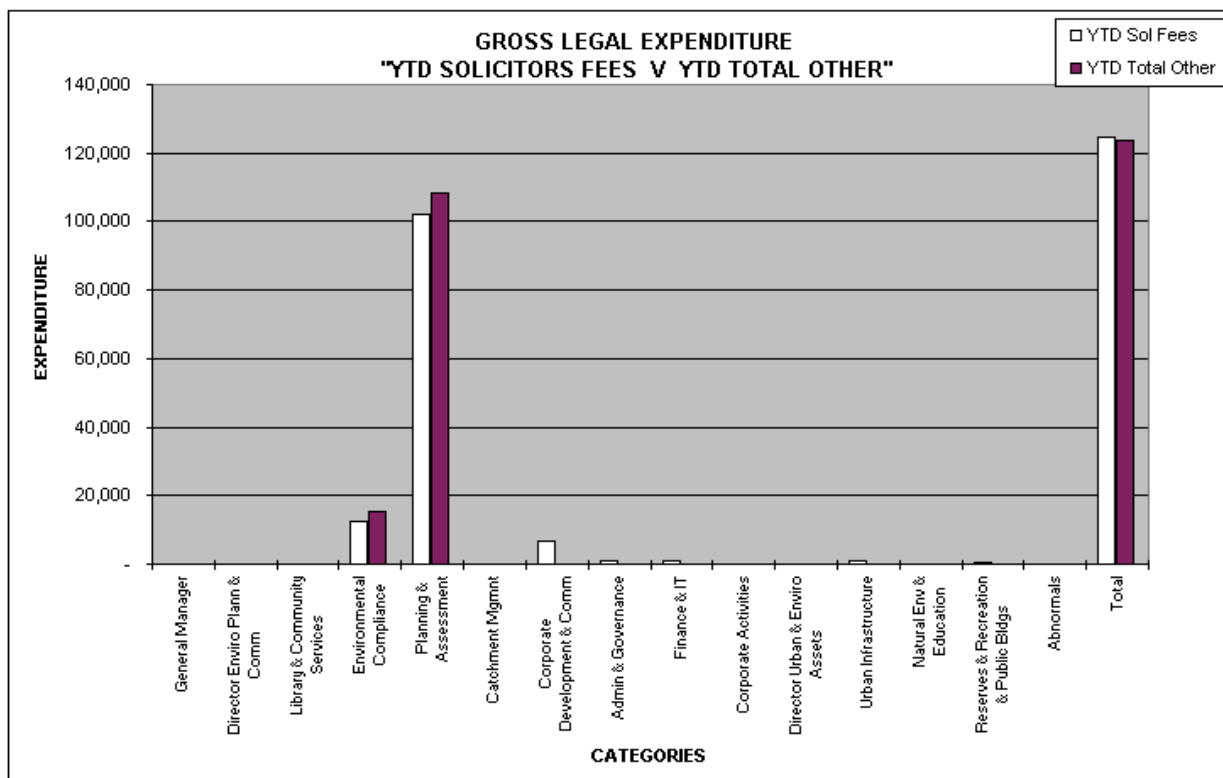
Report prepared by
Renae Wilde, Senior Project Accountant

Mark Jones
CHIEF FINANCIAL OFFICER

LEGAL EXPENDITURE **TOTALS AND GRAPHICAL REPRESENTATION**

as at 30th September 2010

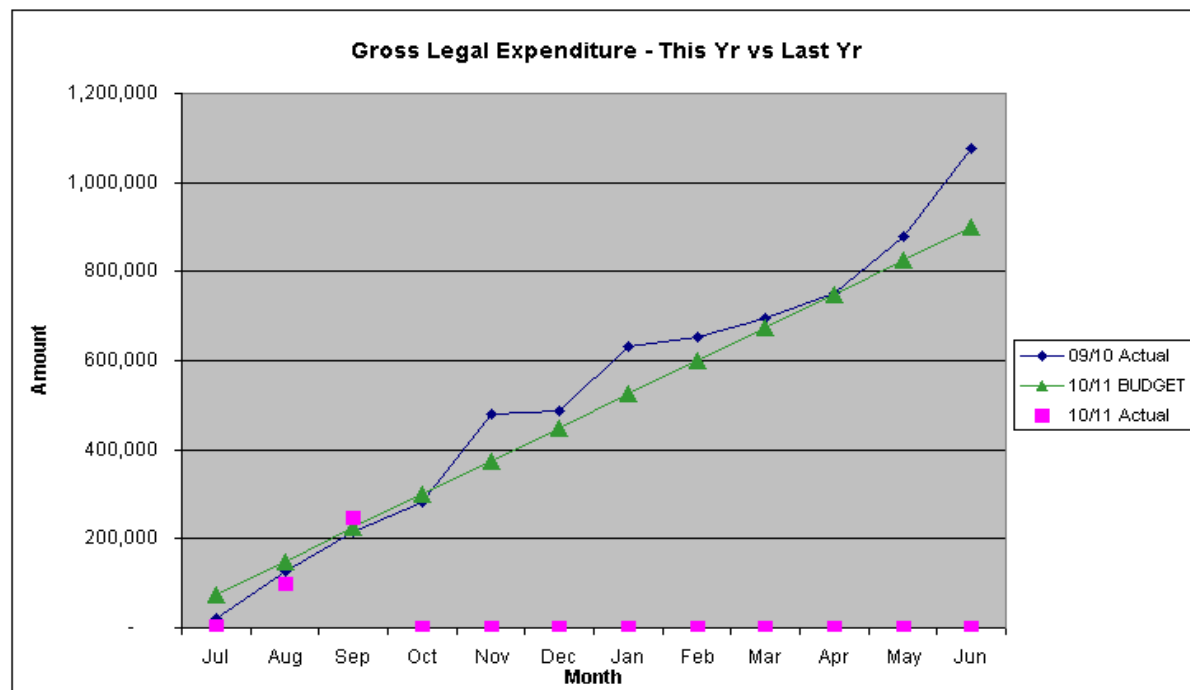
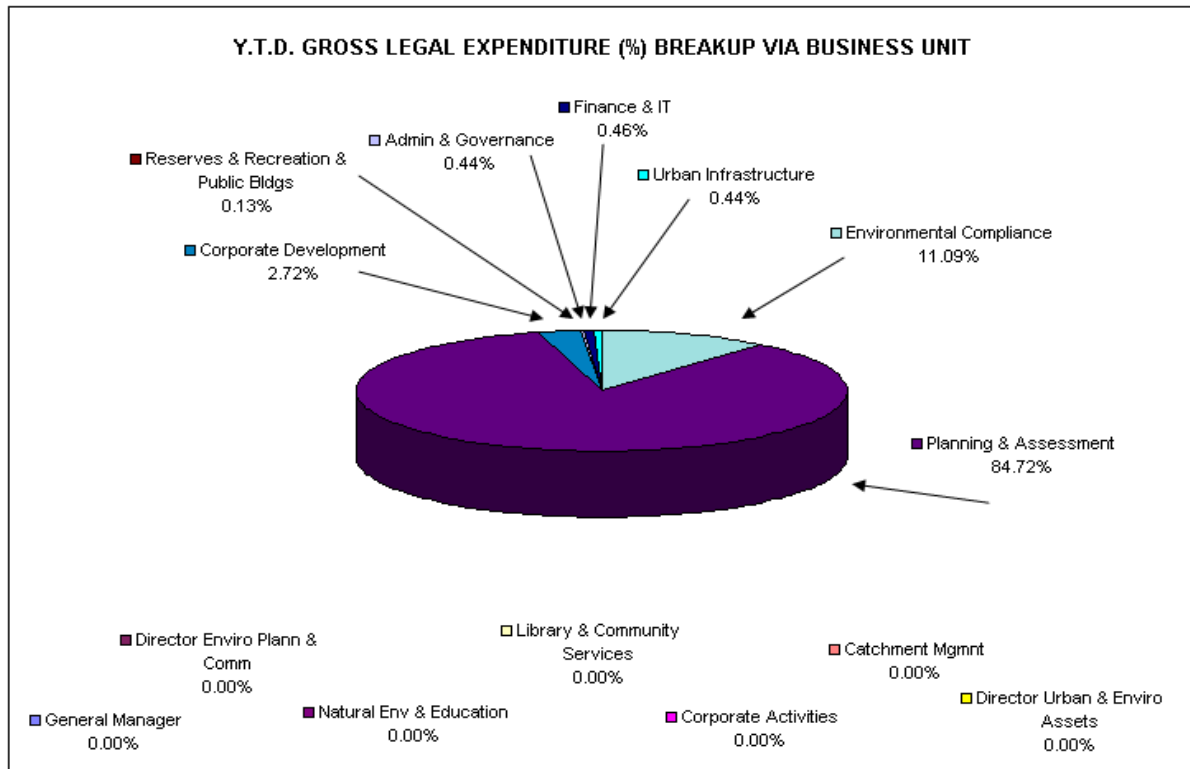
Solicitors Other Expenditure	Solicitors Fees Expenditure	Third Party Expenditure	Total Expenditure	Current Year Budget	Current Year Inc/Recov/Reversal
6,889	124,651	116,986	248,526	900,000	140,571



LEGAL EXPENDITURE **TOTALS AND GRAPHICAL REPRESENTATION**

as at 30th September 2010

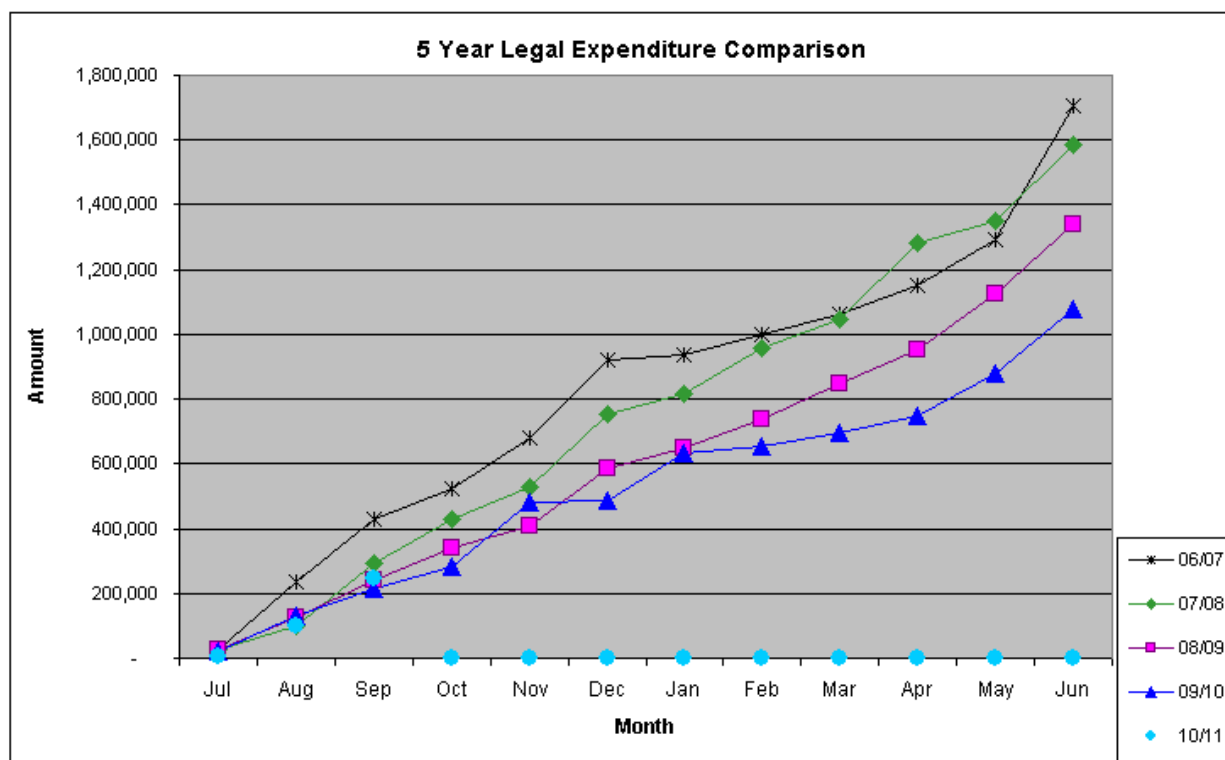
Solicitors Other Expenditure	Solicitors Fees Expenditure	Third Party Expenditure	Total Expenditure	Current Year Budget	Current Year Inc/Recov/Reversal
6,889	124,651	116,986	248,526	900,000	140,571



LEGAL EXPENDITURE TOTALS AND GRAPHICAL REPRESENTATION

as at 30th September 2010

Solicitors Other Expenditure	Solicitors Fees Expenditure	Third Party Expenditure	Total Expenditure	Current Year Budget	Current Year Inc/Recov/Reversal
6,889	124,651	116,986	248,526	900,000	140,571



Top Ten Legal Matters by 2010/11 Expenditure

Property	Description	2010/11 Expenditure	Prior years Expenditure	Expenditure Life to Date All Years
23B MacPherson Street Warriewood	Deemed Refusal	\$ 133,005	\$ 46,152	\$ 179,158
14 - 18 Boondah Road Warriewood	Deemed Refusal	\$ 17,377	\$ 29,328	\$ 46,705
232 / 234 Barrenjoey Road Newport	Deemed Refusal	\$ 13,402	\$ -	\$ 13,402
2 / 8 Bungan Street Mona Vale	Refusal	\$ 12,390	\$ -	\$ 12,390
122 & 122A Crescent Road Newport	Unauthorised Building Works	\$ 12,164	\$ 57,352	\$ 69,516
20 Hunter Street South Warriewood	Refusal	\$ 10,359	\$ -	\$ 10,359
413 Whale Beach Road Palm Beach	Deemed Refusal	\$ 9,616	\$ 25,038	\$ 34,654
2129 Pittwater Road Church Point	Appeal on Refusal	\$ 4,619	\$ 68,874	\$ 73,493
1868 Pittwater Road Church Point	Modification to Court Consent	\$ 3,538	\$ -	\$ 3,538
47 Irrawong Road North Narrabeen	Non-Compliance with EPA Order	\$ 2,771	\$ 13,018	\$ 15,789
		\$ 219,241	\$ 239,763	\$ 459,004

C10.3 Monthly Contractors and Staff Report - August 2010

Meeting: Governance Committee Meeting **Date:** 18 October 2010

Strategy: Business Management

Action: Produce monthly, quarterly and annual budgets and statements

PURPOSE OF REPORT

To report on new staff appointments and contract engagements for the month of August, 2010.

1.0 BACKGROUND

On 7 September 2009 Council resolved:

*"In light of the current economic crisis and financial constraints of Council,
Council resume the monthly reporting of all staff and contractor appointments."*

Accordingly, a monthly report in respect of all new appointments of staff and engagement of new contractors is submitted to Council.

In order to gain a more precise and meaningful understanding of contractor engagements on a month by month basis, all Monthly Contractors and Staff Reports will list new staff appointments and terminations and contractor engagements for each month that exceed \$2,000 and are ongoing for greater than one month.

2.0 ISSUES

The information at Attachment 1 of this Report has been provided by the Business Unit Managers and is broken into the following sub-sections:

- Appointment of Council staff
- Termination of Council Staff
- Contracts (greater than \$2,000 and ongoing for greater than one month)

3.0 SUSTAINABILITY ASSESSMENT

3.1 Supporting & Connecting our Community (Social)

3.1.1 The Report will have no impact on this strategy

3.2 Valuing & Caring for our Natural Environment (Environmental)

3.2.1 The Report will have no impact on this strategy

3.3 Enhancing our Working & Learning (Economic)

3.3.1 The Report will have no impact on this strategy

3.4 **Leading an effective & Collaborative Council (Governance)**

3.4.1 The Report will have no impact on this strategy

3.5 **Integrating our Built environment (Infrastructure)**

3.5.1 The Report will have no impact on this strategy

4.0 **EXECUTIVE SUMMARY**

The movements of Council staff for the month of August 2010 are as follows:

- 5 appointments that refill existing vacancies
- 2 terminations

A summary of new contractor engagements are outlined in Attachment 1 of this Report.

RECOMMENDATION

1. That the information provided on the engagement of new contracts for the month of August 2010 as provided by the Business Unit Managers at Attachment 1 be noted.
2. That the terminations and appointments of staff during August 2010 be noted.

Report prepared by

Mark Jones
CHIEF FINANCIAL OFFICER

ATTACHMENT 1

Appointments of Council Staff in August 2010

Business Unit	Position	Status (PFT,TFT,PPT,TPT, Secondment)	Start Date	Finish Date	Reason for Appointment
P&A	Planning Officer - Development	PFT	2/08/10	N/A	Recruitment Vacancy
UI	Streetscape Vegetation Maintenance	PFT	9/08/10	N/A	Recruitment Vacancy
P&A	Planning Officer - Development	PFT	16/08/10	N/A	Recruitment Vacancy
CL&ED	Program Support Officer	PPT	17/08/10	N/A	Recruitment Vacancy
CD	Workers' Compensation & Return to Work Co-ordinator	PPT	24/08/10	N/A	New Position

Terminations of Council Staff in August 2010

Business Unit	Position	Status (PFT,TFT,PP T,TPT Secondment)	Start Date	Finish Date
CS&C	Internal Auditor	PPT	24/01/05	2/08/10
CL&ED	Occasional Care Supervisor	PPT	19/07/99	13/08/10

Contract Engagements

Division/Unit	Name of Approved Consultant/Contractor / Agency	Position Type of Work	Terms of Engagement	Cost to Council	Term
Corporate Development	Tempnet	Casual Educators – CEC	Contract Agreement	\$3,898	1 Year
Corporate Development	Tempnet	Casual Parking Officers –EC	Contract Agreement	\$6,484	1 Year
Corporate Development	Tempnet	Assistant Development Officers – P&A	Contract Agreement	\$2,235	1 Year

C10.4 Banking and Collection Services

Meeting: Governance Committee

Date: 18 October 2010

STRATEGY: Business Management

ACTION: Effectively manage Council's corporate responsibilities

PURPOSE OF REPORT

To consider the responses to Pittwater Council's Tender (undertaken as a Shoroc Regional Initiative) for the period 1 January 2011 to 31 December 2014 (with a further 3 year option) for the provision of:

1. Banking Services (Transactional Banking)
2. Collection services (Payment Facilities for rates and sundry debtors via phone and internet)
3. Agency (Over the Counter Payment Points for rates and sundry debtors)

1.0 BACKGROUND

- 1.1 On 31 December 2010 Council's banking, collection and agency agreements with the current suppliers, being the Commonwealth Bank for banking services, Corum for collection services and Australia Post for agency services, will expire.
- 1.2 Accordingly, Pittwater Council entered into a joint tender with the Shoroc Councils for the provision of the following services.
 - Banking Services (a three year contract – 1 January 2011 to 31 December 2014 (with a further 3 year option)
 - Collection Services (a three year contract – 1 January 2011 to 31 December 2014 (with a further 3 year option)
 - Agency Services (a three year contract – 1 January 2011 to 31 December 2014 (with a further 3 year option)
- 1.3 Tenders were invited to tender for either all services or for any of the services individually.
- 1.4 Tenders were advertised on both Tuesday 17 August 2010 and Tuesday 24 August 2010 and closed at 2.00 p.m. on Thursday 9 September 2010.
- 1.5 For each service, Shoroc requested that a price per transaction type be submitted on the basis of all four Council's as a group (Shoroc) and for each Council individually.

2.0 ISSUES

2.1. TENDERS RECEIVED

Four tenders were received as follows:

- Commonwealth Bank (CBA)(both for banking and collection services)
- Westpac Banking Corporation (both for banking, collection and agency services)
- National Australia Bank (NAB)(both for banking, collection and agency services)
- Australia Post (collection and agency services only)

2.2. TENDER ASSESSMENT

In the assessment of tenders, each provider was scored and ranked using the following weighted criteria (excluding price):

- Statement of Compliance proposed terms & condition of contract (7.5%)
- Service Experience and Referees (7.5%)
- Accessibility of Facilities to Council Customers (20%)
- Focus on Customer Service (12.5%)
- Additional Services and Service Processing (12.5%)
- Contract Implementation (20%)
- Pricing Adjustments (20%)

In addition to the assessment of service levels (as indicated above) overall price was also a consideration in the assessment of Tenders in order to achieve the best service level at a cost effective price for Council.

2.3 TENDER ASSESSMENT PANEL

The following staff from the four Shoroc Councils made up the Assessment Panel.

Financial Accountant (Pittwater Council)
Revenue Controller (Pittwater Council)
Management Accountant (Mosman Council)
Management Accountant (Manly Council)
Chief Financial Officer (Warringah Council)
Deputy Chief Financial Officer (Warringah Council)
Banking and Grants Coordinator (Warringah Council)
Procurement Manager (Warringah)

2.4 OUTCOME

After extensive deliberation of the four tenders it was determined that due to differing service level requirements of each Council especially with respect to the provision of bank guarantees and credit card collections from parking machines each Council's priorities differed and accordingly it was thought that through further direct negotiations by each Council individually a more tailored and cost effective provision of banking, collection and agency payment services may be obtained.

Further to the above, during the tender process it became apparent that some of the information provided in the tenders required further clarification and therefore to make a fully informed decision on an equitable and ethical basis, no tender should be accepted at this stage and that Council should proceed back to the Market Place.

Accordingly, due to differing service level requirements and clarification of information provided in the tenders, it is recommended that no tender at this point be accepted and that Council on an individual basis seeks competitive quotes (as a further tender process is not required as the provision of Council's required services individually and collectively falls under the tender threshold of \$150,000) from the Market for the provision of:

1. Banking Services (Transactional Banking)
2. Collection services (Payment Facilities for rates and sundry debtors via phone and internet)
3. Agency (Over the Counter Payment Points for rates and sundry debtors)

Note: an extension from our current service providers will be sought in the interim until such time new contracts are entered into for Council's required services.

3.0 SUSTAINABILITY ASSESSMENT

3.1 Supporting & Connecting our Community (Social)

3.1.1 The Report will have no impact on this strategy

3.2 Valuing & Caring for our Natural Environment (Environmental)

3.2.1 The Report will have no impact on this strategy

3.3 Enhancing our Working & Learning (Economic)

3.3.1 The Report will have no impact on this strategy

3.4 Leading an Effective & Collaborative Council (Governance)

3.4.1 The Report will have no impact on this strategy

3.5 Integrating our Built Environment (Infrastructure)

3.5.1 The Report will have no impact on this strategy

4.0 EXECUTIVE SUMMARY

Accordingly, due to differing service level requirements and clarification of information provided in the tenders, it is recommended that no tender at this point be accepted and that Council on an individual basis seeks competitive quotes (as a further tender process is not required as the provision of Council's required services individually and collectively falls under the tender threshold of \$150,000) from the Market for the provision of:

1. Banking Services (Transactional Banking)

2. Collection services (Payment Facilities for rates and sundry debtors via phone and internet)
3. Agency (Over the Counter Payment Points for rates and sundry debtors)

RECOMMENDATION

1. That no tender for the provision of Banking, Collection and Agency Services be accepted.
2. That Council seeks further quotations from the market place for the provision of Banking, Collection and Agency Services.
3. That the General Manager be authorised to negotiate with the preferred supplier/s for all or either Banking, Collection and Agency Services.
4. That the General Manager be authorised to approve all contract payments associated with this contract and affix the Seal of Council to any relevant documents if required.

Report prepared by

Mark Jones
CHIEF FINANCIAL OFFICER

C10.5 Lease to Bayview Yacht Racing Association - 1842 Pittwater Road, Bayview

Meeting: Governance Committee

Date: 18 October 2010

STRATEGY: Business Management

ACTION: Manage Council's Lease Portfolio

PURPOSE OF REPORT

To adopt a 20 year lease with the Bayview Yacht Racing Association for part premises at 1842 Pittwater Road, Bayview.

1.0 BACKGROUND

1.1 At its meeting on 19 July 2010 Council resolved as follows:

- "1. That the attached draft lease for the Bayview Yacht Racing Association be endorsed and placed on public exhibition for 28 days.*
- 2. That following the public exhibition process a report be brought back to Council addressing any issues raised."*

2.0 ISSUES

2.1 Outcome of the Public Exhibition of the Draft Lease.

The lease document was publicly exhibited on Council's website and notices placed in the Manly Daily. Hard copies of the document were made available for inspection at both the Avalon and Mona Vale Customer Service Centres. A copy of the notice was also placed on the premises. The exhibition period ended on 3 September 2010 and no submissions were received in that time.

3.0 SUSTAINABILITY ASSESSMENT

3.1 Supporting & Connecting our Community (Social)

Granting of this lease to the club will allow BYRA to continue its role of providing low cost recreational facilities and seacraft training to the broader Pittwater community.

3.2 Valuing & Caring for our Natural Environment (Environmental)

Not applicable in this instance.

3.3 Enhancing our Working & Learning (Economic)

Not applicable in this instance.

3.4 **Leading an Effective & Collaborative Council (Governance)**

Not applicable in this instance.

3.5 **Integrating our Built Environment (Infrastructure)**

Not applicable in this instance.

4.0 EXECUTIVE SUMMARY

- 4.1 The granting of this lease will ensure the continue operation of the Bayview Yacht Racing Association (BYRA) and provide recreational and training facilities for the public including schoolchildren for at least the next 20 years.

RECOMMENDATION

1. That Council adopt the attached 20 year lease to the Bayview Yacht Racing Association.
2. That the General Manager be authorised to execute the lease document under power of attorney.

Report prepared by
George Veness, Senior Property Officer

Paul Reid
TEAM LEADER – CORPORATE STRATEGY & COMMERCIAL

Form 07L
Release 26
www.lands.nsw.gov.au

LEASE
New South Wales
Real Property Act 1900

Leave this space clear Affix additional
pages to the top 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) **FOLIO OF THE REGISTER**

Property leased

AUTO CONSOL 6381-242 WHOLE BEING LOTS 9A and 10A IN DEPOSITED PLAN 9606
AUTO CONSOL 6521-232 PART BEING LOT 8A IN DEPOSITED PLAN 9606
PART BEING THE PREMISES KNOWN AS BAYVIEW YACHT RACING ASSOCIATION
CLUBHOUSE AT 1842 PITTWATER ROAD, BAYVIEW NSW 2104

(B) **LODGED BY**

Document
Collection
Box

Name, Address or DX, Telephone, and LLPN if any

CODE

Reference

L

(C) **LESSOR**

PITTWATER COUNCIL

The lessor leases to the lessee the property referred to above

(D)

Encumbrances (if applicable)

(E) **LESSEE**

BAYVIEW YACHT RACING ASSOCIATION INCORPORATED

(F)

TENANCY

(G) 1 **TERM** TWENTY (20) YEARS

2 **COMMENCING DATE** 16 DECEMBER 2008

3 **TERMINATING DATE** 15 DECEMBER 2028

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

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)** B hereto

8 Incorporates the provisions set out in N A in the Department of
Lands, Land and Property Information Division as No N A

9 The **RENT** is set out in No 1 1 & of ANNEXURE C

ALL HANDWRITING MUST BE IN BLOCK CAPITALS
0801

Page 1 of 18

DEPARTMENT OF LANDS
LAND AND PROPERTY INFORMATION DIVISION

DATE

- (H) I certify that the person(s) signing opposite, with whom I am personally acquainted or as to whose identity I am otherwise satisfied, signed this instrument in my presence

Certified correct for the purposes of the Real Property Act 1900 by the authorised officer named below

Signature of witness

Signature of authorised officer

Name of witness
Address of witness

Authorised officer's name
Authority of officer
Signing on behalf of

I certify that the person(s) signing opposite, with whom I am personally acquainted or as to whose identity I am otherwise satisfied, signed this instrument in my presence

Certified correct for the purposes of the Real Property Act 1900 by the authorised officer named below

Signature of witness

Signature of authorised officer

Name of witness
Address of witness

Authorised officer's name
Authority of officer
Signing on behalf of

(I) **STATUTORY DECLARATION ***

I

solemnly and sincerely declare that—

- 1 The time for the exercise of option to _____ 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

Made and subscribed at
on

in the State of New South Wales
in the presence of—

Signature of witness

Signature of lessor

Full name of witness
Address of witness

Qualification of witness *[tick one]*

- ☐ Justice of the Peace
☐ Practising Solicitor
☐ Other qualified witness *[specify]*

* As the Department of Lands may not be able to provide the services of a justice of the peace or other qualified witness, the statutory declaration should be signed and witnessed prior to lodgment of the form at Land and Property Information Division

ALL HANDWRITING MUST BE IN BLOCK CAPITALS

THIS IS THE ANNEXURE A TO THE LEASE BETWEEN **PITTWATER COUNCIL** AS LESSOR AND **THE BAYVIEW YACHT RACING ASSOCIATION INCORPORATED** AS LESSEE

THE VENDOR MADE A DECISION TO DISPOSE OF THE LAND BY RESOLUTION OF PITTSBURGH COUNCIL
MADE ON THE _____ DAY OF _____ 200____ AND DELEGATED TO THE ATTORNEY BELOW THE
POWER TO SIGN THIS CONTRACT ON BEHALF OF PITTSBURGH COUNCIL

CERTIFIED CORRECT FOR THE PURPOSES OF
THE REAL PROPERTY ACT 1900 BY THE PERSON(S)
NAMED BELOW WHO SIGNED THIS DOCUMENT
PURSUANT TO THE POWER OF ATTORNEY SPECIFIED

SIGNATURE OF ATTORNEY

NAME OF ATTORNEY

ADDRESS OF WITNESS

- Item 3 **Permitted Use**
Sporting, youth training and development facility, storage of sporting and boating equipment, hire of space as community meeting rooms and all uses incidental to and associated with a yacht racing club including the hiring of the hall and kitchen for functions such as engagements, weddings, day time children's birthday parties, night time adult birthday parties **PROVIDED THAT** the Lessee shall not hire out the premises for 18th or 21st birthday parties or any function where loud noise or disturbance to neighbours can be reasonably expected
- Item 4 Public liability insurance
\$10,000.000 for any one claim
- Item 5 Lessor's address for service
PO Box 882, Mona Vale NSW 1660
Fax (02) 9970 7150
- Lessee's address for service
1842 Pittwater Road
Bayview NSW 2104

The Lessee agrees with the Lessor as follows

1 Interpretation

1.1 The following words have these meanings unless the contrary intention appears. Item numbers referred to are those in the reference schedule. Other definitions are on the cover sheet.

Common Areas means those parts of the Land or buildings which the Lessor intends for common use including public amenities.

Land means the land described on the cover sheet on which the Premises are situated.

Lessor's Property means all plant, equipment, fixtures, fittings, furnishings, furniture and other property the Lessor has provided or provides on the Premises.

Minister means the Minister responsible for the administration of the Crown Lands Act, 1989.

Outgoings means

- (a) water consumption
- (b) electricity and gas consumption, including electricity consumed for external security lighting and flood lighting and telephone

Permitted Use means the use in Item 3.

Plan of Management means the Plan of Management for Parks and Playgrounds dated July 2003

Premises means the land and all improvements erected on the Land including fittings and fixtures necessary for community use Premises includes the Lessor's Property

Rent means the yearly amount in Item I as varied under this Lease

Rules means the Rules as set out in Annexure 1 as varied or added to under this Lease

Services means the services to the Land provided by authorities or the Lessor

Lessee's Activities means the sporting, youth training and development activities carried on from the premises from time to time

Lessee's Employees and Agents means each of the Lessee's employees, officers, agents, contractors and invitees

Lessee's Property means all property on the Premises and/or the Land which is not Lessor's Property or property or property stored on the Premises on behalf of another community organisation

Term means the period from and including the Commencement date to and including the Expiry date

- 1 2 Unless the contrary intention appears
- (a) the singular includes the plural and vice versa, and
 - (b) "person" includes a firm, a body corporate, an unincorporated association, an association or an authority, and
 - (c) an agreement, representation or warranty-
 - (i) in favour of two or more persons is for the benefit of them jointly and severally, and
 - (ii) on the part of two or more persons is for the benefit of them jointly and severally, and
 - (d) a reference to
 - (1) a person includes the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns- and
 - (2) a document includes any variation or replacement of it, and
 - (3) a law includes regulations and other instruments under it and, and amendments or replacements of any of them
 - (4) a thing includes the whole and each part of it, and
 - (5) a group of persons includes all of them collectively, any two or more of them collectively and each of them individual, and
 - (6) the president of a body or authority includes any person acting in that capacity, and
 - (e) "include" (in any form) when introducing a list of items does not limit the meaning of the words to which to the list relates to those items or to items of a similar kind,
- 1 3 If the Lessee proposes to amend the Permitted Use or to make any alterations, additions or modifications to the improvements on the Land the Lessee will give the Lessor not less,

than 28 days prior notice in writing giving particulars of such proposal. The Lessor shall within 28 days of receipt of the Lessee's written notification provide the Lessee with all necessary information as to the statutory approvals relevant to the Lessee's proposal. the Lessor may within 28 days of receipt of the Lessee's proposal give notice that the Lessor intends to amend the community net benefit requirements set out in clause 7.5 as a result of the Lessee's proposal, if the Lessor gives such notice the Lessee will be at liberty within 28 days thereafter to withdraw the Lessee's notice of the Lessee's proposal in which case the Lessor's intended amendments to the community net benefit requirements set out in clause 7.5 will not apply

2 Rent and Community Net Benefit

- 2.1 The Lessee must pay the Rent annually in advance
- 2.2 The Lessor and Lessee acknowledge that the Lessor has granted this Lease for a nominal rent in consideration for the Lessee's contribution to the Community Net Benefit comprising -
- (a) On-going operation of the community facility within the Premises.
 - (b) The expenses incurred and the benefit of person hours expended by members in improving and maintaining the Premises and surrounds in accordance with clause 7.5,
 - (c) The benefit of making the Premises or part thereof available for reasonable use by local community and other sporting groups in accordance with clause 7.5,
 - (d) The benefit of providing reasonable storage space in the Premises to local community and sporting groups in accordance with clause 7.5, if requested and if such request is supported by the Lessor and subject to available space at the discretion of the Lessor,
 - (e) The benefit of providing youth training and development programs to the youth of the area in accordance with clause 7.5,
 - (f) The benefit of person hours expended by members in providing training and development of youth in the area

3 Rates and taxes, outgoings

- 3.1 The Lessee shall pay Council rates in accordance with Council's Rates Policy. Category C- Community Service/Public Benefit, as amended from time to time

The Lessee shall pay Sydney Water Corporation service charges and shall pay all charges for water consumed on the Premises

- 3.2 The Lessee shall pay Outgoings as and when they fall due

4 Insurances

- 4 1 The Lessee will indemnify and keep indemnified the Lessor and the Minister against all actions, suits, claims, debts, obligations and other liabilities arising out of the Lessee's use and occupation of the Premises during the continuance of this Lease and further the Lessee must:-
- (a) in connection with the Premises maintain with insurers on terms (including a cross liability clause) approved by the Lessor (who may not unreasonably withhold its approval) in the Name of the Lessor and Tenant.
 - (i) public liability insurance for at least the amount in Item 4 as varied by notice from the Lessor, and
 - (ii) workers compensation insurance, and
 - (iii) other insurances which are required by law or which in the Lessor's reasonable opinion a prudent Lessee would take out including those in connection with Lessee's works on the Premises, and
 - (b) give the Lessor evidence that it has complied with clause 4 1 (a) when asked to do so, and
 - (c) notify the Lessor immediately if an insurance policy required by this clause 4 1 is cancelled or an event occurs which may allow a claim or affect rights under an insurance policy in connection with the Premises, the Building or Property in or on them
- 4 2 The Lessee may not enforce, conduct, settle or compromise claims under any insurance policy required by this Lease even if that policy also covers other property, if the Lessor gives the Lessee a notice that the Lessor wishes to do these things
- 4 3 The Lessee may not do anything which may affect rights under any insurance which may increase an insurance premium payable in connection with the Premises, the building or property in them
- 4 4 Insurance proceeds (even if of a policy in the Lessee's name only in breach of clause 4 1 (a)) which the Insurer does not require to be used for replacement or reinstatement must be paid into a separate joint account in the names of the Lessor, the Lessee and, if required, by the Lessor, any other person. The money must be used to settle claims in connection with the event insured against or to replace or reinstate the insured item and then any surplus shared between the account holders having regard to their respective interests in that item
- 4 5 The Lessee shall take out and maintain building insurance in respect of the Premises

5 Indemnities and releases

- 5 1 The Lessee is liable for and indemnities the Lessor and the Minister against liability or loss arising from, and cost incurred in connection with
- (a) damage, loss, injury or death caused or contributed to by the act, negligence or default of the Lessee or of the Lessee's Employees and Agents, and
 - (b) the Lessor doing anything which the Lessee must do under this Lease but has not done or which the Lessor considers the Lessee has not done properly
- 5 2 The Lessee releases the Lessor from, and agrees that the Lessor is not liable for, liability or loss arising from, and cost incurred in connection with,
- (a) damage, loss, injury or death unless it is caused by the Lessor's act, negligence or default, and
 - (b) anything the Lessor is permitted or required to do under this Lease, and
 - (c) if the Lessor has complied with clause 11 2,
 - (i) a Service not being available, being interrupted or not working properly, and
 - (ii) the Lessor's plant and equipment not working properly, and
- 5 3 Each indemnity is independent from the Lessee's other obligations and continues under this Lessee and after it expires or is terminated The Lessor may enforce an indemnity before incurring expense
-

6 Use

- 6 1 The Lessee must use the Premises only for the Permitted Use
- 6 2 Use of the Premises shall at all times be governed by this Lease and the Lessor's Plan of Management as amended from time to time and published on the Lessor's website, together with any applicable development controls (a copies of which have been provided to the Lessee)
-

7 Lessee's additional obligations

- 7 1 The Lessee must provide the Lessor as soon as possible annually in accordance with Council's financial year with a copy of the Lessee's Annual Report including audited or signed financial statements showing income and expenditure and gross turnover,
- 7 2 The Lessee may not,
- (a) alter the Lessor's Property or remove it from the Premises, or
 - (b) store or use flammable, volatile or explosive substances on the Premises provided that the Lessee may store fuel for rescue boats and reasonable quantities of paint for maintenance, WD40, lubricating oils and anti-fouling paint, provided that it is kept in accordance with current safety standards which at present require the Lessee to keep this fuel in a Flammable Liquids cabinet, or
 - (c) do anything in or around the Premises which in the Lessor's reasonable opinion may be annoying, dangerous or offensive, or

- (d) do anything to overload the services nor use them for anything other than their intended purpose
- 7 3 If the Lessee may not do something in connection with this Lease, then it may not do anything which may result in it happening
- 7 4 The Lessee must ensure that the Lessee's Employees and agents comply. if appropriate, with the Lessee's obligations under this Lease
- 7 5 The Lessee shall undertake the following Community Net Benefits -
- (a) develop in collaboration with the Lessor a 2 year rolling maintenance schedule for the interior and exterior of the Premises, the schedule must be prepared every 2 years and the Lessee shall carry out all scheduled maintenance to the interior and exterior of the Premises, excluding Common Areas, within the 2 year period, the Lessor shall carry out all scheduled maintenance to the Common Areas within the 2 year period,
 - (b) keep a record of all construction(if applicable). repair, maintenance and operation costs expended by it, including person hours and provide a copy to the Lessor annually,
 - (c) make the whole or any part of the Premises available for use by other local sporting or bona fide community groups at the discretion of the Tenant. prepare an annual record of use of the whole or part of the Premises by other local sporting or bona fide community groups, the record will include charges, such charges will be set at a nominal or modest rate which is less than commercial rates, the record and an estimate of the value of same if charged at commercial rates, will be submitted to the Lessor annually, regard will be had by the Lessee to the reasonable needs of and the alternatives, if any, available to other local sporting and bona fide community groups provided that the Lessee shall be permitted to refuse use if a request is unreasonable or if granted would be likely to adversely impact upon the Lessee's use of the Premises having regard to availability of space, clash of activities or adequacy of security,
 - (d) develop a 2 year rolling program for the training and development of youth of the area in sporting skills and provide a copy to the Lessor annually and keep a record of the Lessee's annual performance together with a record of an estimate of person hours spent by the Lessee's members on youth training and development of youth in the program, the Lessee shall provide a copy to the Lessor annually,
 - (e) provide the Lessor with the names and contact details of the members of the management committee and promptly advise the Lessor of any changes,
 - (f) [deleted]
 - (g) 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),
 - (h) inform the Lessor of damage to the Premises or of faulty service immediately after it becomes aware of it,
 - (i) promptly when asked by the Lessor, do everything necessary for the Lessee to do to enable the Lessor to exercise its rights under this Lease,
 - (j) comply with all Rules of which it has notice in Annexure 1

- 7 6 The Lessee and the Lessor shall review the Community Net Benefit requirements set out in clause 7 5 every 5 years with a view to variation to meet changing community expectations and having regard to the Lessee's financial strength and ability to provide such benefits
- 7 7 The Lessee agrees from time to time as required by the Lessor to arrange for an officer of Pittwater Council to visit the site and confirm that the fuel storage at the Premises is safe in accordance with current Occupational Health and Safety legislation

8 Cleaning the Premises, repair and replace

- 8 1 The Lessee must keep the Premises tidy, weed free and free of vermin and comply with the Lessor's directions about refuse removal and recycling
- 8 2 The Lessee must keep clean or provide a cleaning service for the Premises and remove or arrange for refuse to be removed from the Premises regularly
- 8 3 The Lessee must keep the Premises and the Lessee's Property in good repair and promptly replace worn or damaged items with items of similar quality

9 Lessee's works

- 9 1 The Lessee may not carry out works to or construction on the Premises without the prior approval of the Lessor, if the Lessor gives approval it may impose conditions These conditions may include specifying -
- (a) which part of the Premises may not be reinstated and which parts must be, and
 - (b) which items of Lessee's Property installed as part of the works may not be removed when the Lessee vacates the Property
- 9 2 The Lessor will advise the Lessee if proposed works or construction require development/building approval and will provide appropriate information and advice
- 9 3 The Lessee must ensure that any works it does are in accordance with any plans, specifications and schedule of finishes required and approved by the Lessor (who may not unreasonably withhold its approval)

10 Transfer and other Dealings

- 10 1 The Lessee may not transfer this Lease or sub-let or part with possession, other than as provided for in clause 7 5(e) without the prior approval of the Lessor and the Minister
- 10 2 The Lessee shall not carry on or permit any person, organisation or corporation to carry out, any commercial activity (excluding fundraising activities) on the Premises without the prior written approval of the Lessor Such approval shall not be unreasonably withheld

11 Lessor's additional rights and obligation

- 11 1 Subject to the Lessor's rights, while the Lessee complies with the obligations under this Lease, it may occupy the Premises during the Term without interference by the Lessor
- 11 2 The Lessor may
- (a) carry out any works on the Land or the Premises (including alterations and re-development), limit access if the Lessor takes reasonable steps (except in emergencies) to minimise interference with the Lessee's use of the Premises, and
 - (b) exclude or remove any person from the Land, and
 - (c) [deleted] and
 - (d) change the direction or flow of pedestrian access into, out of or through the Land, and
 - (e) change or vary car parking arrangements including implementation of pay and display adjacent to the Land, and
 - (f) change or vary car parking arrangements and car parking fees
- 11 3 The Lessor may enter the Premises at reasonable times on reasonable notice to see if the Lessee is complying with its obligations under this Lease or to do anything the Lessor must or may do under this Lease, if the Lessor decides there is an emergency, the Lessor may enter at any time without notice, if the Lessor decides there is an emergency, the Lessor may stop the Lessee from entering the Land and/or the Premises at any time,
- 11 4 The Lessor may sub-divide the Land or grant easements or other rights over it or the Premises unless this would have a substantial or adverse affect on the Lessee's use of the Premises,
- 11 5 After giving the Lessee reasonable notice, the Lessor may do anything which the Lessee should have done or which the Lessor considers has not been done properly,
- 11 6 The Lessor may appoint agents or others to exercise any of its rights or perform any of its duties under this Lease,
- 11 7 The Lessor may vary Rules or make Rules which are consistent with this Lease in connection with the operation, use and occupation

12 Expiry or termination

- 12 1 Two (2) years prior to the date of termination of the Tern the Lessor and Tenant
- (a) will inspect the Premises and the Lessor will inform the Lessee in writing of any remedial work to bring the Premises to a reasonable condition, the Lessee shall complete such works no later than twenty-eight (28) days prior to the date of expiration of the Term,
 - (b) discuss the opportunity for a new lease and the Lessor will give an indication of its intentions and any likely change in conditions,

- 12 2 The Lessee must vacate the Premises on the earlier of the expiry date and the date this Lease is terminated and leave them in a condition satisfactory to the Lessor acting reasonably,
- 12 3 The Lessee may not remove the Lessee's Property which -
- (a) the Lessor has stated (as a condition to giving approval to works) may not be removed, or
 - (b) is part of structural work done by the Lessee to the Premises unless the Lessor gives the Lessee notice requiring the Lessee to remove the Lessee's Property
- 12 4 Subject to 12 3 and 12 5 the Lessee must remove the Tenant's Property from the Premises during the seven (7) days immediately before the day the Premises must be vacated,
- 12 5 If the Lessor terminates this Lease by re-entry, the Lessee may give the Lessor a notice within seven (7) days after termination that it wants to remove the Lessee's Property which it may or must remove from the Premises,
- 12 6 Within seven (7) business days after the Lessee gives its notice, the Lessor must give the Lessee a notice stating when and how the Lessee's Property is to be removed from the Premises and by whom
- 12 7 The Lessor may treat the Lessee's Property as abandoned and deal with it in any way it sees fit at the Lessee's expense if the Lessee does not
- (a) give its notice on time, or
 - (b) remove the Lessee's Property in accordance with this clause 12 or a notice given under it
- 12 8 The Lessee's Property is at the Lessee's risk at all times,
- 12 9 The Lessee must promptly make good any damage caused by the Lessee's Property being removed from the Premises,
- 12 10 On the day the Lessee must vacate the Premises, the Lessee must give the Lessor the key to the Premises held by the Lessee and by any other person to whom they have given any set of keys to the Premises

13 Holding over

- 13 1 If the Lessee continues to occupy the Premises after the Expiry date with the Lessor's approval, it does so under a monthly tenancy
- (a) which either party may terminate on one (1) month's notice ending on any day, and
 - (b) at a rent which is one twelfth of the Rent, including Community Net Benefits
- 13 2 Subject to clause 13 1, the monthly tenancy is on the same terms as this Lease except for those changes which,
- (a) are necessary to make this Lease appropriate for a monthly tenancy, or
 - (b) the Lessor requires as a condition of giving its approval to the holding over,

13 3 Any holding over period shall not exceed twelve (12) months

14 Damage to Premises

- 14 1 If the Premises are damaged so that the Lessee's use is substantially adversely affected, the Lessor must give the Lessee a notice within a reasonable time after the damage occurs either
- (a) terminating this Lease on a date not less than two (2) weeks after the date the Lessor gives the notice. or
 - (b) stating that the Lessor intends to make the Premises fit for the Lessee's use
- 14 2 The Lessor may not terminate this Lease if -
- (a) the damage is caused or contributed to or by , or
 - (b) rights under an insurance policy in connection with the premiums are prejudiced or a policy is cancelled or payment of a premium or claim is refused by the insurer because of the act or default-of the Lessee or of the Lessee's Employees and Agents This does not affect the rights the Lessor may have in connection with the events specified in this clause 14 2
- 14 3 This clause does not oblige the Lessor to restore or reinstate the Premises to the condition prevailing at the date of the last rolling improvement program under clause 7 5 (a)

15 Default

- 15 1 Each obligation of the Lessee to pay money and its obligations under clauses 2,3,4,6,7. and 8 are essential terms of this lease Other obligations under this Lease may also be essential terms
- 15 2 The Lessor may terminate this Lease by giving the Lessee notice or by re-entry if the Tenant
- (a) repudiates its obligations under this Lease, or
 - (b) does not comply with an essential term of this Lease, or
 - (c) does not comply with an obligation under this Lease (which is not an essential term) and, in the Lessor's reasonable opinion -
 - (i) the non-compliance can be remedied, but the Lessee does not remedy it within a reasonable time after the Lessor gives the Lessee notice to remedy it, or
 - (ii) the non-compliance cannot be remedied or compensated for, or
 - (iii) the non-compliance cannot be remedied but the Lessor can be compensated and the Lessee does not pay the Lessor compensation for the breach within a reasonable time after the Lessor gives the Lessee notice to pay it

- 15 3 If this Lease is terminated under this clause 15
- (a) the Lessee indemnifies the Lessor against any liability or loss arising and any cost incurred (whether before or after termination of this Lease) in connection with the Lessee's breach of this Lease and the termination of this Lease including the Lessor's loss of the benefit of the Lessee performing its obligations under this Lease from the date of that termination until the Expiry Date, and
 - (b) the Lessor must take reasonable steps to mitigate its loss

16 Costs and expenses

- 16 1 In connection with this Lease the Lessee must pay -
- (a) stamp duty and registration fees,
 - (b) its own legal costs

17 Notices

- 17 1 A notice or approval must be -
- (a) in writing, and
 - (b) left at or posted by certified post to the address or sent to the facsimile number of the party in Item 5, as varied by notice
- 17 2 A notice or approval is taken to be given
- (a) if posted, on the third day after posting, and
 - (b) if sent by facsimile, on the next business day after it is sent, unless the sender is aware that transmission is impaired

18 Miscellaneous

- 18 1 A provision of or a right under this Lease may not be waived or added except in writing signed by whoever is to be bound
- 18 2 The covenants, powers and provisions implied in leases by sections 8A, 84A, 85 and 86 of the Conveyancing Act 1919 do not apply to this Lease
- 18 3 In this Lease words used in any of the forms of words in the first column of part 2 of schedule 4 to the Conveyancing Act 1919 do not imply a covenant under section 86 of that Act
- 18 4 Expiry or termination of this Lease does not affect any rights in connection with a breach of this Lease before then
- 18 5 The Lessee warrants that it -
- (a) has relied only on its own enquiries in connection with this Lease and not on any representation or warranty by the Lessor or any person acting or seeming to act on the Lessor's behalf, and
 - (b) was made aware of the Rules then current when signing this Lease

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- 18 6 The Lessee must comply on time with undertakings given by or on behalf of the Lessee in connection with this Lease

19 Disputes

- 19 1 A party may not begin legal proceedings in connection with a dispute under this Lease (except a dispute because the Lessee has not paid Rent or other money it owes under this Lease) unless the dispute has first been decided by a person appointed under this clause 19.
- 19 2 If there is a dispute under this Lease to which this clause 19 applies, either party may give the other a notice requiring the dispute to be decided under this clause 19,
- 19 3 The dispute must be referred to a person agreed on by the parties but if the parties do not agree on a person within seven (7) days after the notice is given, then to a person appropriately qualified to deal with the dispute appointed at the request of either party by the chair of LEADR (Lawyers Engaged in Alternative Dispute Resolution).
- 19 4 The Person acts as an expert and not as an arbitrator and must give a written decision including reasons Unless there is a manifest error, that person's decision is final and binding,
- 19 5 The person may enquire into the dispute as that person thinks fit Including representations and taking advice from people that person considers appropriate,
- 19 6 The parties may make submissions and must give every assistance that person requires, including providing copies of relevant documents,
- 19 7 Each party must pay its own costs in connection with the dispute The parties will share the cost of referring the dispute and the person's costs

20 Crown Land

- 20 1 This Lease is subject to the provisions of the Crown Lands Act 1989 including section 109 of that Act
-

RULES

These are the Rules referred to in the Lease between

PITTWATER COUNCIL

And

BAYVIEW YACHT RACING ASSOCIATION INCORPORATED

Dated this day of 2009

Of the premises known as BYRA, 1842 Pittwater Rd, Bayview

The provisions of the Lease apply to these Rules

1 The Lessee may not -

(a) Erect signage at the Premises. However at the date of signing this Lease, the Lessor has approved the following signs -

- i A permanent sign exhibiting the Club's name and contact number,
- ii A banner advertising the "Try Sailing" programme, at any time during the year, and
- iii A community noticeboard If the dimensions are to be greater than the existing noticeboard erected on the Premises at the date of this Lease, the Lessor's written consent must be contained, which consent shall not be unreasonably withheld

(b) Hold an auction, garage boot, bankrupt or fire sales in the Premises without the prior approval of the Lessor,

(c) Keep any animals or birds on the Premises,

(d) Operate a musical instrument, radio, TV or other equipment that does not comply with then current noise requirements,

(e) Throw anything out of any part of the Building.

(f) Obstruct -

- I windows in the Premises except by internal blinds or curtains,
II any air vents, air conditioning ducts or skylights in the Premises, or
III emergency exits from the Premises

2 The Lessee must -

- (a) Put up signs in the Premises prohibiting smoking,
- (b) Evacuate the Premises immediately and in accordance with the Lessor's directions when informed of any actual or suspected emergency,
- (c) Secure the Premises when they are unoccupied and comply with the Lessor's directions about security,
- (d) Ensure that there is no unreasonable noise emanating from the Premises after 10pm Monday to Wednesday and after 12 midnight Thursday to Saturday and that there is no unreasonable noise whatsoever, on Sundays,
- (e) Ensure that there are no containers or rubbish bins or receptacles including skip bins to be placed in or around the demised area All materials are to be stored safely within the club premises or downstairs area as appropriate, and
- (f) Be responsible for the cleaning of all dressing sheds and the barbeque area, to the reasonable satisfaction of the Lessor, from time to time

3 The Lessee agrees to ensure that all contracted users of the Premises abide by the provisions of "Conditions of Use of Premises" provided by the Lessor to the Lessee from time to time

C10.6 2009/2010 Annual Report**Meeting:** Governance Committee**Date:** 20 September 2010

STRATEGY: Business Management**ACTION:** Effectively manage Council's corporate responsibilities

PURPOSE OF REPORT

To inform Council of the completion of the 2009/2010 Annual Report.

1.0 BACKGROUND

- 1.1 Within 5 months after the end of each year, a council must prepare a report as to its achievements with respect to the objectives and performance targets set out in its management plan for that year. (Sec 428 Local Government Act 1993)
 - 1.2 The Local Government Act 1993 and the Local Government (General) Regulation 2005 stipulates the matters to be reported upon.
 - 1.3 Copies of Council's Annual Report must be furnished to the Minister. Copies are also provided on Council's website, in Council's libraries and Customer Service Centres at Mona Vale and Avalon, and are available for sale upon request. A copy is tabled for Council's information.
-

2.0 ISSUES

- 2.1 The production of an Annual Report is a legislative requirement and provides Councillors and members of the public with useful information about the Council's achievements throughout the previous year.
-

3.0 SUSTAINABILITY ASSESSMENT**3.1 Supporting & Connecting our Community (Social)**

- 3.1.1 The Annual Report reflections the strategic actions contained in the Key Directions of the 2020 Strategy

3.2 Valuing & Caring for our Natural Environment (Environmental)

- 3.2.1 The Annual Report reflections the strategic actions contained in the Key Directions of the 2020 Strategy

3.3 Enhancing our Working & Learning (Economic)

- 3.3.1 The Annual Report reflections the strategic actions contained in the Key Directions of the 2020 Strategy

3.4 Leading an Effective & Collaborative Council (Governance)

- 3.4.1 This report is in response to Sec 428 of the Local Government Act and Section 217 of the Local Government (General) Regulation 2005

3.5 Integrating our Built Environment (Infrastructure)

- 3.5.1 The Annual Report reflections the strategic actions contained in the Key Directions of the 2020 Strategy

4.0 EXECUTIVE SUMMARY

The Annual Report has been prepared in accordance with the requirements of Section 428 of the Local Government Act 1993 and Section 217 of the Local Government (General) Regulation 2005.

Council's Annual Report will be forwarded to the Minister and copies made available for the public as indicated above.

RECOMMENDATION

That the information provided in the Annual Report as tabled, be noted.

Report prepared by

Ruth Robins
PRINCIPAL OFFICER ADMINISTRATION

Warwick Lawrence
MANAGER ADMINISTRATION & GOVERNANCE

C10.7 Nomination of "Designated Persons" - Disclosures of Pecuniary Interest

Meeting: Governance Committee

Date: 18 October 2010

STRATEGY: **Business Management**

ACTION: Effectively manage Council's corporate governance responsibilities

PURPOSE OF REPORT

To review the positions within Council's Organisation Structure nominated as "Designated Persons" under the Pecuniary Interest provisions of the Local Government Act.

1.0 BACKGROUND

The General Manager is required under the provisions of section 449(1) of the Local Government Act, 1993 to receive returns disclosing interests of Councillors and Designated Persons. The purpose of this report is to review those positions defined as 'Designated Persons' pursuant to section 441 of the Local Government Act, 1993.

2.0 ISSUES

2.1 For the purpose of the Local Government Act, 1993, section 441 defines 'Designated Persons' as follows:

- *The General Manager,*
- *other senior staff of the Council*
- *a person (other than a member of the senior staff of the Council) who is a member of staff of the Council or a delegate of the Council and who holds a position identified by the Council as the position of a designated person because it involves the exercise of functions under this or any other Act (such as regulatory functions or contractual functions) that, in their exercise, could give rise to a conflict between the person's duty as a member of staff or delegate and the person's private interest.*
- *a person (other than a member of the senior staff of the Council) who is a member of a Committee of the Council identified by the Council as a Committee whose members are designated persons because of the functions of the Committee involve the exercise of the Council's functions under this or any other Act (such as regulatory functions or contractual functions) that, in their exercise, could give rise to a conflict between the member's duty as a member of the Committee and the member's private interest."*

- 2.2 At its meeting held on 19 September 2009, the Council determined those positions within its organisation structure that it wished to be classified as 'Designated Persons.' A list of those positions is attached at Attachment 1.
- 2.3 It is considered appropriate that the Council now review those positions classified as 'Designated Persons' due to the amendments that have occurred to Council's organisation structure since July, 2009.
- 2.4 A revised list of positions recommended for classification as 'Designated Persons' is listed at Attachment 2.

3.0 SUSTAINABILITY ASSESSMENT

3.1 Supporting & Connecting our Community (Social)

- 3.1.1 This Report will have no impact on this Strategy

3.2 Valuing & Caring for our Natural Environment (Environmental)

- 3.2.1 This Report will have no impact on this Strategy

3.3 Enhancing our Working & Learning (Economic)

- 3.3.1 This Report will have no impact on this Strategy

3.4 Leading an Effective & Collaborative Council (Governance)

- 3.4.1 This Report is in response to the requirements of Section 441(1) of the Local Government Act 1993.

3.5 Integrating our Built Environment (Infrastructure)

- 3.5.1 This Report will have no impact on this Strategy

4.0 EXECUTIVE SUMMARY

- 4.1 The General Manager is required under the provisions of section 449(1) of the Local Government Act, 1993 to receive returns disclosing interests of Councillors and Designated Persons. The purpose of this report is to review those positions defined as 'Designated Persons' pursuant to section 441 of the Local Government Act, 1993.
- 4.2 At its meeting held on 19 September 2009, the Council determined those positions within its organisation structure that it wished to be classified as 'Designated Persons.' A list of those positions is attached at Attachment 1.
- 4.3 A revised list of positions recommended for classification as 'Designated Persons' is listed at Attachment 2.

RECOMMENDATION

That all employees of Pittwater Council holding the positions listed in Attachment 2 to this report, be nominated as 'Designated Persons' in accordance with section 441 of the Local Government Act, 1993:

Report prepared by

Ruth Robins

PRINCIPAL OFFICER ADMINISTRATION

Warwick Lawrence

MANAGER ADMINISTRATION

Designated persons as adopted at the Council meeting held on 19 September 2009**General Manager**

- General Manager
- Director, Environment and Planning and Community
- Director, Urban & Environmental Assets
- Team Leader Corporate Strategy

Administration & Governance

- Manager, Administration & Governance/Public Officer
- Principal Officer Administration
- Group Leader Customer Service
- Group Leader Records

Catchment Management & Climate Change

- Team Leader Catchment Management & Climate Change
- Project Leader Coast and Estuary
- Project Leader Flood Risk Management
- Project Leader Catchment Management

Community, Library & Economic Development

- Manager, Community, Library & Economic Development
- Principal Officer Library Services
- Children's Services Co-ordinator
- Community Facilities Co-ordinator
- Social Planning & Community Development Co-ordinator

Corporate Development & Commercial

- Manager Corporate Development and Commercial
- Principal Officer Commercial

Environmental Planning & Assessment

- Manager, Environmental Planning & Assessment
- Principal Officer Development
- Principal Strategic Planner
- Principal Officer Land Release
- Executive Development Officer
- Senior Development Engineer
- Senior Development Officer
- Development Officer
- Senior Strategic Planner
- Strategic Planner

Environmental Compliance

- Manager, Environmental Compliance
- Principal Officer Development Compliance
- Principal Officer Environmental Health
- Development Compliance Officer
- Environmental Health Officer
- Team Leader Ranger
- Ranger

Finance & IT

- Chief Financial Officer
- Principal Officer Revenue Controller
- Assistant Revenue Controller
- Financial Accountant
- Management Accountant
- Risk & Insurance Co-ordinator
- IT Team Leader
- Senior Property Officer

Natural Environment & Education

- Manager, Natural Environment & Education
- Development Assessment Officer – Natural Areas

Reserves, Recreation & Building Services

- Manager, Reserves, Recreation & Building Services
- Principal Officer Strategic Planning
- Principal Officer Operations
- Building Services Group Leader
- Reserves Supervisor
- Senior Officer Tree Management
- Tree Preservation Officer

Urban & Environmental Assets

- Manager, Urban Infrastructure
- Principal Engineer Works
- Principal Engineer, Roads, Traffic & Emergency Management
- Principal Engineer, Strategy, Design & Asset Management
- Project Leader Streetscape
- Project Leader Stormwater Management
- Project Leader – Warriewood Infrastructure
- Purchasing & Fleet Co-ordinator
- Strategic Purchasing Officer
- Strategic Procurement/Contracts officer

DESIGNATED PERSONS - As at 13 September 2010

<p><u>General Manager</u></p> <ul style="list-style-type: none"> • General Manager • Director- Environmental, Planning and Community • Director - Urban & Environmental Assets • Team Leader -Corporate Strategy and Commercial • Corporate Planning & Sustainability Coordinator • Internal Auditor • Principal Officer Commercial • Senior Property Officer <p><u>Administration & Governance</u></p> <ul style="list-style-type: none"> • Manager- Administration & Governance/Public Officer • Principal Officer Administration • Group Leader Customer Service • Group Leader Records <p><u>Catchment Management & Climate Change</u></p> <ul style="list-style-type: none"> • Team Leader- Catchment Management & Climate Change • Principal Officer Coast and Estuary • Project Leader Flood Risk Management • Project Leader Catchment Management <p><u>Community, Library & Economic Development</u></p> <ul style="list-style-type: none"> • Manager- Community, Library & Economic Development <p><u>Corporate Development</u></p> <ul style="list-style-type: none"> • Manager - Corporate Development <p><u>Environmental Planning & Assessment</u></p> <ul style="list-style-type: none"> • Manager - Environmental Planning & Assessment • Principal Officer Development • Principal Strategic Planner • Principal Officer Land Release • Executive Development Officer • Senior Development Engineer • Senior Development Officer • Development Officer • Senior Strategic Planner • Strategic Planner 	<p><u>Environmental Compliance</u></p> <ul style="list-style-type: none"> • Manager- Environmental Compliance • Principal Officer Development Compliance • Principal Officer Environmental Health • Development Compliance Officer • Environmental Health Officer • Principal Officer Development Compliance, Land Use • Team Leader Ranger • Ranger's Supervisor • Senior Ranger • Trainee Ranger • Ranger <p><u>Finance & IT</u></p> <ul style="list-style-type: none"> • Chief Financial Officer • Principal Officer Revenue Controller • Assistant Revenue Controller • Financial Accountant • Management Accountant • Risk & Insurance Co-ordinator • IT Team Leader <p><u>Reserves, Recreation & Building Services</u></p> <ul style="list-style-type: none"> • Manager- Reserves, Recreation & Building Services • Principal Officer Strategic Planning • Principal Officer Operations • Building Services Group Leader • Reserves Supervisor • Senior Officer Tree Management • Tree Preservation Officer <p><u>Urban Infrastructure</u></p> <ul style="list-style-type: none"> • Manager- Urban Infrastructure • Principal Engineer Works • Principal Engineer- Strategy, Investigations & Design • Principal Engineer, Roads, Traffic & Emergency Management • Project Leader Streetscape & OH&S • Project Leader Stormwater Management • Project Leader Road Reserve Management • Project Leader Asset Management System • Senior Officer Procurement & Fleet Management • Procurement & Contracts Officer
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C10.8 Tabling of Pecuniary Interest Returns

Meeting: Governance Committee

Date: 18 October 2010

STRATEGY: **Business Management**

ACTION: Effectively manage council's corporate governance responsibilities

PURPOSE OF REPORT

To table completed Pecuniary Interest Returns lodged under the provisions of Section 449 of the Local Government Act, 1993.

1.0 BACKGROUND

Under the provisions of section 450A of the Local Government Act, 1993 the General Manager must arrange for the tabling of all Pecuniary Interest Returns at the first meeting of the Council after the last day of the period for lodgement, i.e. 30 September 2010.

2.0 ISSUES

2.1 Lodgement of Returns

Pecuniary Interest Returns have been lodged by all Councillors and all employees nominated as "Designated Persons" by Council resolution of the 21 September 2009. The completed returns will be tabled at the meeting.

2.2 Policy Implications

The returns are public documents and available for inspection by any person in accordance with the requirements of the Government Information (Public Access) Act 2009 (GIPA) unless the "designated person" or Councillor requests to have their personal information withheld in accordance with the provision of Section 739 of the Local Government Act, 1993.

3.0 SUSTAINABILITY ASSESSMENT

3.1 Supporting & Connecting our Community (Social)

3.1.1 The Report will have no impact on this Strategy

3.2 Valuing & Caring for our Natural Environment (Environmental)

3.2.1 The Report will have no impact on this Strategy

3.3 Enhancing our Working & Learning (Economic)

3.3.1 The Report will have no impact on this Strategy

3.4 Leading an Effective & Collaborative Council (Governance)

3.4.1 This Report is in response to Section 450A of the Local Government Act, 1993

3.5 Integrating our Built Environment (Infrastructure)

3.5.1 The Report will have no impact on this Strategy

4.0 EXECUTIVE SUMMARY

- 4.1 Each year “designated” officers of the Council and Councillors are required to complete declaration returns regarding their pecuniary interests for the period 1 July to 30 June. The legislation requires the tabling of such returns at the first Council meeting after the last day of the period for lodgement, i.e. 30 September 2009.

The returns are held in a register and are publicly available upon request unless the “designated person” or Councillor requests to have their personal information withheld in accordance with the provision of Section 739 of the Local Government Act, 1993

RECOMMENDATION

1. That it be noted that all Councillors and all employees nominated as “designated persons” by Council resolution of 21 September 2009, have lodged pecuniary interest returns in accordance with the requirements of the Local Government Act, 1993.
2. That the pecuniary interest returns for the twelve (12) month period ending 30 June 2010 be tabled at the Meeting.

Report Prepared by

Ruth Robins
PRINCIPAL OFFICER ADMINISTRATION

Warwick Lawrence
MANAGER, ADMINISTRATION & GOVERNANCE

Planning an Integrated Built Environment Committee

11.0 Planning an Integrated Built Environment Committee Business

C11.1 R0001/09 - 17 & 25-27 Foamcrest Avenue Newport - Cover Report to Consultant's Assessment

Meeting: Planning an Integrated Built Environment Committee

Date: 18 October 2010

STRATEGY: Land Use & Development

ACTION: Provide an effective development assessment and determination process

PURPOSE OF REPORT

To introduce the attached assessment report and recommendation provided to Council by the independent consultants SJB Planning.

1.0 BACKGROUND

- 1.1 In November 2008 Council resolved to grant owners consent to Woolworths Ltd to lodge an application to rezone the Council car park sites at 17-19 & 25-27 Foamcrest Avenue, Newport to General Business 3(a).
- 1.2 On 28 July 2009 a Planning Proposal was submitted to Council by URBIS Pty Ltd on behalf of Fabcot Pty Ltd (a subsidiary of Woolworths Ltd).
- 1.3 O'Connor Marsden & Associates prepared a Probity Assessment Protocol due to Council's contractual interest in the proposal.
- 1.4 Having regard for the Probity Assessment Protocol, Pittwater Council prepared a project brief and invited quotes from 5 independent planning consultants.
- 1.5 Responses were evaluated and Council engaged SJB Planning on the 30th of July 2009, to undertake the assessment of the planning proposal and any future development application.
- 1.6 From July 2009 to October 2010 SJB Planning undertook the assessment of the Planning Proposal.

2.0 ISSUES

- 2.1 The project brief required SJB Planning to deliver assessment reports and recommendations on the Planning Proposal with assessment against and consideration of the Pittwater LEP 1993, the Newport Masterplan, the Pittwater 21 DCP, State policies, directions, directives and procedures and community responses.
- 2.2 Attached is an assessment report to Council prepared by SJB Planning on the Planning Proposal submitted by Fabcot Pty Ltd.

- 2.3 Council staff have reviewed the report from an administrative viewpoint and endorse the report for consideration by Council.

2.4 **Alternative Planning Proposal**

- 2.5 Concern has been raised by a number of local residents regarding a statement in SJB Planning's report relating to the alternative Planning Proposal and the background to its preparation. The relevant discussion of concern in the SJB Planning report, is found in the Executive Summary at section 7.12 and is repeated below:

"The alternative Planning Proposal has been prepared in accordance with the amendments recommended in this report and at the request of Council's strategic planning department."

- 2.6 The reference to a request from "Council's strategic planning department" relates to Council staff's request that the process for the consideration of the Planning Proposal is in keeping with requirements of the Environmental Planning and Assessment Act 1979. In this regard the Director of Environmental Planning & Assessment by correspondence dated 1st October 2010 to SJB Planning stated:

"Further to our meeting on Wednesday afternoon to discuss your draft report, below is an advice relating to the administration of the Act and DoP procedures relating to changing an applicants "Planning Proposal" prior to referral to the Gateway. Please be advised that the following words may be inserted in your report if you so desire.

"Council's Director of Planning has advised that s55(1) of the EP&A Act and the Department of Planning's guideline for Plan making ,state respectively:

"The relevant planning authority is required to prepare a document that explains the intended effect of the proposed instrument and sets out the justification for making the proposed instrument (the planning proposal) ".

"The planning proposal can be prepared by the RPA, or by a proponent for the proposed LEP. In either event, the RPA is ultimately responsible for the planning proposal and must be satisfied with it such that it is prepared to forward it to the Minister for the next step in the process, being the gateway determination."

It is therefore open to the Council to not accept in total the applicants "Planning Proposal" and to prepare it's own for referral to the Gateway.

It is hoped the above is of assistance to your consideration of the issue.

- 2.7 As discussed, SJB Planning have outlined that they are satisfied with the principle of rezoning the subject site from 5(a) (Special Uses "A") to 3(a) (General Business "A"). Therefore, the onus is on the "relevant planning authority" (in this case SJB Planning in the place of Council staff) to take responsibility for and prepare the Planning Proposal to be forwarded to Department of Planning for gateway determination.

3.0 **SUSTAINABILITY ASSESSMENT**

3.1 **Supporting & Connecting our Community (Social)**

- 3.1.1 Please see attached assessment report by SJB Planning.

3.2 Valuing & Caring for our Natural Environment (Environmental)

3.2.1 Please see attached assessment report by SJB Planning.

3.3 Enhancing our Working & Learning (Economic)

3.3.1 Please see attached assessment report by SJB Planning.

3.4 Leading an Effective & Collaborative Council (Governance)

3.4.1 Having regard for issues of probity arising from Council's conflicting roles as an assessment authority, as a current land owner, and as the future owner of stratum on the site, an Assessment Protocol was developed by O'Connor Marsden & Associates. In accordance with the Protocol, Pittwater Council engaged an independent planning consultant to undertake the assessment of the planning proposal and any future development application on the site.

3.5 Integrating our Built Environment (Infrastructure)

3.5.1 Please see attached assessment report by SJB Planning.

RECOMMENDATION

That the attached report and recommendation from SJB Planning be considered.

Report prepared by

Steve Evans

DIRECTOR – ENVIRONMENTAL PLANNING & COMMUNITY

SUBJECT: Planning Proposal affecting 17 and 25-27 Foamcrest Avenue, Newport

Overview and PURPOSE OF REPORT

SJB Planning NSW Pty Ltd has been engaged by Council to undertake an independent assessment of an application to rezone Council owned land at 17 and 25-27 Foamcrest Avenue Newport and review a Planning Proposal submitted on behalf of Woolworths Ltd. The proposal is to prepare a draft local environmental plan (LEP) for the land to enable it to be rezoned from 5(a) (Special Uses "A") to 3(a) (General Business "A").

At the Council meeting held in November 2008, Council resolved to grant owner's consent to Woolworths Ltd to lodge a rezoning application to rezone 17 and 25-27 Foamcrest Avenue, Newport from 5(a) (Special Uses "A") to 3(a) (General Business "A").

At the same meeting Council also resolved to grant owner's consent to Woolworths Ltd to lodge a Development Application for retail development, including a supermarket, at 17 and 25-27 Foamcrest Avenue, Newport.

A Planning Proposal (refer to Attachment 2) was prepared and submitted to Council by URBIS Pty Ltd on behalf of Fabcot Pty Ltd which is a subsidiary of Woolworths Ltd. It is noted that Woolworths currently owns land adjoining the subject parcels of land.

As of the date of the preparation of this report, a Development Application for the subject site had not yet been lodged with Council by Woolworths Ltd. This report does not consider or make an assessment of any Development Application concerning development at the site, including development for the purpose of a supermarket.

It is also noted that this report does not in any way consider the merits, the conditions or any of the circumstances relating to any agreement which Council may have to sell the subject land to Woolworths Ltd.

This report assesses two key matters as follows:

- The planning merit of the proposition to rezone the land at 17 and 25-27 Foamcrest Avenue Newport from 5(a) (Special Uses "A") to 3(a) (General Business "A"); and
- The planning merit of the actual Planning Proposal prepared and submitted to Council on behalf of Woolworths to undertake the rezoning.

This report concludes that the proposal to rezone the Council owned land at 17 and 25-27 Foamcrest Avenue Newport from 5(a) (Special Uses "A") to 3(a) (General Business "A") is a rational planning outcome, is consistent with NSW Department of Planning policies, is consistent with the Draft North East Sub-regional Strategy, is consistent with the Newport Village Commercial Centre Masterplan and therefore has merit.

This report concludes that the rezoning of the subject land to 3(a) (General Business "A") will be consistent with the Newport Village Commercial Centre Masterplan as it applies to the site; where as the current zoning effectively prohibits the realisation of the Newport Village Commercial Centre Village Masterplan as it applies to the site.

This report however also concludes that aspects of the Planning Proposal submitted on behalf of Woolworths Ltd are inconsistent with the Newport Village Commercial Centre Masterplan.

Specifically the stated objectives and intended outcomes of the submitted Planning Proposal and aspects of the indicative concept drawings are inconsistent with the built form outcomes envisaged in the Newport Village Commercial Centre Village Masterplan.

In accordance with the NSW Government's 'gateway' process which deals with rezoning applications and LEP amendments, a planning proposal can be prepared by the relevant planning authority (RPA) or by a proponent for the proposed LEP. In either event, the RPA is ultimately responsible for any planning proposal to be forwarded to the Minister for the next step in the process, being the gateway determination.

Therefore in accordance with the findings of this report, it is considered that the Planning Proposal submitted by Woolworths should not proceed to the NSW Department of Planning.

While recommending rejection of the Planning Proposal as submitted, the authors of this report also recognise that the rezoning of the site to 3(a) (General Business "A") has the potential to deliver the Newport Village Commercial Centre Masterplan as it applies to the site. If the Council concurs that the potential realisation of the Masterplan is worth pursuing, given that this is the stated Council policy position for the site, then it is recommended that the alternative Planning Proposal, attached to this report, proceed to the Department of Planning for a gateway determination.

Therefore in accordance with the provisions of Section 55(1) of the EP&A Act and the Department of Planning's guideline for Plan making, the applicant's Planning Proposal is recommended to be rejected and an alternative Planning Proposal has been prepared for the rezoning and for referral to the gateway process.

The alternative Planning Proposal outlines a broader objective and intended outcome for the rezoning which is considered to accord with the Newport Village Commercial Centre Masterplan and does not focus on any one particular future development outcome.

The alternative Planning Proposal details that the purpose of the rezoning is to enable the future redevelopment of the site consistent with the Newport Village Commercial Centre Masterplan, and the surrounding commercial centre, while maintaining a public car park.

The alternative Planning Proposal does not list the development of a supermarket as a stated objective or outcome and it does not include concept plans or indicative drawings of potential future built form outcomes. It also follows however, that the Planning Proposal does not exclude a supermarket as being one of the forms of potential future development at the site under a 3(a) "General Business A" zone, albeit that retail development fronting Foamcrest Avenue in this location is not consistent with the Newport Village Commercial Centre Masterplan.

It is noted that the alternative Planning Proposal has been prepared in accordance with the amendments recommended in this report, and as noted above, in accordance with the provisions of Section 55(1) of the EP&A Act and the Department of Planning's guideline for Plan making, the applicant's Planning Proposal.

1.0 THE SITE AND SURROUNDING LAND

- 1.1 The land affected by the proposal is known as 17 and 25-27 Foamcrest Avenue, Newport. The land includes four allotments which are owned by Pittwater Council. The subject lots are detailed in Table 1.

Table 1 Subject Land

The four allotments, which are identified in Figure 1 below, currently accommodate 56 'at grade' public car parking spaces.

The four allotments have a total area of 2364.8m², Lots 10 and 11 Section 5 Deposited Plan 6248 (i.e. 17 Foamcrest Avenue) having an area of 1112.8m² and Lots 14 and 15 Section 5 Deposited Plan 6248 (i.e. 25-27 Foamcrest Avenue) having an area of 1252m².

Within, and surrounding, the allotments there are several gardens beds which accommodate various forms of vegetation.

Address	Property Description	Zone	Owner
17 Foamcrest Avenue, Newport	Lot 10 Section 5 Deposited Plan 6248	5(a) (Special Uses "A")	Pittwater Council
17 Foamcrest Avenue, Newport	Lot 11 Section 5 Deposited Plan 6248	5(a) (Special Uses "A")	Pittwater Council
25 Foamcrest Avenue, Newport	Lot 14 Section 5 Deposited Plan 6248	5(a) (Special Uses "A")	Pittwater Council
27 Foamcrest Avenue, Newport	Lot 15 Section 5 Deposited Plan 6248	5(a) (Special Uses "A")	Pittwater Council

Figure 1: Lot 10, Lot 11, Lot 14 and Lot 15, Section 5 in Deposited Plan 6248 (17, 25 and 27 Foamcrest Avenue) – site nominated in blue.



The site is oriented in a north west to south east direction, however for the sake of this report the Foamcrest Avenue frontage is referred to as the northern side and the Barrenjoey Road frontage is referred to as the southern side.

The four Council owned allotments straddle a fifth allotment (Lot 1 in Deposited Plan 584141) which runs through the street block from Foamcrest Avenue to Barrenjoey Road (refer to Figure 2).

The allotment separating the Council owned land has two frontages (i.e. Foamcrest Avenue and Barrenjoey Road) and has two street addresses being 23 Foamcrest Avenue (on its northern side) and 343-345 Barrenjoey Road (on its southern side).

Lot 1 in Deposited Plan 584141 is owned by Woolworths Ltd and accommodates an open car park on the northern side and a commercial/retail building on the southern (Barrenjoey Road) side.

The car park on the Woolworths owned land has approximately 24 car spaces. The car park has operated in conjunction with the Council owned car parks such that it is effectively a contiguous car park open to the public which also provides a vehicular access link between Councils two car parks at 17 Foamcrest Avenue and 25-27 Foamcrest Avenue.

Figure 2: Lot 1 Deposited Plan 584141 – nominated in orange



The commercial/retail building has a central arcade which allows pedestrian access from the car park.

Lot 1 in DP 584141 has also operated as a pedestrian link from the Council car parks through to shops in Barrenjoey Road.

The subject allotments slope down from Foamcrest Avenue towards Barrenjoey Road so that the ground level of the footpath in front of 17 Foamcrest Avenue is approximately 5m higher than the ground level of the footpath in front of 343 Barrenjoey Road.

To the west of 17 Foamcrest Avenue is the property at 335 Barrenjoey Road which extends from Barrenjoey Road through to Foamcrest Avenue. 335 Barrenjoey Road is legally described as SP 44281 and accommodates various commercial/retail buildings within a shopping arcade/mall over the southern portion of the site and a residential flat building above a car park on the northern side of the site which addresses Foamcrest Avenue.

Immediately to the north of the subject land is Foamcrest Avenue and beyond that is residential development in the form of one, two and three storey free standing dwellings and medium density residential buildings.

To the east of the site, there is a row of single storey commercial/retail shops which address Robertson Road (at 29 Foamcrest Avenue and 349 Barrenjoey Road). There is a covered walkway running along the rear of the shops which is adjacent to the eastern boundary of 27 Foamcrest Avenue.

The properties of 337-341 Barrenjoey Road are located to the south of 17 Foamcrest Avenue. A development application for a mixed use development including retail premises and residential units was approved by Pittwater Council and construction has commenced and is nearing completion.

Located to the south of 25 Foamcrest Avenue are commercial/retail buildings at 343 Barrenjoey Road.

To the south of 27 Foamcrest Avenue is the property known as 347 Barrenjoey Road which accommodates a single storey commercial/retail building which houses a pharmacy. At the rear of the pharmacy, adjacent to the southern boundary of 27 Foamcrest Avenue, is an 'at grade' car park which relies on informal vehicular access over 27 Foamcrest Avenue.**2.0**

2.0 BACKGROUND

2.1 At its meeting held on 17 November 2008 Council resolved the following:

1. That Council note the proposed development scheme as generally set out in the concept sketches included as Attachment 2 to this report for the amalgamated Council/Woolworths properties at Foamcrest Avenue & Barrenjoey Road, Newport.

2. That Council grant owners consent to Woolworths Ltd to lodge a rezoning application to rezone the Council car park sites at 17-19 & 25-27 Foamcrest Avenue, Newport to a General Business 3 (a) zoning, it being noted that the rezoning application will be independently assessed and determined by the Minister for Planning.

3. That Council grant owners consent to Woolworths Ltd to lodge a development application for a retail development including a supermarket and associated car parking at 17-19 & 25- 27 Foamcrest Avenue, Newport, it being noted that the development application will be independently assessed and referred to the Joint Regional Panel for determination.

4. That it be noted that the granting of owners consent in 2 and 3 above in no way fetters the statutory and regulatory responsibilities of the Council under the Environmental Planning & Assessment Act.

5. That the General Manager be authorised to negotiate with Woolworths Ltd the sale of Council's car park sites at 17-19 & 25-27 Foamcrest Avenue, Newport in accordance with Council's valuation advice and the construction of an additional stratum layer/s of public car parking, to be owned by the Council in perpetuity, as part of the proposed development scheme referred to in 1 above.

6. That a further report be brought to Council on the financial, legal and contractual matters associated with this project prior to any agreement being reached with Woolworths Ltd.

7. That community consultation in relation to this project be commenced in accordance with the Council's adopted community engagement policy (Level 3 - High Impact/Local), including but not limited to the Newport Residents Association, the Newport Chamber of Commerce and residents of Foamcrest Avenue, Newport.

2.2 A Planning Proposal was lodged on behalf of Woolworths Ltd on 10 July 2009. Table 2 outlines a history of the key dates and assessment relating to the Planning Proposal.

Table 2 History of Key Dates

Action	Date
Planning Proposal submitted to Council by URBIS Pty Ltd on behalf of Fabcot Pty Ltd which is a subsidiary of Woolworths Ltd.	28/07/2009
Application was advertised/notified.	7/09/2009 to 9/10/2009
Submission of Tree Assessment and Impact Report prepared by Rain Tree Consulting	24/09/2009
Submission of Traffic Report prepared by Colston Budd Hunt & Kafes	15/10/2009
First round of 'Key Stakeholder' meetings held.	30/11/2009
Public Information Session held.	3/12/2009
Request to applicant for Economic Impact Assessment	23/12/2009
Submission of Response to Issues raised at Public Information Session from Woolworths Ltd	8/02/2010
Submission of Newport Commercial Centre Economic Assessment prepared by Hill PDA	11/02/2010
Receipt of Peer Review of the Traffic Report prepared by ML Traffic Engineers	15/02/2010
Submission of amended concept plans	12/04/2010
Submission of amended Supplementary Traffic Report prepared by Colston Budd Hunt & Kafes	12/04/2010
Submission of Statement on the Design Changes to the Concept Plans	15/04/2010
Submission of amended concept plans (i.e. sections)	20/04/2010
Receipt of Peer Review of the Supplementary Traffic Report prepared by ML Traffic Engineers	22/04/2010
Receipt of Peer Review of Economic Assessment prepared by Leyshon Consulting	16/04/2010
Application was readvertised/renotified.	28/04/2010 to 28/05/2010
Submission of amended concept plans (i.e. Mezzanine Level)	05/05/2010
Submissions of response to issues raised by ML Traffic, prepared by Colston Budd Hunt & Kafes	24/05/2010
Second round of 'Key Stakeholder' meetings held.	08/06/2010
Submission by Woolworths Ltd of Posters of a street view of Barrenjoey Road - 17 Foamcrest Avenue, Newport	24/06/2010
Submission of amended concept plans (i.e. Mezzanine Level showing link to Robertson Road)	26/08/2010

3.0 REVIEW OF THE PLANNING PROPOSAL SUBMITTED ON BEHALF OF WOOLWORTHS

3.1 Overview of the planning proposal

A planning proposal has been prepared and submitted to Council by URBIS Pty Ltd on behalf of Fabcot Pty Ltd which is a subsidiary of Woolworths Ltd.

The proposal relates to four Council owned allotments. The location of the subject land is shown in Figure 1.

The current zoning of the four allotments is 5(a) (Special Uses "A") with the word "Parking" notated on the respective sites on the Pittwater Local Environmental Plan 1991 Zone Map (refer to Figure 3).

Development on the land is restricted in accordance with the development control table at clause 9 of the Pittwater Local Environmental Plan 1993 which outlines that development for the following purposes is the only form of development permitted (with consent) at the site:

"Advertisements; drainage; helipads; roads; the purpose indicated by scarlet lettering on the Zoning Map and any purpose ordinarily incidental or subsidiary thereto; utility installations (other than gas holders or generating works)."

Therefore currently, development for the purpose of commercial premises, recreation areas, public buildings and shop-top housing (amongst other purposes) is prohibited at the site.

The land immediately to the east, west and south of the subject land is zoned 3(a) (General Business "A") – refer to extract from the Pittwater Local Environmental Plan 1991 Zone Map below in Figure 3.

All four allotments are proposed to be rezoned to 3(a) (General Business "A").

Figure 3: Extract from current Pittwater Local Environmental Plan 1991 Zone Map



3.2 Explanation of provisions to be used in the local environmental plan

The proposed rezoning requires the amendment of the Pittwater Local Environmental Plan 1993 Zoning Map in accordance with the proposed changes as outlined in Table 3 below.

Table 3 Proposed Zoning Changes

Address	Property Description	Existing Zone	Proposed Zone
17 Foamcrest Avenue, Newport	Lot 10 Section 5 Deposited Plan 6248	5(a) (Special Uses "A")	3(a) (General Business "A")
17 Foamcrest Avenue, Newport	Lot 11 Section 5 Deposited Plan 6248	5(a) (Special Uses "A")	3(a) (General Business "A")
25 Foamcrest Avenue, Newport	Lot 14 Section 5 Deposited Plan 6248	5(a) (Special Uses "A")	3(a) (General Business "A")
27 Foamcrest Avenue, Newport	Lot 15 Section 5 Deposited Plan 6248	5(a) (Special Uses "A")	3(a) (General Business "A")

It is also considered that in order to allow shop-top housing at the site, commensurate with the surrounding 3(a) zoned land and the desired future character for the Newport Village Commercial Centre, the parcels of land comprising the site should all be identified by the symbol "STH" on the Multi-Unit Housing Map.

The submitted Planning Proposal does not address this issue. It is considered that any planning proposal forwarded to the Department of Planning for a gateway determination should include a proposed amendment to the Multi-Unit Housing Map.

The proposal requires no other provisions of the LEP to be amended.

3.3 Rezoning objective and intended outcomes – as proposed

The stated objectives and intended outcomes of the proposed rezoning as detailed in the submitted Planning Proposal are as follows:

"5.1 Objectives and Intended Outcomes

The planning proposal and site concept have been developed with consideration of the strategic directions for Pittwater, specifically relevant to Newport, the surrounding land uses as well as discussions with Council.

The objective of the rezoning is:

To enable the redevelopment of the car park site for retail development, consistent with the remainder of the town centre and including the retention of the public car parking component and provision of additional car parking.

An indicative concept of the intended outcome for the site has been prepared, with the following key principles:

- *Retail uses include a supermarket and speciality retail shops*
- *Basement supermarket at the rear of the site beneath the levels of the existing car park*
- *Speciality shops fronting an arcade, accessible from Barrenjoey Road*
- *Two storey decked car park over the retail space, with level access from Foamcrest Avenue*
- *Retention of the public car parking component currently on site and enhancement in the car parking numbers*

- *Provision of loading facilities in the north of the site, distanced from residential land uses.*
- *Retention of the existing through site link from Barrenjoey Road to Foamcrest Avenue with the use of travelators and a central pedestrian walkway through the car park at ground level.*
- *Provision of future pedestrian links to Robertson Street and to the south west of the site, if the adjoining sites were to be redeveloped.*
- *The bulk of the development is generally in accordance with the setback requirements of Pittwater DCP and the Newport Masterplan.*

Indicative concept drawings prepared by Rice Daubney are provided as appendix A to this report and propose an enhanced retail offer with associated car parking, as well as retaining the public car parking component on the site.

The detailed design of the proposal is currently being progressed as part of a development application for the site and will be lodged following the submission of this rezoning proposal.

It is noted that the indicative concept plans have been amended so that the reference to concept plans prepared by Rice Daubney is no longer relevant. The amended concept plans have been prepared by BN Architecture and include an underground car park with a supermarket and specialty retail above.

In summary, the primary objective and intended outcome of the Woolworths submitted Planning Proposal is for the future development of a new supermarket at the site in addition to maintaining the quantum of public car parking spaces.

3.4 Newport Village Commercial Centre Masterplan

The key strategic planning document for the site is the Newport Village Commercial Centre Masterplan.

The purpose of the [Masterplan](#) is to establish a holistic and integrated vision document for the Newport Village Commercial Centre, encompassing both the private and public domain. The document was developed with extensive community involvement.

The Masterplan provides an urban design framework that aims to enhance the amenity and design quality of the centre, and to support social, economic and cultural activities. Its stated focus is on a high amenity and high quality environment to support social, economic and cultural activities and to contribute positively to Newport's future.

It follows then that the logical strategic planning objective for the site should be the delivery of the desired future character as generally outlined in the Newport Village Commercial Centre Masterplan.

The Masterplan outlines strategies for 8 specific elements and these strategies are reinforced and implemented by development controls in the Masterplan and within DCP21. When combined, the strategies and the recommended development controls together form the desired future character.

Within the strategies of the Masterplan there are specific references to the subject site and the area which the subject site lies in, known as the 'car park precinct'. The most pertinent references when considering the desired future character for the site are in Part 4.6 (Land Uses) and Part 4.9 (Built Form). The stated Land Use strategy in Part 4.6 identifies that the desired future land uses for the site include mixed uses (retail, commercial, community and residential).

The strategy in Part 4.9 (Built Form) and the Figure 4.9.1 confirm that a form and scale of development commensurate with adjacent commercial development is envisaged across the site. The relevant extracts are detailed below:

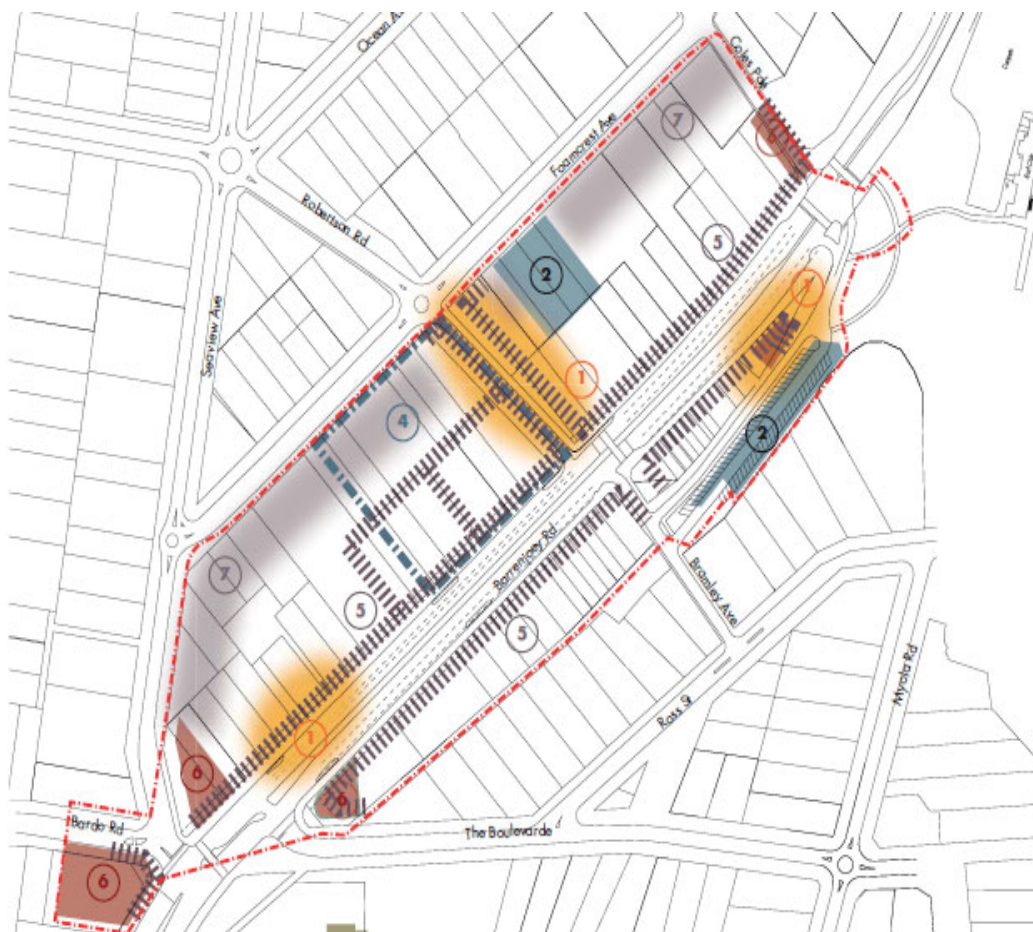
"4.6 Land Uses

Mixed uses including retail, commercial, community and residential uses are appropriate for the village centre. The strategy includes retaining the focus on Barrenjoey Road and Robertson Road as the main retail streets. Foamcrest Avenue is not suitable for retail uses for two reasons: it interfaces with a residential area and it should not compete with the intensity of use on the main shopping street and side streets. Ground floor uses on Foamcrest could include commercial uses in the form of professional suites, and a higher proportion of residential use in mixed use buildings would not be out of place east of Robertson Road beyond the church.

4. Consider the 'car park precinct' including the Council-owned sites on Foamcrest Avenue as an aggregated site (or possibly 2 or 3 integrated sites), to rationalise land uses, optimise efficiencies and deliver high amenity, high quality built form. Integrate the sites fronting Robertson Road with the planning of this 'precinct' to ensure that no lots remain isolated and unable to be developed."

(Note: Figure 4.6 does not have a key. The numbers on the Figure 4.6 relate to the above points).

"Figure 4.6 Land Uses"



“Figure 4.9.1 Built Form”



Section 4.6 outlines that development addressing Foamcrest Avenue is not suitable for retail uses for reasons relating to the interface with residential properties and competition with the main shopping street and side streets. The indicative concept plans do not propose active retail uses to address the Foamcrest Avenue frontage.

The strategies for ‘Land Use’ and ‘Built Form’ for the site are supported by detailed development controls within Part D10 of DCP 21. The detailed development controls in DCP21 originate and have been adapted from the draft development controls outlined in Part 5.8 (Proposed Amendments to DCP 21) of the Masterplan.

Numerous built form controls in Part D10 of DCP21 are exclusive to the car park precinct and reinforce the desired future development outcomes for the site. The built form controls seek to achieve a scale and form commensurate with commercial and mixed use development. One of the key built controls relevant to the site is reproduced below:

“D10.6 Height (Newport Commercial Centre)”

The maximum height for the commercial centre varies from one to three storeys.

- *For one-storey buildings, limit the overall height in metres to 7 metres*
- *For two storey buildings, limit the overall height in metres to 8.5 metres.*
- *For three storey buildings, limit the overall height in metres to 11.5 metres.*

The following height restrictions also apply:

- *On Barrenjoey Road and 17-29 Foamcrest Avenue (including land fronting Foamcrest Avenue at 343 Barrenjoey Road), limit the street frontage height to 2 storeys, with a maximum height above the flood planning level of 7 metres to the top of the structure (equivalent to the floor level of the floor above). Above this, a balustrade is permitted to the top level so long as the balustrade is at least 50% transparent.*
- *On Barrenjoey Road and 17-29 Foamcrest Avenue (including land fronting Foamcrest Avenue at 343 Barrenjoey Road), limit the height at the 4 metre setback (to the topmost storey) to 10.5 metres above the flood planning level, with the roof form being contained within a height plane of 15 degrees, to a maximum overall height of 11.5 metres.”*

As demonstrated above the desired future character for the site is congruent with the desired future character of the wider Newport Village Commercial Centre.

The site is not identified for development for a specific land use or development type, rather it is identified for development in a manner commensurate with the land uses and activities over the remainder of the Newport Commercial Centre which is exclusively zoned 3(a) (General Business “A”) apart from Council owned Open Space near Bramley Avenue.

In accordance with the development control table at clause 9 of the Pittwater Local Environmental Plan 1993, the permitted land uses in the 3(a) (General Business “A”) zone are relatively broad and include, amongst others, development for the purpose of commercial premises, recreation areas, public buildings and group buildings or residential flat buildings which are attached to shops or commercial premises.

3.5 Environmental Assessment

The Planning Proposal raises issues with regards to the following environmental matters:

- Traffic and parking
- Economic impacts
- Built form
- Flooding
- Tree removal
- Social impacts

Consideration of each of these issues is outlined below. Consideration against the Newport Masterplan is also included.

Traffic and parking

3.5.1 The submitted Planning Proposal was referred to Council’s Engineer who outlined that a supermarket is likely to have a heavy dependency on large vehicles servicing the site and therefore raised concerns as to whether the configuration of Foamcrest Ave can cater with the service demand created by such a development.

3.5.2 Council’s Engineer indicated that a traffic management assessment should be submitted with the rezoning application demonstrating that the roads surrounding the development will be able to cater for the likely demand for service deliveries from a supermarket.

3.5.3 The applicant subsequently submitted a Traffic Report prepared by Colston Budd Hunt & Kafes

3.5.4 The Traffic Report was undertaken based on the proposal “to rezone the parts of the site used for car parking, to provide for a new Woolworths supermarket of some 3,540m² and specialty shops of some 610m². Vehicular access would be provided from Foamcrest Avenue, to a parking area for 287 parking spaces” The Traffic Report in summary found the following:

- The signal controlled intersection of Barrenjoey Road with Seaview Avenue is operating with average delays of less than 20 seconds per vehicle during the Thursday afternoon and Saturday lunchtime peak periods. This represents level of service B, a good level of service.
- The roundabout controlled intersections of Foamcrest Avenue with Robertson Road and Seaview Avenue are operating with average delays of less than 15 seconds per vehicle during peak periods. This represents level of service A/B, a good level of service.
- The proposed provision of 287 spaces satisfies Council requirements, and is considered to be appropriate.
- Traffic increases on Foamcrest Avenue, from where access to the development is proposed, would be some 180 to 190 vehicles per hour two-way during Thursday afternoon and Saturday peak hours. Increases on Seaview Avenue, Robertson Road and Barrenjoey Road would be some 20 to 190 vehicles per hour two-way.
- Based on the calculated traffic generation rates, the intersection of Barrenjoey Road with Seaview Avenue would operate with average delays of less than 25 seconds per vehicle during peak periods. This represents level of service B, a good level of service.
- The intersections of Foamcrest Avenue with Robertson Road and Seaview Avenue would continue to operate with average delays of less than 15 seconds per vehicle during peak periods. This represents level of service A/B, a good level of service.
- The proposed car park access driveway on Foamcrest Avenue would operate with average delays for all movements of less than 15 seconds per vehicle during peak periods. This represents level of service A/B, a good level of service.
- The road network will be able to cater for the additional traffic from the proposal.
- The proposal would strengthen demand for existing public transport services in the area.
- The access and the internal circulation and layout are considered appropriate.

3.5.5 Council engaged ML Traffic to undertake a peer review of the Colston Budd Hunt & Kafes Traffic Report. The Peer Review essentially listed various items that needed further attention or clarification.

3.5.6 A Supplementary Traffic Report prepared by Colston Budd Hunt & Kafes was subsequently submitted which examined the traffic implications of the amended drawings lodged for the Planning Proposal and also sought to address the matters raised by in the ML Traffic Peer Review.

3.5.7 The Supplementary report concluded that the main points relating to the traffic implications of the amended Planning Proposal are as follows:

- *The revised planning proposal would provide for a 2,950m² supermarket and 1,365m² specialty shops;*
- *The proposal would strengthen demand for existing public transport services in the area;*

- *The proposed parking provision complies with the requirements of Pittwater 21 DCP and RTA Guidelines;*
 - *Access, internal circulation and layout are considered appropriate;*
 - *The road network will be able to cater for the additional traffic from the proposed development;*
 - *While there would be an increase in traffic in Foamcrest Avenue as a result of the proposed development, there would be not a significant affect on road safety; and*
 - *The matters raised by the ML traffic review have been addressed.*
- 3.5.8 Council engaged ML Traffic to undertake a peer review of the Supplementary Traffic Report in which ML Traffic concluded the following:
- “A review of the traffic assessment has been undertaken for the planning proposal at 17 and 25-27 Foamcrest Avenue, and 343 Barrenjoey Road including the development of the two adjacent Council properties.*
- A review showed that further information is required to assess the traffic report in the following areas*
- *Clarification of the peak hours is required*
 - *The net trip generation of the site has not been done correctly.*
- We believe that the above issues are of a minor nature and certainly do not preclude the proposed development from obtaining approval from Pittwater Council. Upon receipt of the minor clarification and correction, there are no traffic issues that would preclude the approval of the proposed development.”*
- 3.5.9 A letter of response was prepared by Colston Budd Hunt & Kafes. The letter addressed the two outstanding matters to which ML Traffic subsequently acknowledged by way of email dated 24/05/2010.
- 3.5.10 In light of the above details and summarised analysis, it is considered that the Planning Proposal is considered satisfactory with regard to traffic and parking implications.

Economic

- 3.5.11 The applicant was requested to provide an Economic Impact Assessment to inform the Planning Proposal and responded by submitted the “Newport Commercial Centre Economic Assessment” prepared by Hill PDA.
- 3.5.12 The report nominated a trade area and analysed the trade area demographics. The report provided analysis of the retail floor space within the area, identified the demand for retail floor space within Newport, analysed the economic implications for the Newport Commercial Centre and outlined the economic merits of the proposal. The report concluded the following:
- “This Economic Analysis of the proposal rezoning has found that there is a sufficient demand within the Newport Commercial Centre trade area at the present time to accommodate 3,800 sqm of retail floor space including a 3,200 sqm supermarket and 600sqm specialty retail.*
- As the subject site is located within the Newport Commercial Centre, the attraction of a full line supermarket and the additional parking could provide economic benefits to the surrounding specialty retailers. We also consider that a centre on the Subject Site as planned could promote sustainable travel given its close proximity and ease of access to a range of family households and businesses.*

The central location of the Subject Site within the suburb of Newport and Pittwater LGA would also allow for residents to have greater access to parking and conduct their core shopping.

There are a number of likely positive impacts of the proposed rezoning including:

- *Improved retail offer,*
- *Reduced escape expenditure*
- *Reduction in travel costs”*

3.5.13 Council engaged Leyshon Consulting to under take a peer review of the Economic Assessment prepared by Hill PDA.

3.5.14 The Peer Review came to the following conclusions (note these are paraphrased and not direct quotes):

- The report does not assess the potential impact of the proposed development but merely examines certain floorspace demand and supply issues.
- Concern is raised that the Hill PDA report does not examine what affect a much larger Woolworths supermarket of 3,200m². (plus 600m². of supporting specialty retail) will have on the smaller recently opened 1,600m². Coles supermarket at the northern end of the Newport retail strip.
- The Hill PDA report does not consider what might be the impact on the existing centre at Avalon of the transfers of spending from the Avalon Woolworths to the new store proposed at Newport.
- Hill PDA have argued that it is an established legal precedent in the Land and Environment Court of New South Wales that the relevant impact of a proposed development is that which falls on centres not individual stores or direct competitors.
- Given the importance of this issue and Council's involvement in this development as both a property owner and a decision-maker, we believe Council should seek an independent legal opinion as to whether the normal requirements of Section 79C(1)(b) of the Act can be set aside in this instance in the manner advocated by Hill PDA.
- Overall, therefore, a reasonable balance between the demand for, and supply of, supermarket floorspace within the Newport trade area in 2011-12 appears likely if development of the proposed Woolworths proceeds.
- This does not mean, however, that a Woolworths supermarket can be introduced into the Newport retail system “impact free”. We have concerns about the potential impact of the proposed supermarket on the newly opened, and much smaller Coles in Newport, and what the inevitable reduction in sales activity at Woolworths Avalon may mean for that centre.
- It is fair to note that the proposed Woolworths supermarket will bring some benefits to the Newport centre. The development of a full-line supermarket within the centre where none exists at present should have a positive influence on local shopping patterns to the benefit of Newport as a whole.
- It should encourage a higher proportion of trade area resident shopping trips to be directed to Newport than occurs at present. This should have potential spin-off benefits in terms of the existing retail premises which line Barrenjoey Road.
- The proposed retail development at Newport will also create jobs in the centre.
- Subject to final plans, the centre will also benefit from an increase in overall off-street car parking by some 57 spaces.
- Arguments that the proposed development will increase local competition in the supermarket sector appear overstated.

- Another economic benefit is that the proposal will generate an increased “choice” for shoppers as far as supermarket goods are concerned in Newport rather than within the surrounding region as Woolworths is already represented at Avalon, Mona Vale and Warriewood.
- There is prima facie evidence that the proposed development would not generate, in a general sense, unacceptable impacts on the retail system in the trade area and would, if viewed in isolation from community concerns, produce some economic benefits for the Newport centre.

With respect to the first five dot points above it is noted that legal advice to Council indicates the Court has generally held that, in respect of the economic impact of a proposed development, the proper planning consideration which a decision-maker must have regard to is the overall economic impact on the commercial centre or community, that is the wider locality.

The legal advice to Council indicates that the Court has stated that section 79C(1)(b) of the EPA Act “*does not require the consideration of economic impact on individual competitors, except to the extent that any impact upon individual competitors, or competition generally, demonstrates economic impact in the locality as an environmental or planning matter* (see *Cartier Holdings Pty Ltd v Newcastle City Council* (2001) per Justice Pearlman, upheld in *The Village McEvoy Pty Ltd v Council of the City of Sydney* (No 2) [2010] NSWLEC 17).

Also, the draft State Environmental Planning Policy (Competition) 2010, which has been publicly exhibited but has not yet come into force, appears to be an attempt by the NSW government to codify the above principle, notwithstanding that it is unlikely to apply to the rezoning of land because the SEPP will only apply to Part 4 development applications that are made after the SEPP comes into force.

- 3.5.15 Notwithstanding that the Peer Review alludes to the economic benefits of the proposal being overstated in the applicant’s economic report and also raises issue with various technical arguments in the report, the Peer Review concludes that on balance there is prima facie evidence that the proposed development would not generate, in a general sense, unacceptable impacts on the retail system in the trade area.
- 3.5.16 Further the Peer review finds that, if viewed in isolation from community concerns, the proposal would produce some economic benefits for the Newport centre.
- 3.5.17 On the basis of the expert economic analysis, it is considered that the Planning Proposal is satisfactory with regard to the potential economic impacts, notwithstanding that retail development addressing the Foamcrest Avenue side of the site is inconsistent with the Newport Village Commercial Centre Masterplan.

Built Form

- 3.5.18 The submitted Planning Proposal was supported by ‘indicative concept’ drawings which outlined a potential building footprint and envelope for a supermarket, speciality retail shops and car park development across the subject site and the Woolworths Ltd owned land at 343 Barrenjoey Road (also known as 23 Foamcrest Avenue).

The applicant has since amended the concept drawings, providing significantly more detail and indicating basement car parking where previously above ground car parking was proposed.

The amended drawings have considerably less detail than that which would be expected for a set of Development Application drawings, as would be expected with a Planning Proposal.

A review of the drawings indicates that various built form aspects of the supermarket, specialty retail and car park concept are inconsistent with the built form envisaged for the site as detailed in the Newport Village Commercial Centre Masterplan.

Specifically the building footprints do not align with those outlined in Figure 4.9.1 Built Form of the Masterplan. In this regard it is recognised that some of the proposed heights of the indicative buildings are less than what is shown in the Masterplan, which envisages 1, 2 and 3 storey development over the site.

It is acknowledged that the building footprints in the Masterplan are not a prescribed requirement and as such there is flexibility to arrange buildings at the site in a manner that is not exactly the same as building footprint presented in Figure 4.9.1.

It is also acknowledged that future development at the site is unlikely to correlate exactly as the Masterplan outlines in terms of building envelopes, building footprints and building alignments.

Nonetheless, the proposed indicative arrangement of buildings will inhibit the successful realisation of another important aspect of the Masterplan - the pedestrian links across the site.

Importantly, the site is identified in the Newport Village Commercial Centre Masterplan (refer to sections 4.5 and 4.2 and Figure 4.2 and 4.5 of the Masterplan) as accommodating significant north – south and east – west pedestrian pathways / links across the site. It is envisaged that these two links will form part of a wider, integrated pedestrian network throughout the Commercial Centre.

The amended indicative concept drawings show a relatively convoluted and disjointed set of pedestrian links, such that the north-south link is entered adjacent to the two loading bays in the north east corner, leads down a set of stairs to the basement (mezzanine level) car park, leads across the car park in front of a row of car spaces (i.e. within the vehicular circulation space of the car park) and then delivers the pedestrian to a set of travelators which in turn delivers the pedestrian to shops at the front of the proposed development near Barrenjoey Road.

The proposed east-west pedestrian link is less clear. The amended concept drawings indicate a proposed link between Robertson Road, through the property at 29 Foamcrest Avenue, into the subject site. The link however does not appear to extend through the site to link up with the existing stepped pedestrian path which is located at the south west corner of the site. Instead it appears that a pedestrian would have to enter the 'mezzanine' car park level and manoeuvre through the circulation space of the car park to a doorway in the south west corner of the car park.

It is noted that the majority, if not all of the pedestrian linkages proposed, appear to be covered and the majority are not "edged and overlooked by active uses" as envisaged Part 4.6 of the Masterplan.

Other aspects of concern with the indicative built form relate to the proposed setbacks and boundary interfaces.

Specifically the proposed interface between the site and Foamcrest Avenue does not appear to result in an active street front as envisaged by the Masterplan. In addition the proposed loading dock appears to sit forward of the set back required in the Masterplan and in the relevant DCP 21 controls.

The proposed nil setback to the western boundary is potentially an issue in terms of visual massing, view loss and solar access for the medium density residential development located immediately to the west of the site.

The nil setback to the eastern boundary is also of concern given it is likely to result in the deletion of the current servicing arrangements for most of the commercial properties located at 29 Foamcrest Avenue and 349 Barrenjoey Road (which address Robertson Road) and which informally rely on 27 Foamcrest Avenue for access for servicing (i.e. for service deliveries, garbage storage and collection, etc).

The applicant has indicated the provision of two loading/service bays in the north east corner of the development for use by the commercial properties to the east. It is not clear however how these would operate, and it does not appear that they would resolve garbage storage and collection issues for the commercial properties located at 29 Foamcrest Avenue and 349 Barrenjoey Road.

Other potential built form issues concern the front alignment which appears to be set further forward than at least one adjacent building, notwithstanding that the proposed building alignment may accord with the relevant development control.

While it is recognised that the drawings are indicative only, and it is considered some, if not all of the built form issues may be able to be addressed through the Development Application process, it is nonetheless considered inappropriate to put forward the indicative concept drawings in their current form as part of the Planning Proposal given there are clear and apparent non-compliances with the desired future character built form controls in the Newport Village Commercial Centre Masterplan and the DCP21 development controls.

Flooding

- 3.5.19 Council's Flood Risk Map states the properties the subject of the Planning Proposal have been identified as being within a High Hazard Area, affected by a Flood Planning Level (FPL) and Probable Maximum Flood (PMF).

Council has a Flood Risk Management Policy which has been prepared in accordance with the principles and guidelines of the Floodplain Development Manual 2005. Future development will be subject to the provisions of the Policy and a flooding assessment of the site may be required.

The proposal was referred to Council's Engineer who has confirmed that it is apparent that future development will be able to comply with flood related development controls.

Tree Removal

- 3.5.20 Council's Natural Resource officer has reviewed the proposed rezoning application and inspected the site. An arborist report (RainTree Consulting Arboricultural Management July 2009) was submitted with the application. The report assesses 36 trees in relation to the site and proposal. Any potential impact to these trees relates to a future Development Application which at this stage has not been lodged. The report specifies that the majority of the trees onsite would require removal in accordance with the works anticipated in the indicative concept plans submitted with the planning proposal as they all fall within the indicative building footprint.

As the current application is only for rezoning, no trees require removal at this stage, the arborist report should be resubmitted with the future DA to which it will be more applicable.

Social Impacts

- 3.5.21 The rezoning of the land is likely to have limited direct or indirect social impacts. The future development of the land in accordance with the planning provisions of the new zone may result in social impacts.

It is noted that the initial (non-statutory) community consultation and notification of the Planning Proposal raised significant interest within the community and a total of 2574 submissions were received (including various petitions) with respect to the two notification periods.

The overwhelming majority of these submissions raised objection to the proposal and the issues raised are summarised in section 3.7 below.

It is reasonable to say that the majority of the objections relate directly or indirectly to the proposed future development of the site for the purpose of a Woolworths supermarket.

3.6 Consistency with Relevant Strategic Planning Framework

- 3.6.1 The Planning Proposal is considered to be generally consistent with the objectives and actions contained within the draft North-East Sub-regional Strategy and the Sydney Metropolitan Strategy.

- 3.6.2 The Planning Proposal is considered to have aspects that are inconsistent with the Newport Village Commercial Centre Masterplan as elaborated upon elsewhere in the report.

- 3.6.3 The Planning Proposal is considered to be generally consistent with the community's vision as expressed in the Council's *Strategic Plan 2020 and Beyond*.

In particular the proposal is consistent with the "Town and Village Strategy" which outlines that strategic infrastructure is to provide integrated car parking options in Newport and Mona Vale and investigate other options via ongoing masterplans.

- 3.6.4 The planning proposal is consistent with applicable state environmental planning policies.

In particular it is noted that the proposal is considered to be consistent with the Draft SEPP (Competition) 2010, (refer to discussion below).

- 3.6.5 Draft SEPP (Competition) 2010 has been prepared and was placed [on exhibition](#) for public comment from 27 July 2010 to 26 August 2010.

The aims of this draft SEPP are to promote economic growth and competition and to remove anti-competitive barriers in environmental planning and assessment. The new draft State Environmental Planning Policy (SEPP) proposes:

- The commercial viability of a proposed development may not be taken into consideration by a consent authority, usually the local council, when determining development applications;

- The likely impact of a proposed development on the commercial viability of other individual businesses may also not be considered unless the proposed development is likely to have an overall adverse impact on the extent and adequacy of local community services and facilities, taking into account those to be provided by the proposed development itself; and
- Any restrictions in local planning instruments on the number of a particular type of retail store in an area, or the distance between stores of the same type, will have no effect.

The provisions of the draft SEPP relate to specific Development Applications more so than the proposed rezoning of land and in this regard any future Development Application relating to the subject site will be considered against the provisions of the draft SEPP.

Notwithstanding, the proposal to rezone the subject site from 5(a) (Special Uses "A") to 3(a) (General Business "A") has also been considered against the provisions of the draft SEPP and has found to be consistent with those provisions.

The rezoning will result in an increase in the quantum of 'business zoned' land within the wider Newport Commercial Centre and the economic analysis undertaken to date (refer to section 3.5 above) indicates that the actual rezoning of the land is unlikely to have an overall adverse impact on the extent and adequacy of local community services and facilities.

- 3.6.6 It is also noted that the proposal to rezone the land is consistent with the Planning System Circular (PN 08-002) issued by the NSW Department of Planning with respect to the zoning of infrastructure land in LEPs.

The circular outlines six principles that should be followed when zoning infrastructure land in new LEPs. It is considered that the circular applies given that the site contains (and is proposed to contain) an infrastructure type covered in the Infrastructure SEPP (i.e. *a car park for the purpose of 50 or more cars with access to classified road or to road that connects to classified road, if access within 90m of connection, measured along alignment of connecting road*).

Principle 1.2 (Rezoning existing 'special use' zones) of the circular states the following:

"Land currently zoned 'special use' for these types of infrastructure or services (e.g. roads, railway lines, pipelines etc), should be zoned the same as the adjacent land. Applying the adjacent zone type to public infrastructure land follows a basic planning principle of aligning land uses. It is established practice to refer to the zoning of adjoining land when seeking to establish an appropriate zoning for land. In many cases the infrastructure land would have been zoned the same as the adjoining land if it had not been used instead for an infrastructure purpose. This approach avoids the need for spot rezonings when the infrastructure use ceases or is downsized in the future. It is preferable that the land use zone be the same as the adjacent zoning, so that future uses are compatible with existing surrounding uses."

In summary, it can therefore be reasonably expected that as part of the Council's new comprehensive LEP that will be introduced in accordance with the Standard Instrument format, Council will be required to rezone the subject land to 3(a) (General Business "A") in accordance with the provisions of Planning Circular PN 08-002.

3.6.7 The Planning Proposal is generally consistent with the applicable Ministerial Directions (S117 Directions).

3.7 Non-statutory Preliminary Notification and Community Consultation

Formal consultation with State and Commonwealth Authorities will be carried out as advised by the Department of Planning upon any gateway determination.

Although not required by legislation, preliminary non-statutory notification and community consultation was undertaken with respect to the submitted Planning Proposal in accordance with Council's Community Engagement Policy.

The application was advertised between 7 September 2009 and 9 October 2009 with 1343 submissions received (1340 in objection and 3 in support). It is noted that 1019 of the 1340 objections received were in a 'pro-forma' style format

It is also noted that one of the 1340 objections had a petition attached with 2018 signatures.

Upon the amendment of the application and provision of additional information, the application was re-advertised between 28 April 2010 and 28 May 2010 with 1231 submissions received (1225 in objection and 6 in support). It is noted that 998 of the 1325 objections received were in a 'pro-forma' style format.

It is also noted that one of the 6 submissions of support has a petition attached titled "*Letters From Newport Business Owners*" with signatures from the owners and / or operators of 60 businesses within Newport and 1 in Bilgola Plateau.

In total 2574 submissions were received (not including signatories to petitions). It has not been determined how many people have lodged submissions in addition to signing petitions.

It is also noted that the Newport vs Woolies Community Group has a website devoted to objection to the Planning Proposal submitted by Woolworths Ltd.

Several 'alternative concepts' have also been proposed (including supporting drawings) and submitted during the notification periods.

One of the alternative concepts was prepared on behalf of the Newport vs Woolies Community Group and a number of submissions received refer to this alternative concept.

In addition to the notification periods outlined above a 'Public Information Session' was held (and independently facilitated) and a series of meetings were undertaken with identified 'Key Stakeholders' including the Newport Residents Association, the Newport vs Woolies Community Group, Pittwater Council Property Officer, and Woolworths Ltd representatives. It is noted that the Newport Chamber of Commerce were also invited to the Stakeholder meetings but did not attend.

The matters raised are generally consistent and have been summarised below:

Objections raised:

- The proposal is inconsistent with the Newport Village Commercial Centre Masterplan.
- The proposal is inconsistent with controls within the Pittwater DCP 21 and the Pittwater LEP 1993.

- The proposal is inconsistent with Draft North East Draft Regional Strategy.
- The proposal is inconsistent with Section 117 Directions of the EP&A Act 1979.
- The proposal does not satisfy (or provide sufficient information to satisfy) the statutory requirements of a Planning Proposal.
- The Planning Proposal should not be considered without consideration of a DA because they are closely linked.
- Approval of the proposal effectively means approval of a future DA for a supermarket.
- There is no need for a second supermarket in Newport.
- Additional retail floor space will create over supply in Newport.
- A supermarket will negatively impact upon the viability of existing businesses within Newport.
- The economic report is inaccurate and or flawed.
- The proposal will lead to the loss of the sense of 'Village' that currently exists at Newport.
- The proposal will result in significant additional car and truck movements and will result in significant adverse impacts upon the local road network.
- Car parking should be provided below ground level (Note: The amended 'indicative concept' plans include below ground car parking).
- Additional parking is not required in Newport.
- The traffic reports submitted are inaccurate and or flawed.
- The proposal will not result in the highest and best land use of the site – for example an underground car park with public open space at ground level would be a better use of the site.
- The site should not be sold by Council.
- The site should be developed for the purpose of open space.
- The site should be developed for the purpose of 'green community space - as a focus for an off main road village centre'.
- The proposal will result in poor pedestrian outcomes in terms of safety and lack of pedestrian linkages through the site.
- The proposal will result in adverse built form/architectural outcomes.
- The proposal will result in a diminished streetscape for both Foamcrest Avenue and also to Barrenjoey Road.
- The proposal does not respond to the residential interface in Foamcrest Avenue and will result in adverse impacts to the residential amenity of nearby residential dwellings.
- Alternative proposals have not been fully or properly explored.
- The proposal will have adverse impacts upon wildlife.
- The proposal will have adverse upon existing infrastructure (roads, electricity, water sewerage and drainage).
- The proposal to rezone (and develop) the land is primarily for Council's economic and or financial purposes.
- There is concern about transparency with regard to the dealings of Council and Woolworths.
- There has been a lack of consultation with the community.
- The amended 'indicative concept drawings' do not address the issues raised in the first round of notification and submissions.

In support:

- Woolworths project will upgrade 'tired' buildings and improve the streetscape.
- Woolworths project will revitalise the Newport shopping strip.
- Woolworths project will attract larger pedestrian flow to Newport shops.
- Woolworths project will draw more customers to the area that currently shop elsewhere and increase economic activity for existing small businesses.

- Woolworths project will attract new small businesses that would otherwise not come to Newport.
- There are insufficient car spaces and no loading zones at the southern end of Newport to support small businesses and the Woolworths project would help address this problem.
- The “protesters” don’t speak for all small business owners in Newport.
- The amended design is considerably improved and is likely to be a good addition to Barrenjoey Road.
- Amended ‘indicative concept’ has addressed the majority of issues.
- The development of a Woolworths supermarket would provide choice and a balance to Coles.
- The long term benefits of a Woolworths store will outweigh the short term negative inconveniences.
- If Woolworths is unable to develop the site it will sell the land and the site will be developed for different purposes leaving the Council car park split and difficult to develop in the future.

Summary:

As demonstrated above the non-statutory preliminary notification and community consultation attracted significant public interest. The majority of the submissions received raise objection to the Planning Proposal, with less than 1% of submissions in support of the proposal.

The overwhelming majority of the objections submitted relate to the proposed future development of the site for the purpose of a Woolworths supermarket.

The objections raise a number of issues, but the majority of matters raised are concerned with the outcomes related to the future development of the site for the purpose of a supermarket.

It is also notable that the majority of the submissions received indicate that the proposal does not accord with the Newport Village Commercial Centre Masterplan and that any Planning Proposal and future development should accord with the Masterplan.

This point was also one of the key matters raised by representatives of the Newport Residents Association and the Newport vs Woolies Community Group at the Stakeholder meetings and within their respective written submissions.

Other key issues raised by the above mentioned Key Stakeholders relate to the economic impacts, traffic related impacts, built form impacts and social impacts that the development of the site for the purpose of a supermarket will have upon the Newport Village Commercial Centre and the wider Newport community.

Discussion about the potential environmental, economic and social impacts is outlined above in section 3.5.

4.0 ALTERNATIVE PLANNING PROPOSAL

The Planning Proposal submitted by Woolworths focuses on one main intended outcome and one main objective for the site, that being the future development of the site for the purpose of a supermarket, retail speciality shops and a car park.

Though it may be that development for the purpose of a supermarket will be development that is permitted with consent upon the site being rezoned, it is considered that the Planning Proposal objective is not consistent with the desired future character of the site, such that that the desired future character is much broader than 'development for one purpose only'.

The stated objective in the submitted Planning Proposal does not seek to deliver the broader desired future character for the site as set out in the Newport Village Commercial Centre Masterplan and for this reason the objective is not supported.

In addition, various aspects of the 'indicative concept' outlined in the submitted Planning Proposal are inconsistent with the Newport Village Commercial Centre Masterplan as detailed in the above sections of this report and therefore the indicative concept cannot be supported.

Notwithstanding that the submitted Planning Proposal is not supported, this report nonetheless concludes that the actual rezoning of the site from 5(a) (Special Uses "A") to 3(a) (General Business "A") is a rational planning outcome, is consistent with NSW Department of Planning policies, is consistent with the Draft North East Sub-regional Strategy, will provide the potential for the delivery of future development generally consistent with the Newport Village Commercial Centre Masterplan and therefore has merit.

In light of that conclusion and in accordance with the provisions of Section 55(1) of the EP&A Act and the Department of Planning's guideline for Plan making, an alternative Planning Proposal has been provided.

The objective of the alternative Planning Proposal is considered to be consistent with the Newport Village Commercial Centre Masterplan. The alternative Planning Proposal is attached to this report (refer to Attachment 3) and the objective is outlined below:

"The objective of this Planning Proposal is for the rezoning of 17 and 25-27 Foamcrest Avenue Newport from its current 5(a) (Special Uses "A") to 3(a) (General Business "A") to enable the redevelopment of the site consistent with the surrounding commercial centre and land uses and generally consistent with the provisions of the Newport Village Commercial Centre Masterplan as it applies to the site, while maintaining public car parking."

5.0 NEXT STEPS

- 5.1 Should Council adopt the recommendation, a request will be made to the Department of Planning for a "gateway" determination. Additionally, the identified Key Stakeholders and those who had previously made written submissions will be advised of Council's resolution.
- 5.2 If the gateway determination is to proceed with the rezoning, then community consultation will be undertaken as required by the Department of Planning.
- 5.3 A report would then be provided to Council following the community consultation process with a recommendation to either proceed or not proceed with the Planning Proposal and draft LEP.
- 5.4 In summary the steps of the "gateway" process are:
 - A Planning Proposal (PP) is prepared by the proponent or Relevant Planning Authority (in this case, Council)

- Preliminary non-statutory notification of rezoning
- Council formally considers PP (this report)
- Council resolves to forward PP or the alternative PP to Department of Planning (DoP)
- PP assessed by DoP
- A Planning Panel considers PP & recommendations of DoP
- Gateway determination (potential referral to the Joint Regional Planning Panel)
- Consultation with State/Commonwealth Public Authorities
- Council conducts formal Community Consultation
- Council conducts a public hearing if required
- Council considers community and agency submissions and determines whether to proceed
- Final PP assessed by DoP
- DoP prepares legal instrument in consultation with Parliamentary Counsel
- Plan is made by the Minister

6.0 SUSTAINABILITY ASSESSMENT

6.1 Supporting & Connecting our Community (Social)

- 6.1.1 Progressing the plan-making process to permit land uses and activities at the site in accordance with the 3(a) (General Business “A”) zone will facilitate the potential redevelopment of the site in a manner generally consistent with the Newport Village Commercial Centre Masterplan. The Masterplan aims to enhance the amenity and design quality of the centre, and to support social, economic and cultural activities. Its stated focus is on a high amenity and high quality environment to support social, economic and cultural activities and to contribute positively to Newport’s future.

6.2 Valuing & Caring for our Natural Environment (Environmental)

- 6.2.1 The site is within an existing business precinct (commercial centre) in a built up area of Newport. The site has not been identified as containing critical habitat or threatened species, populations or ecological communities, or their habitats.

Assessment of future development applications will include evaluating the likely impacts of future development with respect to natural environment and economic and social impacts in the locality.

6.3 Enhancing our Working & Learning (Economic)

- 6.3.1 Progressing the plan-making process to permit land uses and activities at the site in accordance with the 3(a) (General Business “A”) zone will facilitate the potential redevelopment of the site in a manner generally consistent with the Newport Village Commercial Centre Masterplan

The increase in the supply of commercial / retail floor space that the rezoning may facilitate (if the site is developed for the purpose of commercial premises to its maximum potential) is likely to result in employment generation within an already well established commercial centre.

Initial analysis indicates that such development is unlikely to unacceptably impact on the viability of the existing Commercial Centre and assessment of future development applications will include evaluation of the likely economic impacts in the locality.

6.4 Leading an Effective & Collaborative Council (Governance)

- 6.4.1 Progressing the plan-making process to permit land uses and activities at the site in accordance with the 3(a) (General Business “A”) zone will facilitate the potential redevelopment of the site in a manner generally consistent with the Newport Village Commercial Centre Masterplan

The Masterplan was developed with extensive community involvement.

Consultation with landowners and community participation has been undertaken during the assessment to ensure that decision-making regarding the proposal is accountable and transparent. Further consultation will likely be required by the Minister for Planning.

6.5 Integrating our Built Environment (Infrastructure)

- 6.5.1 Progressing the plan-making process to permit land uses and activities at the site in accordance with the 3(a) (General Business “A”) zone will facilitate the potential redevelopment of the site in a manner generally consistent with the Newport Village Commercial Centre Masterplan

The rezoning would not inhibit Council’s ability to maintain the quantum of public car spaces which currently exist at the site and it would not inhibit Council’s ability to maintain and improve the pedestrian access through the site currently enjoyed by the public.

The site is within an established Commercial Centre which is well serviced by existing infrastructure including public transport.

7.0 EXECUTIVE SUMMARY

- 7.1 Council resolved to grant owners consent to Woolworths Ltd to lodge a rezoning application to rezone the Council owned 17 and 25-27 Foamcrest Avenue, Newport from 5(a) (Special Uses “A”) to 3(a) (General Business). Woolworths currently own land located between the Council owned parcels of land (known as 23 Foamcrest Avenue and 343 Barrenjoey Road).
- 7.2 A Planning Proposal has been submitted to Council by URBIS Pty Ltd on behalf of Fabcot Pty Ltd which is a subsidiary of Woolworths Ltd.
- 7.3 SJB Planning NSW Pty Ltd was engaged by Council to undertake an independent assessment of the application to rezone the land (this report).
- 7.4 The report concludes that the proposal to rezone the Council owned land from 5(a) (Special Uses “A”) to 3(a) (General Business “A”) is a rational planning outcome, is consistent with NSW Department of Planning policies, is consistent with the Draft North East Sub-regional Strategy, would potentially facilitate development generally consistent with the Newport Village Commercial Centre Masterplan and therefore has merit.
- 7.5 The rezoning of the subject land to 3(a) (General Business “A”) will assist in the possible realisation of the Newport Village Commercial Centre Village Masterplan as it applies to the site, where as the current zoning effectively prohibits the full realisation of the Newport Village Commercial Centre Village Masterplan as it applies to the site.

- 7.6 The Planning Proposal submitted on behalf of Woolworths Ltd is considered to be inconsistent with Newport Village Commercial Centre Masterplan.
- 7.7 The stated key principles in the submitted Planning Proposal do not seek to deliver the broader desired future character for the site as set out in the Newport Village Commercial Centre Masterplan and for this reason is not supported.
- 7.8 It is recommended that the Planning Proposal should not proceed to the NSW Department of Planning's 'gateway' process in its current form.
- 7.9 This report provides an alternative Planning Proposal which outlines a broader objective and intended outcome for the rezoning, when compared to the submitted Planning Proposal.
- 7.10 The objective of the alternative Planning Proposal is for the rezoning of 17 and 25-27 Foamcrest Avenue Newport from its current 5(a) (Special Uses "A") to 3(a) (General Business "A") to enable the redevelopment of the site consistent with the surrounding commercial centre and land uses and generally consistent with the provisions of the Newport Village Commercial Centre Masterplan as it applies to the site, while maintaining public car parking.
- 7.11 The alternative Planning Proposal does not list the development of a supermarket as a stated objective and it does not include concept plans or indicative drawings of potential future built form outcomes. The alternative Planning Proposal does not however, seek to specifically exclude a supermarket as being one of the forms of potential future development at the site. Notwithstanding this, retail development fronting Foamcrest Avenue is not consistent with the Newport Village Commercial Centre Masterplan.
- 7.12 The alternative Planning Proposal has been prepared in accordance with the amendments recommended in this report and at the request of Council's strategic planning department.
- 7.13 This report recommends referral of the alternative Planning Proposal for a gateway determination.

RECOMMENDATION

1. That Council not proceed with the Planning Proposal lodged on behalf of Woolworths as the Proposal is inconsistent with the provisions of the Newport Village Commercial Centre Masterplan.
2. That Council reinforce that the Newport Village Commercial Centre Masterplan is the guiding document for future zoning and redevelopment of the subject land and 23 Foamcrest Avenue.
3. The Council refer the alternative Planning Proposal, as set out in Attachment 3, to facilitate the rezoning of Council owned land at 17 and 25-27 Foamcrest Avenue, Newport from 5(a) (Special Uses "A") to 3(a) (General Business "A"), to the Director General of Planning for a gateway determination.
4. That further community consultation be carried out in accordance with any gateway determination and that the outcome of the community consultation be reported to Council.
5. That Council note that endorsement of proceeding with the alternative Planning Proposal in no way fetters the statutory and regulatory responsibilities of the Council under the *Environmental Planning & Assessment Act 1979* or Council's obligation to objectively consider the suitability of any future development application on this site, including but not limited to that for the purpose of a supermarket.
6. That all persons who have made a submission be formally advised of Council's decision.

Report prepared by

Stuart Gordon, Senior Planner / Stuart McDonald, Director,
SJB Planning NSW Pty Ltd

Planning Proposal:
Rezoning Submission for
17-19 Foamcrest Ave
& 25-27 Foamcrest Ave,
Newport

urbis



Planning Proposal:

Rezoning Submission for
17-19 Foamcrest Ave
& 25-27 Foamcrest
Ave, Newport

Prepared for Fabcot Pty Ltd

July 2009

URBIS STAFF RESPONSIBLE FOR THIS REPORT WERE:

Director	Tim Blythe
Senior Consultant	Naomi Daley
Support Staff	Fiona Buchan
Job Code	SA4097
Report Number	SA4097 _ rezoning submission 10-7-09

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Executive Summary

This planning proposal has been prepared by Urbis for Fabcot Pty Ltd for the rezoning of 17-19 and 25-27 Foamcrest Avenue, Newport. The two parcels of land are currently owned by Pittwater Council and used as a public car park, and propose a rezoning from Special Uses 5(a) to **3(a) General Business A**.

The rezoning proposal and indicative site concept have been developed with consideration of the strategic directions for Pittwater, the surrounding land uses and discussions with Council.

The proposed **3(a) General Business A** zoning for the land parcels is appropriate for the following reasons:

- This submission identifies the specific characteristics of the site, strategically located in a commercial town centre and surrounded by business zoned land. This position makes it realistically possible to achieve a rezoning of the land to business.
- The current special uses zoning, limited to the provision of car parking, does not realise the full potential of the land given its commercial context.
- Retaining the two land parcels for car parking represents an under-utilisation of the land that is suitable for renewal. If the middle portion of the broader car park site (343 Barrenjoey Road) was developed, the resulting car parking arrangement would be somewhat dysfunctional given the split in land area and ownership and could potentially sterilise any future expansion of the land parcels.
- The opportunity exists to provide a broader community benefit through the retention of the public car parking as well as additional retail services.
- The land is of a suitable size to accommodate a worthwhile commercial outcome on the site as appropriate FSR, height and setbacks can be achieved.
- The site is suitable for the rezoning and there are no impediments for the development of the site for commercial development.

For all of the above reasons, we request that this proposal be progressed as a 'spot' rezoning to Pittwater LEP 1993.

This planning proposal has been prepared in accordance with Clause 55(1) and (2) of the Environmental Planning and Assessment Act with consideration of the relevant guidelines, namely "A guide to preparing local environmental plans" and "A guide to preparing planning proposals" issued by the Department of Planning on 1 July 2009.

Executive Summary

The following summary provides an overview of the key findings and recommendations of the study. It is intended to provide a high-level understanding of the research and its implications for the Council and the community.

The study was conducted in response to a request from the Council for a comprehensive review of the current planning system and its effectiveness in addressing the needs of the community. The research was carried out over a period of six months, involving a series of consultations with stakeholders, including residents, businesses, and local organisations.

The findings of the study indicate that the current planning system is largely ineffective in addressing the needs of the community. Key issues identified include a lack of transparency, a slow and complex decision-making process, and a failure to take account of the needs of the community in the development of planning policies.

In response to these findings, a series of recommendations have been made, including the need to improve transparency, streamline the decision-making process, and ensure that the needs of the community are taken into account in the development of planning policies. These recommendations are set out in detail in the full report.

The Council is encouraged to take prompt action on these recommendations, as they are essential for ensuring that the planning system is effective and responsive to the needs of the community. The Council should also consider the need to engage with the community in the development of planning policies, to ensure that they are reflective of the needs and aspirations of the community.

1 Introduction

This planning proposal has been prepared by Urbis for Fabcot Pty Ltd for the rezoning of 17-19 and 25-27 Foamcrest Avenue, Newport.

This proposal seeks the rezoning of two parcels of land, which are currently owned by Pittwater Council and used as a public car park, from Special Uses 5(a) to **3(a) General Business A**. The land parcels form part of a broader site that is proposed to be redeveloped for retail purposes including the provision of a supermarket, speciality retail and associated retail and public car parking. A land ownership diagram is provided below.



The final design of the proposal will be included in a development application currently under preparation. This DA will address all relevant detailed design and environmental considerations such as traffic and access, architectural design, landscaping, acoustics, residential amenity and the like.

Overall, the proposed rezoning is appropriate for the site and Newport commercial centre. The provision of retail opportunities and increased car parking is consistent with Council's desired character for the site as contained within the Newport Masterplan. In summary, the proposed **3(a) General Business A** zoning for the land parcels is appropriate for the following reasons:

- This submission identifies the specific characteristics of the site, strategically located in a commercial town centre and surrounded by business zoned land. This position makes it realistically possible to achieve a rezoning of the land to business.
- The current special uses zoning, limited to the provision of car parking, does not realise the full potential of the land given its commercial context.
- Retaining the two land parcels for car parking represents an under-utilisation of the land that is suitable for renewal. If the middle portion of the broader car park site (343 Barrenjoey Road) was developed, the resulting car parking arrangement would be somewhat dysfunctional given the split in land area and ownership and could potentially sterilise any future expansion of the land parcels.
- The opportunity exists to provide a broader community benefit through the retention of the public car parking as well as additional retail services.

- The land is of a suitable size to accommodate a worthwhile commercial outcome on the site as appropriate FSR, height and setbacks can be achieved.
- The site is suitable for the rezoning and there are no impediments for the development of the site for commercial development.

This planning proposal has been prepared in accordance with Clause 55(1) and (2) of the Environmental Planning and Assessment Act with consideration of the relevant guidelines, namely "A guide to preparing local environmental plans" and "A guide to preparing planning proposals" issued by the Department of Planning on 1 July 2009.



2 Background

The land subject to the rezoning has been operating as a public car park for many years offering public car parking for the Newport commercial centre. The site is centrally located in the town centre and plays a key role in the future vision for Newport as realised in the Newport Masterplan. The existing car park area is composed of three separate sites:

- 343 - 345 Barrenjoey Road (central portion of the car park): currently owned by Fabcot Pty Ltd/Woolworths and will form part of a broader redevelopment proposal
- 17-19 Foamcrest Avenue (south west portion of the car park): Council owned and subject to this rezoning
- 25-27 Foamcrest Avenue (north west portion of the car park): Council owned and subject to this rezoning

Accordingly the land parcels proposed to be rezoned are separated by land owned by Fabcot. All three sites listed above will form part of a whole site redevelopment for retail purposes, of which a development application is currently being prepared.

As part of the review of the planning objectives for the area as detailed in the Newport Masterplan process, Council has viewed the site as being central to boosting local employment and services in Newport. Further, as the site has fragmented ownership, the opportunity for a worthwhile commercial development opportunity is restricted. The car park sites are divided by a private property which has the potential, if separately developed, to undermine the effectiveness of Council's carparks (or other type of development in the future) by isolating the two Council properties.

The site has also been subject to Land and Environment Court proceedings. The previous owner of 343-345 Barrenjoey Road, Auspacific Equity Investments P/L, has previously lodged two development applications for shop top housing developments consisting of mixed use residential and retail development which have been refused by the Council and the Land and Environment Court. In refusing the previous development applications for this property, the Council requested staff to actively encourage integrated solutions to parking and development of the site with adjoining properties.

As such, Council resolved at its meeting held on 18 June 2007 to invite Expressions of Interest (EOI) for the development of the car park sites enabling the commercial growth of the centre.

The EOI assessment and selection criteria specifically focussed on achieving maintenance/increase in public car parking, positive financial return to Council and increased community benefits in the form of employment generation and economic development in Newport and integration of Council's properties with adjoining land/s.

The EOI sought:

- Experience from commercial/residential land developers capable of delivering a high standard proposal
- Retention of at least the existing number of public car parking spaces.
- Increase the number of public car spaces where possible.
- Proposals must demonstrate an economic and employment boost to the Newport commercial centre and provide a net community benefit
- Opportunities for retail and commercial space on the land
- Vehicular access from Foamcrest Avenue.

In addition to the above considerations, a number of key issues were required to be addressed on matters such as environmental outcomes, impact on neighbouring businesses and landowners, sequencing of development, details of anchor tenants, approach to urban design and the like.

Council noted in the documentation that a rezoning of the land would be considered, however due process must be followed recognising its statutory and regulatory obligations.

None of the submitted EOI proposals received by Council provided a solution to the integration of the two carpark sites as the redevelopment proposals would not offer sufficient benefits to the local community, and accordingly, at its meeting held on 3 September 2007, the Council resolved as follows:

- "1. That in relation to EOI No. 08/07 the Council decline to invite tenders in relation to the proposals received and the proponents be notified accordingly.
2. That the General Manager report back to the Council on future options and a way forward in relation to the future development of its two carpark sites at 17-19 and 25-27 Foamcrest Avenue, Newport."

In July 2007 Fabcot purchased the middle portion of the site from the previous owner. Following the Council's resolution on 3 September 2007, Council officers made contact with the individual adjoining land owners to the Council's carparks seeking their position on any redevelopment of their properties and/or the Council carparks. The Council also facilitated a meeting with all adjoining land owners to discuss the potential redevelopment of the various properties. The Council has met with Fabcot on a number of occasions to discuss the future redevelopment of their property and Councils carparks including the purchase the Council-owned sites and amalgamation of the three into a retail development.

On 17 November 2008, Pittwater Council resolved the following (underlining our emphasis):

1. That Council note the proposed development scheme as generally set out in the concept sketches included as Attachment 2 to this report for the amalgamated Council/Woolworths properties at Foamcrest Avenue & Barrenjoey Road, Newport.
2. That Council grant owners consent to Woolworths Ltd to lodge a rezoning application to rezone the Council car park sites at 17-19 & 25-27 Foamcrest Avenue, Newport to a General Business 3 (a) zoning, it being noted that the rezoning application will be independently assessed and determined by the Minister for Planning.
3. That Council grant owners consent to Woolworths Ltd to lodge a development application for a retail development including a supermarket and associated car parking at 17-19 & 25-27 Foamcrest Avenue, Newport, it being noted that the development application will be independently assessed and referred to the Joint Regional Panel for determination.
4. That it be noted that the granting of owners consent in 2 and 3 above in no way fetters the statutory and regulatory responsibilities of the Council under the Environmental Planning & Assessment Act.
5. That the General Manager be authorised to negotiate with Woolworths Ltd the sale of Council's car park sites at 17-19 & 25-27 Foamcrest Avenue, Newport in accordance with Council's valuation advice and the construction of an additional stratum layer/s of public car parking, to be owned by the Council in perpetuity, as part of the proposed development scheme referred to in 1 above.
6. That a further report be brought to Council on the financial, legal and contractual matters associated with this project prior to any agreement being reached with Woolworths Ltd.
7. That community consultation in relation to this project be commenced in accordance with the Council's adopted community engagement policy (Level 3 - High Impact/Local), including but not limited to the Newport Residents Association, the Newport Chamber of Commerce and residents of Foamcrest Avenue, Newport.

3 Site Context

3.1 Description of the Site and Surrounding Development

3.1.1 The Development Site

The key characteristics of the site are:

- The site address and legal description of the land are summarised as:
 - 17-19 Foamcrest Ave; lot 10 and 11 in DP 6248 (these lots are proposed to be rezoned)
 - 25-27 Foamcrest Ave; lot 14 and 15 in DP 6248 (these lots are proposed to be rezoned)
 - 343-345 Barrenjoey Road lot 1 in DP 584141 (adjoining land parcels which forms part of the broader car park site)
- The land parcels are regular in shape. The respective land areas of each block is 1,112.8m² (Nos. 17-19) and 1,252m² (Nos. 25-27).
- The sites have frontage to Foamcrest Avenue. Barrenjoey Road is a main road leading to Mona Vale to the south and Avalon/Palm Beach to the north. Foamcrest Avenue runs parallel to Barrenjoey Road connecting to Seaview Avenue in the south and Neptune Ave, Newport in the north.
- The current use of the broader site currently comprises an at grade bitumen sealed public carpark on the Foamcrest frontage for approximately 80 car spaces (namely 32 carparking spaces (at Nos. 17-19) and 30 carparking spaces (at Nos. 25-27)). The two Council owned sites are located on the periphery of the car park at 17-19 Foamcrest Avenue and 25-27 Foamcrest Avenue.
- The topography of the site slopes from Foamcrest towards Barrenjoey by around 5m.
- The general appearance of the site is somewhat dated, with the built form being quite aged and the car park surface somewhat uneven and damaged from the trees roots.
- Pedestrian connection exists from Foamcrest Avenue to Barrenjoey Road through the car park then by way of an arcade.
- Large, mature trees are located on site, predominately through the middle of the rear portion of the site and along the south west boundary.
- A substantial grass cover is provided along the western boundary which connects to the grassed verge along Foamcrest Avenue.

A locality map of the sites proposed to be rezoned is provided below. Photos of the site are provided overleaf. As discussed earlier, the broader site encompassing 343-345 Barrenjoey Road will form part of the indicative concept for the site and as detailed in the future DA.



Figure 1 – Site Photos



Picture 1 – Foamcrest Ave



Picture 2 – Southwest corner of the site



Picture 3 – South east corner of the site



Picture 4 – Existing east-west pedestrian connection



Picture 5 – Northeast corner of site



Picture 6 – Northwest corner of site

3.1.2 Surrounding Development

The surrounding development has the following key characteristics:

- The site is located within the commercial centre of Newport.
- The Newport town centre is centred on Barrenjoey Road with strip retail straddling the road. Newport beach is located to the east, with the main beach car park located north east of the centre. Newport Park and Bowling Club are located to the south of the centre. Pittwater is located further to the west.
- The immediate context of the site is predominately commercial in nature. The western side of Foamcrest is predominately medium density housing with varying types of residential flat buildings and dwellings. A church is located north west of the site on the corner of Foamcrest and Robertson.
- Robertson Street, to the north of the site, is a one way road, which has various cafes and shops fronting the street and an enhanced pedestrian amenity along this frontage. Conversely the rear of these retail properties have their "back of house" areas abutting the car parking area and some use the adjoining land to service the properties.
- The development immediately to the south of the site comprises a contemporary residential flat building.
- 337-341 Barrenjoey Road adjoins the site and is currently under development. The site has been approved as retail and residential apartments.
- The Newport town centre is located at the base of the hill that leads to Mona Vale; residential is higher to the west and north.

Photos of the surrounding development are provided below.

Figure 2 – Surrounding Development



Picture 7 – Robertson Street



Picture 8 – South west corner of Foamcrest and Robertson St

SITE CONTEXT



Picture 9 – Boundary of site, residential apartment building to the south



Picture 10 – Rear car park of Robertson Street properties

Figure: Newport Town centre and surrounding development





4 Planning Context

4.1 Environmental Planning and Assessment Act 1979

4.1.1 Objects of the Act

A rezoning application must have consideration of the objects of this Act, as follows:

- (a) *to encourage:*
- (i) *the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the 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,*
 - (iii) *the protection, provision and co-ordination of communication and utility services,*
 - (iv) *the provision of land for public purposes,*
 - (v) *the provision and co-ordination of community services and facilities, and*
 - (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*
 - (vii) *ecologically sustainable development, and*
 - (viii) *the provision and maintenance of affordable housing, and*
- (b) *to promote the sharing of the responsibility for environmental planning between the different levels of government in the State, and*
- (c) *to provide increased opportunity for public involvement and participation in environmental planning and assessment.*

This submission is consistent with and has considered the Objects of the Act and have been addressed in the various sections of this report.

4.1.2 Section 117(2) Directions

The Section Ministerial Directions (under Section 117(2) of the Environmental Planning and Assessment Act 1979) provide local planning direction and are to be considered in a rezoning of land.

The relevant considerations are:

- Direction 1.1 – Business and Industrial zones
- Direction 3.4 – Integrating Land use and Transport
- Direction 4.3 – Flood Prone land
- Direction 6.2 – Reserving Land for public purposes

The proposal's consistency with the ministerial directions are commented on in Section 6.3(7).

4.2 State and Local Strategic Planning

The Draft North East Sub Regional Strategy will guide land-use planning in Manly, Warringah and Pittwater local government areas until 2031. The strategy does not have targets specifically for Newport, however the centre is defined as a village. The proposal's consistency with the Draft Strategy is discussed in Section 6.3(4).

4.3 Current Planning Controls

4.3.1 Pittwater LEP 1993

Zoning and permissibility

The Council owned sites, the subject of the rezoning submission, are zoned 5(a) Special Uses A and allow car parking. The remainder of the broader site is zoned 3(a) General Business A under Pittwater LEP 1993. An extract of the LEP zoning map is contained below.



Pittwater LEP 1993 does not contain zone objectives for the land use zones, however the land use table provides permissible development.

Within the 5(a) Special Uses A zone, the following land uses are permissible with consent:

Advertisements; drainage; helipads; roads; the purpose indicated by scarlet lettering on the Zoning Map and any purpose ordinarily incidental or subsidiary thereto; utility installations (other than gas holders or generating works).

The purpose indicated on the zoning map for the 5(a) portion is 'car parking'. All other development is prohibited where not provided as permissible above.

The adjoining land and the remainder of the broader car park site is zoned 3(a) General Business A, commercial premises where the use of the building is less than 2000sqm and shops where the use of the building is less than 1500sqm are permissible without development consent. Other development is permitted, with consent, by virtue of their exclusion from the list of prohibited uses in the zoning table. The zoning prohibits the following land uses:

Bed and breakfast establishments; boarding-houses, dwelling-houses, group buildings or residential flat buildings (other than those attached to shops or commercial premises); caravan parks; gas holders; generating works; industries specified in Schedule 1; institutions; junk yards; liquid fuel depots; mines; recreation establishments; road transport terminals; stock and sale yards.

Relevant LEP provisions

The proposal has considered the relevant provisions within the LEP and are discussed further in the assessment of the application in Section 6.3 (5).

The car park sites are classified as operational in accordance with the Local Government Act 1993 and as described in Clause 54 of the LEP.

4.3.2 Pittwater 21 DCP and Newport Masterplan

Pittwater 21 DCP provides the direction of Newport and additional details for the development of the land. This policy incorporates the Newport Masterplan

The purpose of the Newport Masterplan was to establish a holistic and integrated vision document for Newport Village Commercial Centre with the community, encompassing both the private and public domain. Council commissioned urban design consultants HBO+EMTB to prepare the Masterplan for the village centre.

As a result of the preparation of the Masterplan, amendments were made to Pittwater 21 DCP, effective on 3 December 2007. The Masterplan has been considered as part of the assessment of the rezoning submission within Section 6.3(5).

4.3.3 SEPP 55 – Remediation of Land

Rezoning of land must consider the likelihood of contamination in accordance with SEPP 55. The policy states that land must not be developed if it is unsuitable for a proposed use because it is contaminated. If the land is unsuitable, remediation must take place before the land is developed.

A preliminary contamination investigation was undertaken by Geologix in May 2009. The results indicated that contaminants of potential concern were not detected in fill or native soils at concentrations in excess of the assessment criteria for a commercial/industrial exposure setting. Accordingly, the preliminary investigations on site have not revealed any likely contamination that may prohibit the rezoning to business.

4.4 Draft Comprehensive Pittwater LEP

As required by the State Government planning reforms, Pittwater Council is preparing their comprehensive Local Environmental Plan. Some associated background studies have commenced however no information is publicly available. The expected completion date of the LEP is 2011.

As there is no draft instrument that has been publicly exhibited, this is not a relevant consideration. The subject proposal is therefore to be treated as a 'spot' rezoning or LEP amendment to Pittwater LEP 1993.

5 Rezoning Proposal

5.1 Objectives or Intended Outcomes

The planning proposal and site concept have been developed with consideration of the strategic directions for Pittwater, specifically relevant to Newport, the surrounding land uses as well as discussions with Council.

The objective of the rezoning is:

To enable the redevelopment of the car park site for retail development, consistent with the remainder of the town centre and including the retention of the public car parking component and provision of additional car parking.

An indicative concept of the intended outcome for the site has been prepared with the following key principles:

- Retail uses including a supermarket and speciality retail shops
- Basement supermarket at the rear of the site beneath the level of the existing car park
- Speciality shops fronting an arcade, accessible from Barrenjoey Road
- Two storey decked car park over the retail space, with level access from Foamcrest Avenue
- Retention of the public car parking component currently on site and enhancement in the car parking numbers
- Provision of loading facilities in the north of the site, distanced from residential land uses
- Retention of the existing through site link from Barrenjoey Road to Foamcrest Avenue with the use of travelators and a central pedestrian walkway through the car park at ground level.
- Provision of future pedestrian links to Robertson Street and to the south west of the site, if the adjoining sites were to be redeveloped.
- The bulk of the development is generally in accordance with the setback requirements of Pittwater DCP and the Newport Masterplan.

Indicative concept drawings prepared by Rice Daubney are provided as appendix A to this report and propose an enhanced retail offer with associated car parking as well as retaining the public car parking component on the site.

The detailed design of the proposal is currently being progressed as part of a development application for the site and will be lodged following the submission of this rezoning proposal.

5.2 Explanation of Provisions

The objectives and intended outcomes are to be achieved as follows:

- Amendment of the Pittwater Local Environmental Plan 1993 zoning map to **3(a) General Business A** from 5(a) Special uses for lots 10 and 11 in DP 6248 and lots 14 and 15 in DP 6248 in accordance with the proposed zoning map shown below.
- The permitted land uses will be consistent with the current instrument, Pittwater LEP 1993.
- The development controls that apply to the site will be consistent with those applicable to 343 Barrenjoey Road and the remainder of the Newport Commercial Centre. No site specific development standards are sought as part of this proposal.



6 Rezoning Justification

6.1 Overview

It is proposed to rezone the Council owned portion of the subject site to **3(a) General Business A** in accordance with Pittwater LEP 1993. The rezoning of the site to commercial land is appropriate given the site's location and context adjoining, and within, commercial zoned land.

The 3(a) zoning is appropriate as:

- The land is surrounded by business zoned land and strategically located in a commercial town centre.
- The special uses zoning, limited to the provision of car parking, does not realise the full potential of the land given its commercial context.
- Retaining the two land parcels for car parking represents an under-utilisation of the land that is suitable for renewal. If the middle portion of the broader car park site (343 Barrenjoey Road) was developed, the resulting car parking arrangement would be dysfunctional given the split in land area and ownership and could potentially sterilise any future expansion of the land parcels.
- The opportunity exists to provide a broader community benefit through the retention of the public car parking as well as additional retail services.
- The land is serviced by public transport given its proximate location to Barrenjoey Road.
- The land is within walking distance of the remainder of the commercial centre, the beach and adjoining residential land.
- The land is of a suitable size to accommodate a worthwhile commercial outcome on the site as appropriate FSR, height and setbacks can be achieved.

Given the land parcels are surrounded by General Business zoned land, there is no other suitable or obvious zone other than adopting the adjacent land's zoning. Accordingly, the application of a commercial zoning will provide consistency in the zoning across the subject site but also the commercial centre, unifying the precinct.

Further, given the specific characteristics of the site, the proposed rezoning is unlikely to have a cumulative impact within the LGA as a result of the application being followed by other applications.

The following section provides a justification for the rezoning in accordance with Clause 55(2)(c) of the EP&A Act 1979 and as detailed in the guidelines.

6.2 Section A: Need for the Planning Proposal

1. Is the planning proposal a result of any strategic study or report?

The planning proposal is consistent with the strategic study for Newport, being the Newport Masterplan which now forms part of the Pittwater 21 DCP. The proposal also emerged as a result of the EOI process applicable to the site.

An urban design analysis and strategic review of Newport town centre was commissioned by Pittwater Council to prepare a masterplan for the village centre. As part of the review of the planning objectives for the area as detailed in the Newport Masterplan process, Pittwater Council viewed the site as being central to boosting local employment and services in Newport. Further, as the site has fragmented ownership, the opportunity for a worthwhile commercial development opportunity is restricted. The car park sites are divided by a private property which has the potential, if separately developed, to undermine the effectiveness of Council's carparks (or other type of development in the future) by isolating the two Council properties.

Following the refusal of a previous development application for 343 Barrenjoey Road (the central portion of the broader site), Pittwater Council requested staff to actively encourage integrated solutions to parking and development of the site with adjoining properties. As such, Council resolved at its meeting held on 18 June 2007 to invite Expressions of Interest (EOI) for the development of the car park sites enabling the commercial growth of the centre.

The EOI assessment and selection criteria specifically focussed on achieving maintenance/increase in public car parking, positive financial return to Council and increased community benefits in the form of employment generation and economic development in Newport and integration of Council's properties with adjoining land/s. The EOI sought:

- Experience from commercial/residential land developers capable of delivering a high standard proposal
- Retention of at least the existing number of public car parking spaces
- Increase the number of public car spaces where possible
- Proposals must demonstrate an economic and employment boost to the Newport commercial centre and provide a net community benefit
- Opportunities for retail and commercial space on the land
- Vehicular access from Foamcrest Avenue.

In addition to the above considerations, a number of key issues were required to be addressed on matters such as environmental outcomes, impact on neighbouring businesses and landowners, sequencing of development, details of anchor tenants, approach to urban design and the like.

Accordingly, this rezoning submission is a result of an objective by Council to create additional opportunities for retail floor space, generate employment and local services whilst retaining the public car parking on site.

2. Is the planning proposal the best means of achieving the objectives or intended outcomes or is there a better way?

Given the restrictive nature of the existing 5(a) Special Uses zoning, with limited permissible land uses, there are no other available methods by which to enable the intended outcome for the site of achieving the proposal's objectives.

3. Is there a net community benefit?

The following table addresses the evaluation criteria for conducting a net community benefit test within the Draft Centres Policy as required by the guidelines for preparing a planning proposal.

Evaluation Criteria	Y/N	Comment
Will the LEP be compatible with agreed State and regional strategic direction for development in the area (e.g. land release, strategic corridors, development within 800m of a transit node)?	Y	The proposed rezoning is compatible with the applicable state and regional strategic directions for the area including the Metropolitan Strategy, North East Sub Regional Strategy and SEPP (Infrastructure) 2007. The rezoning allows additional retail space within an established centre.
Is the LEP located in a global/regional city, strategic centre or corridor nominated within the Metropolitan Strategy or other regional/subregional strategy?	Y	The subject site is not identified within a key strategic centre or corridor. The site is identified as part of the Newport village within the North East Draft Subregional Strategy. The proposed rezoning will increase employment and access to additional services for the local community.
Is the LEP likely to create a precedent or create or change the expectations of the landowner or other landholders?	N	The proposed rezoning will not create a precedent within the locality because it represents the only remaining Special Uses land within the immediate vicinity of the site. The site is suitable for retail use and assists in realising the full potential of the land given its commercial context.
Have the cumulative effects of other spot rezoning proposals in the locality been considered? What was the outcome of these considerations?	Y	No other similar sites, with an existing Special Uses zoning, suitable for retailing, exist within the Pittwater LGA.
Will the LEP facilitate a permanent employment generating activity or result in a loss of employment lands?	Y	The proposed rezoning will generate additional full and part time jobs as a result of the enhanced retail offer on site. This will contribute to meeting the employment targets set for the Pittwater LGA within the Draft Subregional Strategy.
Will the LEP impact upon the supply of residential land and therefore housing supply and affordability?	N	The proposed rezoning is not decreasing the amount of available residential land as the current zoning does not permit residential development.
Is the existing public infrastructure (roads, rail, utilities) capable of servicing the proposed site? Is there good pedestrian and cycling access? Is public transport currently available or is there infrastructure capacity to support future transport?	Y	The existing public infrastructure is adequate to meet the needs of the proposal. The site is fully serviced and is contained within an established urban area. The site maintains the existing pedestrian through site links. There is available public transport on Barrenjoey Road that has the ability to support the proposal.

Evaluation Criteria	Y/N	Comment
Will the proposal result in changes to the car distances travelled by customers, employees and suppliers? If so, what are the likely impacts in terms of greenhouse gas emissions, operating costs and road safety?	N	As the proposal is located within a town centre, the proposal will encourage multi purpose trips. Given the proposed amount of car parking and services proposed, people are more likely to decrease their car travel distances and consolidate shopping trips.
Are there significant Government investments in infrastructure or services in the area where patronage will be affected by the proposal? If so, what is the expected impact?	N	The proposal is located within a town centre and affords good access to public transport. The proposal is unlikely to have a negative impact on the surrounding infrastructure or services.
Will the proposal impact on land that the Government has identified a need to protect (e.g. land with high biodiversity values) or have other environmental impacts? Is the land constrained by environmental factors such as flooding?	N	The site is currently a hardstand at grade car park and accordingly, the land does not contain any known critical habitat, threatened species or contain significant biodiversity values. The site is partially flood affected and the detailed design of the proposal will ensure that the development is above the flood planning level.
Will the LEP be compatible/complementary with surrounding adjoining land uses? What is the impact on the amenity in the location and wider community? Will the public domain improve?	Y	The proposal is compatible with adjoining land uses given the site is centrally located within and surrounded by business zoned land. The proposal represents an appropriate form of development for the town centre and will be designed as such to mitigate any adverse amenity impacts. The public domain will be improved and publicly accessible pedestrian connections retained.
Will the proposal increase choice and competition by increasing the number of retail and commercial premises operating in the area?	Y	The proposal will provide an additional supermarket within Newport, hence will increase choice and competition locally. Additional speciality shops will be provided on site further enhancing the retail offer in Newport to the benefit of the community.
If a stand-alone proposal and not a centre, does the proposal have the potential to develop into a centre in the future?	N/A	N/A
What are the public interest reasons for preparing the draft plan? What are the implications of not proceeding at that time?	-	The proposal will provide additional employment and enhanced retail services within the local area. The site will also maintain its role as providing public car parking for Newport. If the plan did not proceed, the land would continue to represent an under-utilisation of the land that is suitable for renewal. If the adjoining land parcel at 343 Barrenjoey Road was developed in the future, this could potentially sterilise the subject lots and create a dysfunctional spilt in car parking.

Overall, the proposal will provide a net community benefit as follows:

- The proposal presents an opportunity to provide a broader community benefit through the retention of the public car parking as well as additional retail and support services.

- The Newport Masterplan (and the community) supports the need for a supermarket within the Newport town centre in addition to the existing smaller Coles. The Masterplan states that a constraint of the centre is the *"lack of full service commercial and retail uses in the village, in particular the lack of supermarket which could anchor the commercial centre"*.
- The rezoning of the land will meet the objectives by revitalising the village commercial centre through allowing land uses beyond car parking.
- The site is currently under-utilised and used for car parking to accommodate the requirements of the surrounding land uses. An opportunity for the renewal of the land exists that provides an enhanced economic and community benefit.
- The proposal will encourage and enable employment growth in a suitable location given the land's context within a town centre.
- Protect and enhance the employment land through the creation of an integrated site allowing a workable commercial outcome.
- Support the viability of the centre by renewing and revitalising part of the centre.

6.3 Section B: Relationship to Strategic planning framework

4. Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub regional strategy (including the Sydney metropolitan Strategy and exhibited draft strategies)?

The proposed rezoning is compatible with the applicable state and regional strategic directions for the area including the Metropolitan Strategy and North East Sub Regional Strategy. Within the strategic documents, the subject site is not identified within a key strategic centre or corridor. The site is identified as part of the Newport village within the North East Draft Subregional Strategy.

In summary, the proposal is consistent with the following actions contained in the Draft North East Sub Regional Strategy:

- *A1.2 – Provide suitable commercial sites and employment lands in strategic areas.* The suitability of the land for business zoning enables adequate provision of employment land. The rezoning allows additional retail space within an established centre.
- *B1.1 – Establish a topology of centres.* Newport is defined as a "village" with characteristics of strip shops and surrounding residential area within a 5-10min walk. The rezoning of the land to business will complete a "hole" in the commercial centre and will not elevate the topology of centre.
- *B4.1 – Concentrate retail activity in centres.* Provision of sufficient land and zoning to allow adequate and worthwhile retail development. Retail activity, specifically supermarkets, are suitably located within centres.

Overall, the proposed rezoning will generate additional full and part time jobs as a result of the enhanced retail offer on site. This will contribute to meeting the employment targets set for the Pittwater LGA within the Draft Subregional Strategy.

5. Is the planning proposal consistent with the local Council's Community Strategic Plan or other local strategic plan?

The planning proposal is consistent with the local strategic planning for the area.

The strategic position of the site and the surrounding area means that the site does not suitably fit as remaining Special Uses and could more appropriately be considered as a business zoned site to assist in achieving Pittwater's objectives in the Pittwater LEP 1993 and Newport Masterplan (and Pittwater 21

DCP). The current zoning map denotes the predominant business zoning of the town centre and the two isolated Special uses zoned parcels.



Above: Pittwater LEP 1993 zoning map

The proposal is consistent with the local planning directions for the area. Our reasoning is as follows:

- Whilst historically the site provides a public car parking function, a broader community benefit can be obtained through the provision of additional employment land generated by retail/commercial development.
- The subject site is located within the 3(a) General Business zone and wholly contained within the Newport town centre. Foamcrest provides the logical boundary to the zones, with residential to the west.
- The proposal is compatible with adjoining land uses given the site is centrally located within and surrounded by business zoned land.
- The site is currently under-utilised and used for car parking to accommodate the requirements of the surrounding land uses. An opportunity for the renewal of the land exists that provides an enhanced economic and community benefit.
- The current provision of car parking is also restricted in its ability to expand or provide additional car parking given the fragmented land ownership and restricted availability of land to provide an enlarged car park development. The land is significantly constrained.
- The proposed rezoning will not create a precedent within the locality because it represents the only remaining Special Uses land within the immediate vicinity of the site. The site is suitable for retail use and assists in realising the full potential of the land given its commercial context.
- The proposal is consistent with the principles of the Newport Masterplan, as discussed further below.

REZONING JUSTIFICATION

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- The rezoning proposal is consistent with Pittwater's planning controls and strategic direction for the area as commented below.

Assessment of Pittwater LEP 1993

Pittwater LEP does not contain any zone objectives for the development of the land. We submit that objectives for the general business zone would be similar to the Standard LEP template objectives for the B2 Local Centre as follows:

- To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.
- To encourage employment opportunities in accessible locations.
- To maximise public transport patronage and encourage walking and cycling.

The rezoning will allow a proposed retail offering within the Newport centre that is consistent with the objectives for a town centre. The rezoning will generate employment and provide for the needs of the surrounding community.

Assessment of Pittwater 21 DCP provisions

The rezoning proposal has considered Pittwater 21 DCP and is consistent with the stated Characteristics of Pittwater and the Desired Future Character within Newport Commercial Centre and the key objectives of Pittwater 21 DCP have been considered as follows:

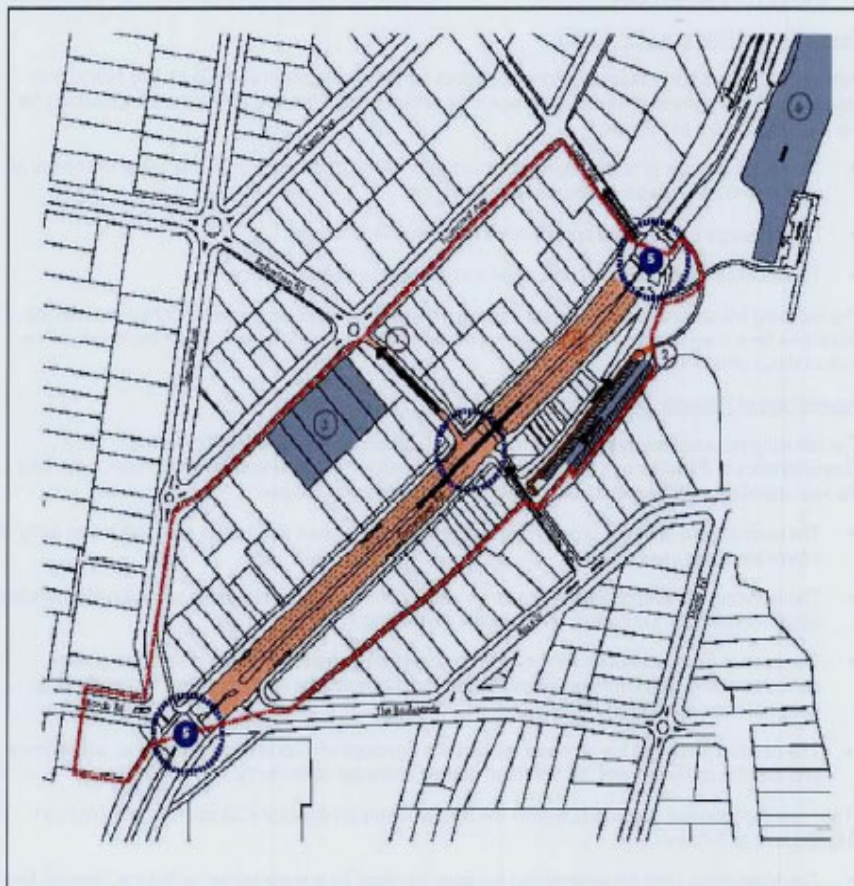
- The rezoning will unify the urban village of Newport and ensure that land is available for an array of interrelated land uses.
- The rezoning will strengthen the economic viability of the village through the provision of a useable amount of land for a business or residential development.
- The desired future character for the centre includes an increased diversity and range of retail, commercial and community activities for Newport. Currently the land, as zoned for car parking, does not allow the fruition of this vision.
- The detailed design of the proposal, as part of a development application for the site, will address and has the ability to meet the built form desired character statements.

The rezoning proposal is compatible with the broader strategic directions contained in the Newport Masterplan, as follows:

- The Masterplan (and the community) supports the need for a supermarket within the Newport town centre in addition to the existing smaller Coles. The Masterplan states that a constraint of the centre is the "lack of full service commercial and retail uses in the village, in particular the lack of supermarket which could anchor the commercial centre".
- The Masterplan recognises the site as the "car park precinct" however the ability to expand the two current land parcels for car parking purposes is constrained. The rezoning allows for a commercial development whilst also increasing the provision of car parking for the centre.
- The rezoning of the land will meet the objectives by revitalising the village commercial centre through allowing land uses beyond car parking.
- The Masterplan acknowledges that the Foamcrest Avenue will continue to provide an off road public car parking function, however existing and additional parking is to be accommodated in a "consolidated and integrated parking solution".

The rezoning of the land and the indicative concept has the ability to meet with the key principles of the Masterplan relevant to the land as follows:

Section 4.3: Vehicle and Public Parking



The Masterplan acknowledges that the Foamcrest Avenue car park will continue to provide an off road public car parking function, however existing and additional parking is to be accommodated in a "consolidated and integrated parking solution". The site recognises Foamcrest Avenue car park to be one of only two car parks that will service the town centre in terms of car parking facilities. Whilst this proposal seeks a rezoning of two land parcels from Special Uses ('car parking') to Business, the car parking function will be retained and enhanced as demonstrated through the indicative concept. The retention of the two isolated car parking lots would have limited ability to increase beyond the current capacity.

The Masterplan also denotes the sites to be amalgamated as demonstrated in the subject proposal.

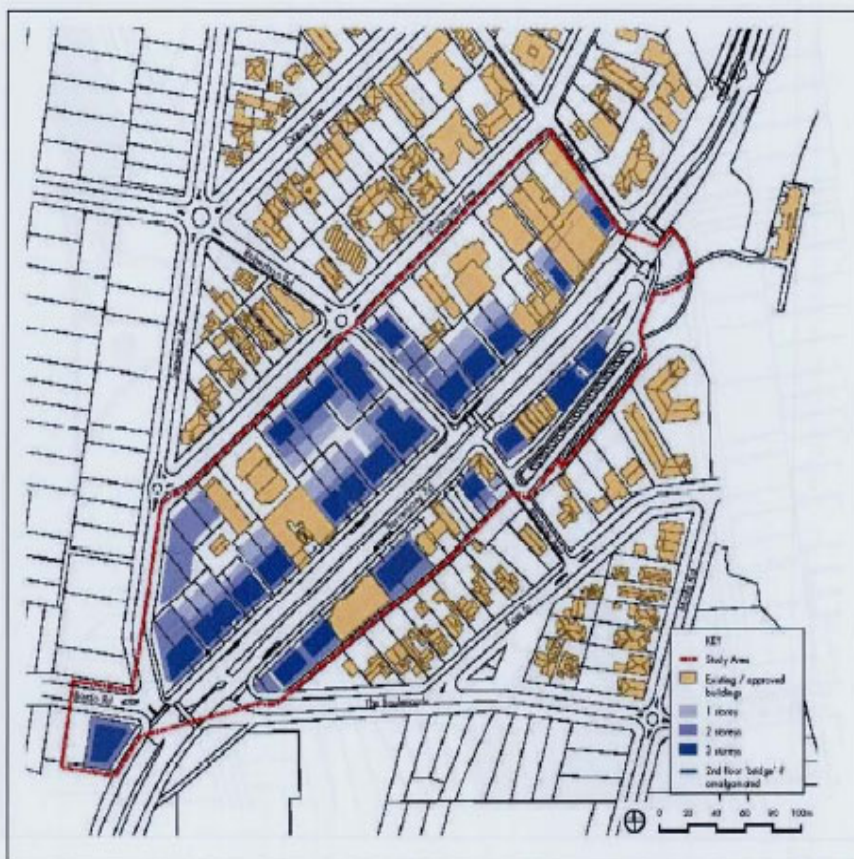
Section 4.5: Pedestrian and Cycle Network



As illustrated above, the proposal will assist in realising a strategy to retain and enhance the pedestrian through site connections. The proposal will preserve the Barrenjoey Road and Foamcrest Avenue car park connection and also makes provision for a future pedestrian connection to Roberston Road and to the potential future connection to the south west of the site.

The proposal will provide an arcade or trafficable spaces with retail shops fronting the space and adding interest to the pedestrian experience and Newport character generally.

Section 4.9: Built Form



As indicated above, the Masterplan denotes a built form strategy to establish scale and height to the Newport village. Whilst the Masterplan provides blocks of possible bulk, the principles of a stepping up in height are adhered to in the proposal by presenting a two storey form and then a setback third storey. As the broader site is proposed to be amalgamated, frontages to both Foamcrest and Barrenjoey are available and able to be presented as a consolidated built form that is connected along the middle portion of the site. The proposed development will ensure that the scale, massing and building proportions are sensitive to the desired village character for Newport.

6. Is the planning proposal consistent with applicable state environmental planning policies?

The planning proposal is consistent with the applicable state environmental planning policies as follows.

SEPP 55 – Remediation of land

Rezoning of land must consider the likelihood of contamination in accordance with SEPP 55. The policy states that land must not be developed if it is unsuitable for a proposed use because it is contaminated. If the land is unsuitable, remediation must take place before the land is developed.

A preliminary contamination investigation was undertaken by Geologix in May 2009. The results indicated that contaminants of potential concern were not detected in fill or native soils at concentrations in excess of the assessment criteria for a commercial/industrial exposure setting. Accordingly, the preliminary investigations on site have not revealed any likely contamination that may prohibit the rezoning to business.

SEPP (Infrastructure) 2007

The proposal has considered the relevant parts of SEPP (Infrastructure) 2007, namely traffic generating developments. The site is located within a town centre and is suitable as it:

- Enhances the commercial or retail offer within an established commercial centre and therefore consolidates the number of trips generated by development;
- Is accessible to public transport along Barrenjoey Road; and
- Sustains the public car parking component on site and therefore maintaining an accessible centre.

All other State Environmental Planning Policies will be thoroughly considered as part of the development application for the site.

7. Is the planning proposal consistent with applicable Ministerial Directions (S 117 Directions)?

The rezoning proposal is consistent with the Ministerial Directions, pursuant to Section 117(2) of the EP&A Act as demonstrated by the following:

The site is consistent with the '1.1 Business and Industrial zones' direction as it:

- Will encourage employment growth in a suitable location given the land's context within a town centre;
- Protect and enhance the employment land through the creation of an integrated site allowing a workable commercial outcome; and
- Support the viability of the centre by renewing and revitalising part of the centre.

The site is consistent with the '3.4 – Integrating Land use and Transport' direction as it:

- Enhances the commercial or retail offer within an established commercial centre and therefore consolidates the number of trips generated by development;
- Is accessible to public transport along Barrenjoey Road; and
- Sustains the public car parking component on site and therefore maintaining an accessible centre.

The site is consistent with the '4.3 – Flood Prone land' direction as:

- The proposal has considered the NSW Government Flood Prone Policy and the principles of the Floodplain Development Manual 2005; and
- Appropriate mitigation measures and hazards controls can be implemented as part of the detailed development proposal to ensure flood hazard has been adequately considered and designed for.

The site is consistent with the '6.2 – Reserving Land for public purposes' direction as it:

- Consolidates the dysfunctional public car parking land parcels with a broader development site to ensure the long term public purpose of car parking is maintained on the site.

6.4 Section C: Environmental, Social and Economic Impact

8. Is there any likelihood that critical habitat or threatened species, populations or ecological communities or their habitats will be adversely affected as a result of the proposal?

The land is unlikely to contain critical habitat or threatened species. An aborist, RainTree Consulting, has undertaken a tree assessment and impact report of the site's significant vegetation and has not identified any critical habitat, populations of communities requiring protection.

9. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

The site is partly flood affected. The detailed design that will form part of the development application will ensure that the development is above the flood planning level.

The site is not known to be subject to other natural hazards.

10. How has the planning proposal adequately addressed social and economic effects?

The proposal has adequately addressed the social and economic effects as follows:

- The proposal will have a positive social and economic benefit through the provision of additional employment opportunities and enhanced retail and services for the community. The provision of public car parking as well as retail car parking will ensure that the current convenient car parking use on the site is continued.
- The Newport Masterplan (and the community) supports the need for a supermarket within the Newport town centre in addition to the existing smaller Coles. The Masterplan states that a constraint of the centre is the "lack of full service commercial and retail uses in the village, in particular the lack of supermarket which could anchor the commercial centre".
- The site does not contain any items of environmental or cultural heritage or form part of a heritage conservation area.

6.5 Section D: State and Commonwealth Interests

11. Is there adequate public infrastructure for the planning proposal?

The existing public infrastructure is adequate to meet the needs of the proposal. The site is fully serviced and is contained within an established urban area and will not place unnecessary demands on the public infrastructure. Currently, the car park is owned by Council and as such is public infrastructure. This proposal will retain the public car parking facility, enhance the amount of car parking and improve the overall condition of the car park and access as well as raising the standard of the car park up to the relevant applicable standards.

12. What are the views of State and Commonwealth public authorities consulted in accordance with gateway determination?

This section of the proposal is completed following consultation with State and Commonwealth public authorities identified in the gateway determination.

Due process will be undertaken by Council and the applicant will cooperate where required.

7 Community Consultation

The specific details for the community consultation on the proposal will be determined as part of the gateway determination. We submit that the proposal is considered to be a 'low impact planning proposal' meaning a proposal that

- Is consistent with the pattern of surrounding land use zones and/or land uses;
- Is consistent with the strategic planning framework;
- Presents no issues with regard to infrastructure servicing;
- Is not a principal LEP; and
- Does not reclassify land.

As part of the Council Resolution of 17 November 2008, Council undertook community consultation in relation to this project. Accordingly, initial consultation on the project has occurred with the local community, including the Newport Resident Action Group. An initial retail concept was tabled as part of this process. In addition, the applicant has addressed the Newport Resident Action group in May in respect to the proposed rezoning and future DA. The development of the current indicative concept, involved a review of the previous scheme recognising the detailed design that forms part of the development application currently being prepared.

Additional community consultation will be undertaken when the draft instrument is on public exhibition in accordance with the requirements in the Act and any DoP guidelines including *"A guide to preparing local environmental plans"*.

7 Community Consultation

The purpose of this section is to provide information on the community consultation process and to outline the key findings of the consultation. The purpose of this section is to provide information on the community consultation process and to outline the key findings of the consultation.

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8 Design Issues Raised by Council

On 2 March 2009, Pittwater Council resolved to sell the subject site to Fabcot and progress commercial terms. As part of progressing a rezoning and development application for the site, Pittwater Council articulated the key issues that are to be considered and form part of any application submitted by Fabcot. The majority of the raised matters relate to the detailed design of the proposal and will be addressed as part of the development application for the site.

Council's matters for consideration are discussed in the following table.

Matter for Consideration	Comment
Pedestrian connectivity between Robertson Road, Barrenjoey Road and the property to the southwest	As discussed in 6.3(5), the proposal has made provision for the retention and future provision of pedestrian links through the site. These include: <ul style="list-style-type: none"> a link from Barrenjoey Road via the use of travelators and then through the car park at ground level to Foamcrest Avenue provision for a link to Robertson (if the adjoining site is redeveloped); and provision of a future link to the southwest. The detailed design of the proposal, submitted with the DA submission, will ensure the permeability of the site is retained.
Sustainability	The proposal will include energy efficiency and water saving measures and will be detailed as part of the development application.
Hours of operation of the loading dock and its operation/management relative to the residential area of Foamcrest Avenue	The hours of operation will ensure the amenity of the surrounding residential area is preserved. An acoustic report and management principles will form part of the DA submission.
Potential noise issues associated with the flooring surface in the car parking area	The design of the proposal has considered the potential noise impacts from the development. The material selection of the flooring and the overall acoustic performance of the development will be assessed as part of the DA submission.
Barrenjoey Road and Foamcrest Avenue façade design to reflect sensitivity to the relaxed character of the Centre and the juxtaposition to the Foamcrest Avenue residential area	The appearance of the facades and frontages to Foamcrest Avenue and Barrenjoey Road will be compatible with the remainder of the centre. The car park façade will be designed to present a more attractive streetscape.
Details of signage that does not dominate the facades of the building and contribute positively to the streetscape	The design of the site signage will be compatible with the location of the site within business zoned land, whilst respecting the adjoining residential areas. The location, form and type of signage will form part of a future development application.

Assessment of the development relative to the Newport Masterplan and relevant DCP provisions	The planning proposal has considered the relevant parts of the Newport Masterplan and DCP in Section 4.3.2 and Section 6. The development application will be further assessed against all relevant planning policies.
Safety by design and effective trolley management	The future development application will adhere to the CPTED principles of natural surveillance, access control and territorial management. The development application will contain a trolley management plan.

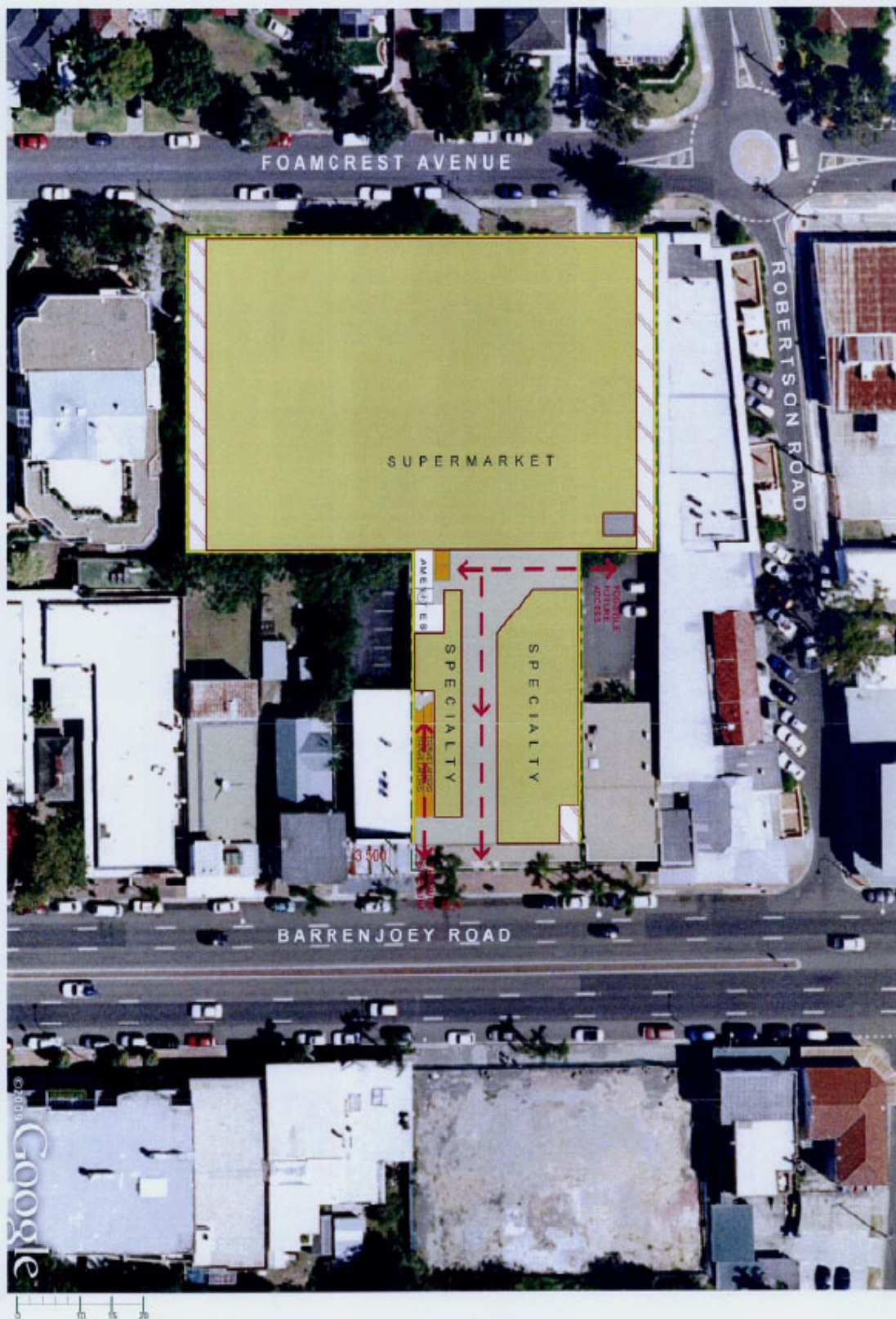
9 Conclusion

The rezoning proposal and indicative site concept have been developed with consideration of the strategic directions for Pittwater, the surrounding land uses and discussions with Council. The proposed **3(a) General Business A** zoning for land parcels is appropriate for the following reasons:

- This submission identifies the specific characteristics of the site, strategically located in a commercial town centre and surrounded by business zoned land. This position makes it realistically possible to achieve a rezoning of the land to business.
- The current special uses zoning, limited to the provision of car parking, does not realise the full potential of the land given its commercial context.
- Retaining the two land parcels for car parking represents an under-utilisation of the land that is suitable for renewal. If the middle portion of the broader car park site (343 Barrenjoey Road) was developed, the resulting car parking arrangement would be dysfunctional given the split in land area and ownership and could potentially sterilise any future expansion of the land parcels.
- The opportunity exists to provide a broader community benefit through the retention of the public car parking as well as additional retail services.
- The land is of a suitable size to accommodate a worthwhile commercial outcome on the site as appropriate FSR, height and setbacks can be achieved.
- The site is suitable for the rezoning and there are no impediments for the development of the site for commercial development.

For all of the above reasons, we request that this proposal be progressed as a 'spot' rezoning to Pittwater LEP 1993.

Appendix A Indicative Concept Drawings



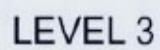
**GROUND
LEVEL**

07026
29 JUNE 2009
1:500 @ A3

343 - 345
BARRENJOEY RD NEWPORT

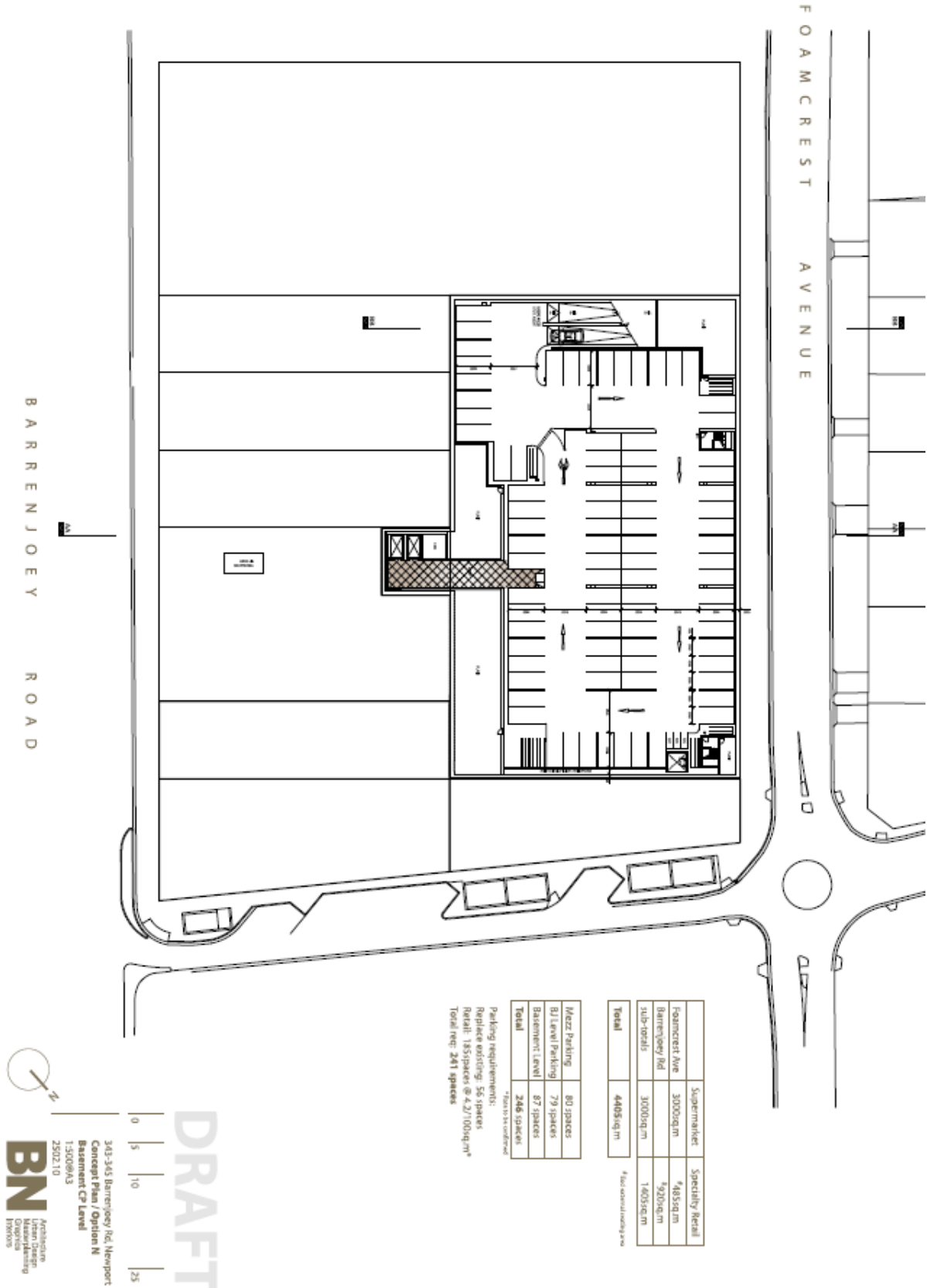


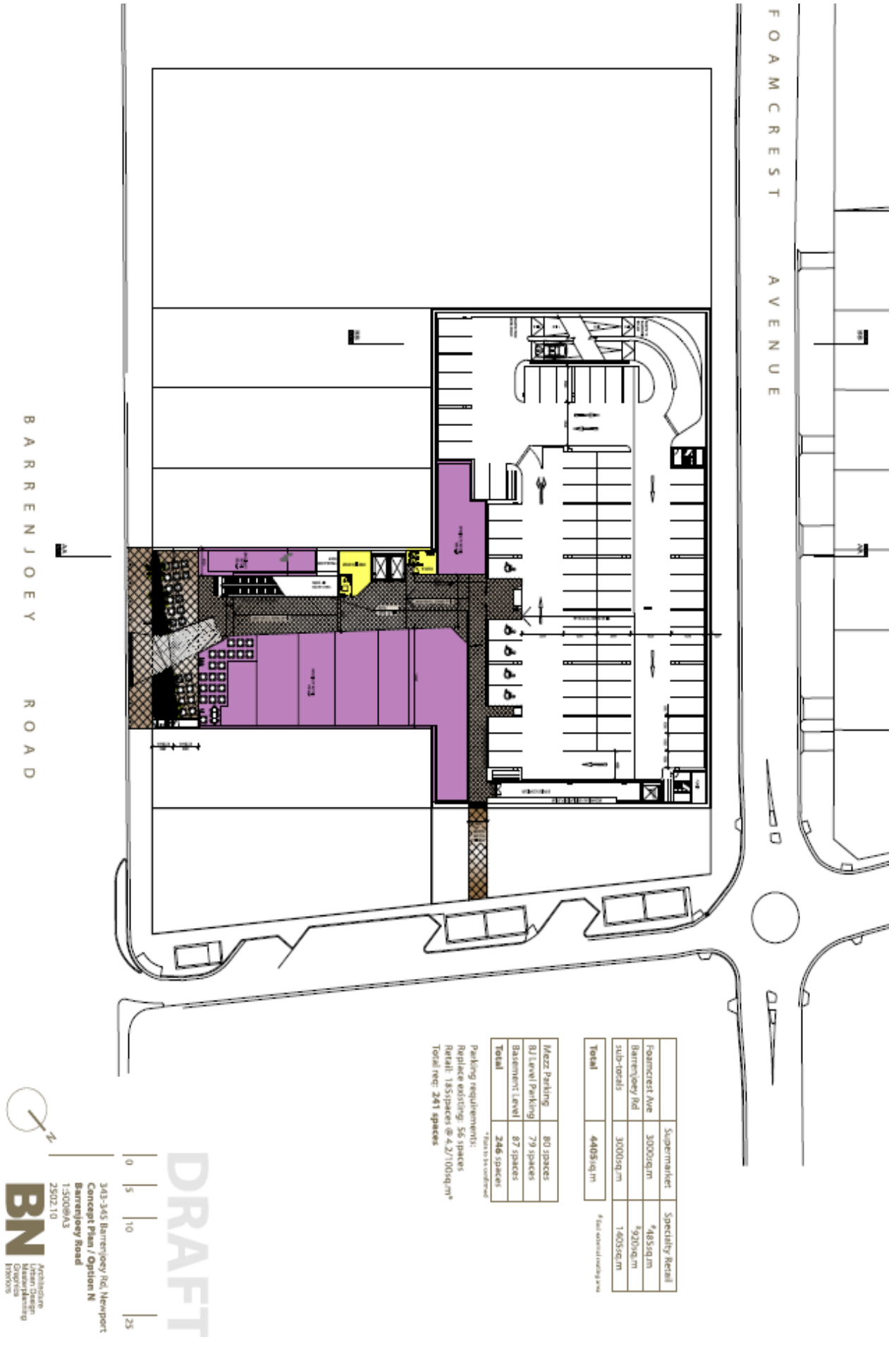




343 - 345
BARRENJOEY RD NEWPORT

AMENDED CONCEPT DRAWINGS





	Supermarket	Specialty Retail
Foamcrest Ave	3000sq.m	948sq.m
Barrenjoey Rd		920sq.m
sub-totals	3000sq.m	1605sq.m
Total	4405sq.m	

* Based on estimated building area

Mezz Parking	80 spaces
B1 Level Parking	79 spaces
Basement Level	87 spaces
Total	246 spaces

Parking requirements:
 * Plans to be confirmed
 Replace existing: 56 spaces
 Retail: 135 spaces @ 4.2/100sq.m*
 Total req: 241 spaces

343-345 Barrenjoey Rd, Newport
 Concept Plan / Option N
 Barrenjoey Road
 1:500@A3
 2502.10
BN Architects
 Urban Design
 Masterplanning
 Planning

[illegible]

CALLING NUMBERS	
NEZZARINE	To go 3 (Dashed)
BARBERSLEY	To go 5 (Dashed)
BARBER	07

NOTE: Addis oval 6 Total into circle
Spores and 20 Big de Spores

barrenjoey road

Robertson Road

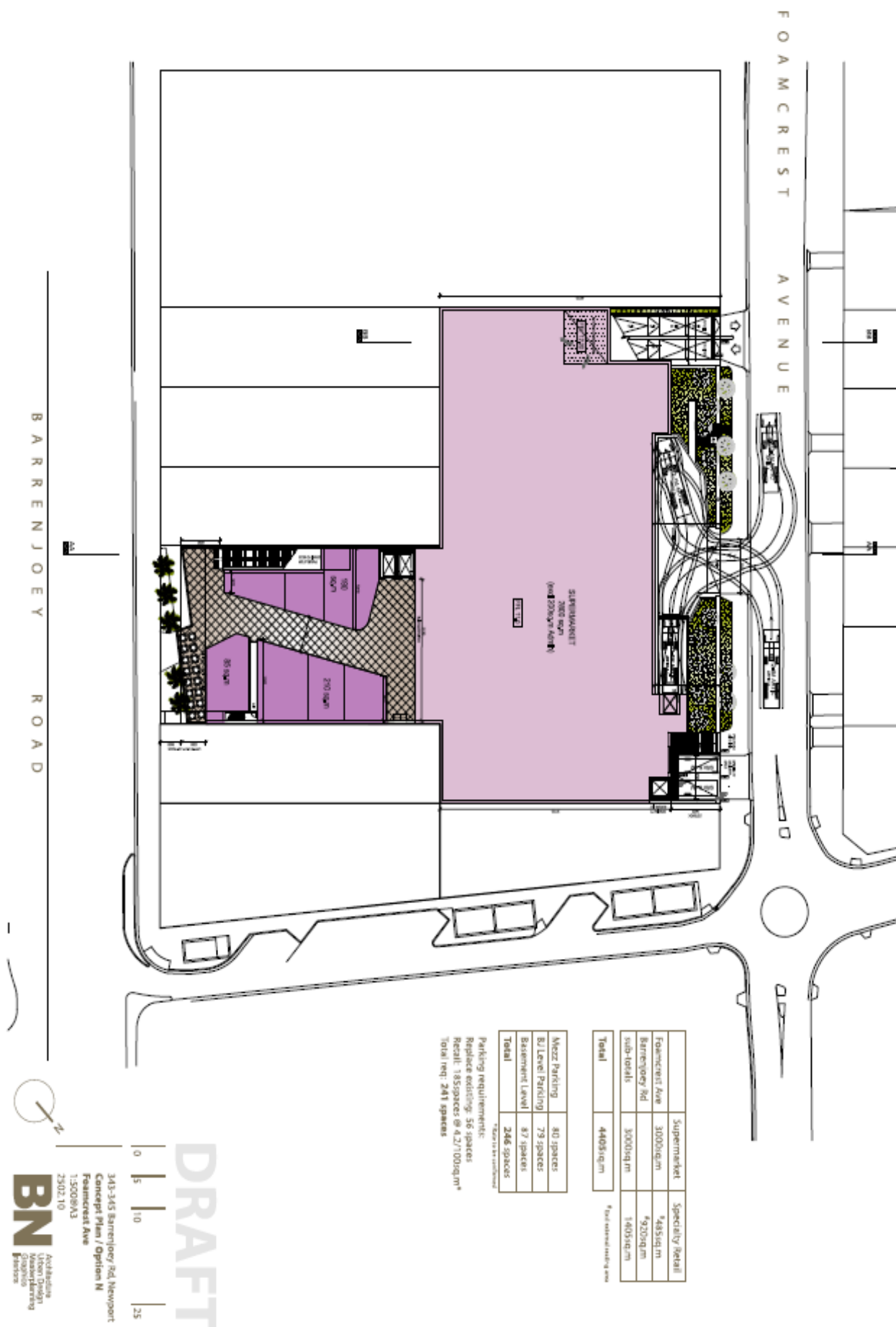


Concept Plan

1-200-851-871

BN

Architectural
Lettering Design
Masterplanning
Graphics
Interiors



	Supermarket	Specialty Retail
Foamcrest Ave	3000sq.m	948sq.m
Barrenjoey Rd		920sq.m
sub-totals	3000sq.m	1405sq.m
Total	4405sq.m	

* Total external loading area

Mezz Parking	80 spaces
B/L Level Parking	79 spaces
Basement Level	87 spaces
Total	246 spaces

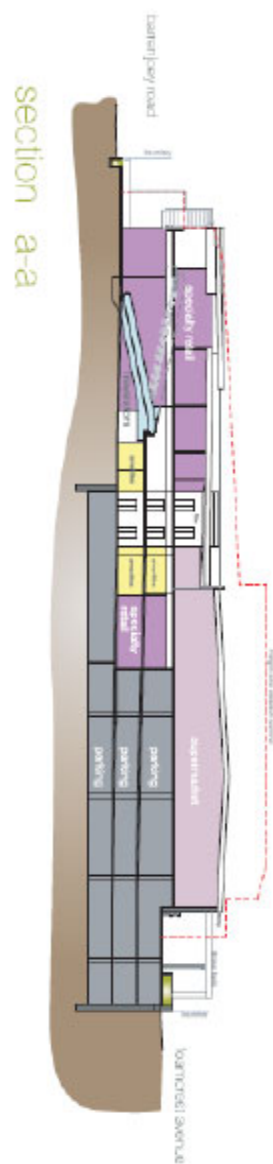
* Based on 30 cars/lot

Parking requirements:
 Replace existing: 56 spaces
 Retail: 185spaces @ 4.2/100sq.m*
 Total req: 241 spaces

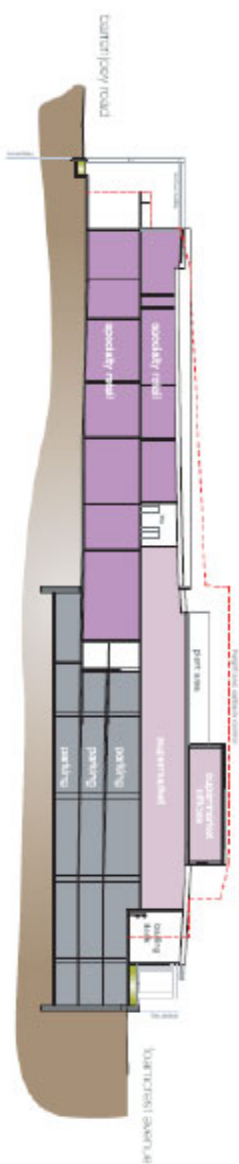
343-345 Barrenjoey Rd, Newport
 Concept Plan / Option N
 Foamcrest Ave
 150080A3
 2502.10

BN
 Architecture
 Urban Design
 Masterplanning
 Planning

sections



section a-a



section b-b

Height and setback control (envelope) control.
Newport village commercial centre masterplan, p 65

PLANNING PROPOSAL

The rezoning of 17 and 25-27 Foamcrest Avenue, Newport

Prepared by SJB Planning NSW Pty Ltd, for Pittwater Council

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Part 4 Community Consultation

Appendix 1 Location Map

Appendix 2 Checklist – Consideration of State Environmental Planning Policies

Appendix 3 Section 117 Ministerial Directions Checklist

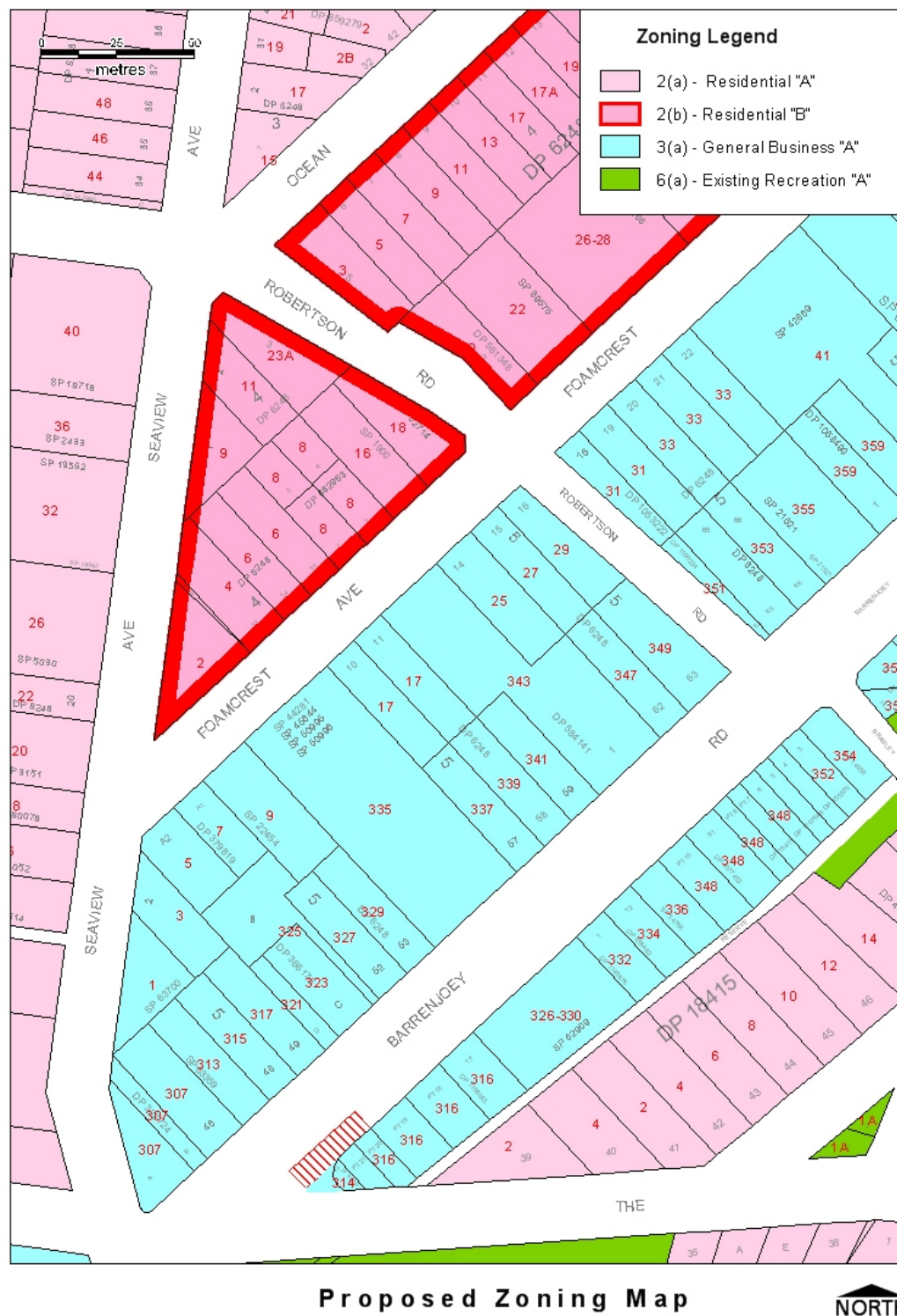
PART 1 OBJECTIVES OR INTENDED OUTCOMES

The objective of this Planning Proposal is for the rezoning of 17 and 25-27 Foamcrest Avenue Newport from its current 5(a) (Special Uses "A") to 3(a) (General Business "A") to enable the redevelopment of the site consistent with the surrounding commercial centre and land uses and generally consistent with the provisions of the Newport Village Commercial Centre Masterplan as it applies to the site, while maintaining public car parking.

MAP 1: Existing Zoning



Subject Site: Lots 10, 11, 14 & 15 Section 5 Deposited Plan 6248 (17, 25-27 Foamcrest Avenue Newport)
MAP 2: Proposed Zoning



Subject Site: Lots 10, 11, 14 & 15 Section 5 Deposited Plan 6248 (17, 25-27 Foamcrest Avenue Newport)

PART 2 EXPLANATION OF PROVISIONS

The proposed rezoning requires the amendment of the Pittwater Local Environmental Plan 1993 Zoning Map in accordance with the proposed zoning map shown in Map 2 and summarised in Table 1.

Table 1 Proposed Zoning Changes

Address	Property Description	Existing Zone	Proposed Zone
17 Foamcrest Avenue, Newport	Lot 10 Section 5 Deposited Plan 6248	5(a) (Special Uses "A")	3(a) (General Business "A")
17 Foamcrest Avenue, Newport	Lot 11 Section 5 Deposited Plan 6248	5(a) (Special Uses "A")	3(a) (General Business "A")
25 Foamcrest Avenue, Newport	Lot 14 Section 5 Deposited Plan 6248	5(a) (Special Uses "A")	3(a) (General Business "A")
27 Foamcrest Avenue, Newport	Lot 15 Section 5 Deposited Plan 6248	5(a) (Special Uses "A")	3(a) (General Business "A")

In order to allow shop-top housing at the site in accordance with clauses 21L, 21M, 21O of the Pittwater Local Environmental Plan 1993, commensurate with adjacent and surrounding 3(a) (General Business "A") zoned land, the parcels of land comprising the site are all proposed to be identified by the symbol "STH" on the Multi-Unit Housing Map.

The existing Multi-Unit Housing Map is shown in Map 3 and the proposed Multi-Unit Housing Map is shown in Map 4.

There are no other provisions that are required to be amended.



Existing Multi-Unit Housing Map



Agenda for the Council Meeting to be held on 18 October 2010.



PART 3 JUSTIFICATION

A Need for the Planning Proposal

(A1) Is the planning proposal a result of any strategic study or report?

The proposed rezoning is consistent with the strategic planning study of the Newport Village which culminated in the Newport Village Commercial Centre Masterplan (“the Newport Masterplan”).

The Newport Masterplan was commissioned by Pittwater Council in late 2006 and followed a five stage process which included Analysis; Setting the Vision; Development of Concept Options; Study Report; and Exhibition, Pittwater Council resolved to adopt the Newport Masterplan in November 2007.

The proposed rezoning is also consistent the Pittwater 21 Development Control Plan (DCP21), which strategically sets the planning outcomes sought for individual localities within Pittwater through desired character statements and development controls for specific areas or localities. Each locality is distinct in terms of its land use, geography, and social character.

Following the adoption of the Newport Masterplan, the Council also adopted amendments to the DCP21 which had been recommended in the Masterplan and which deal exclusively with the Newport Village Commercial Centre. The relevant amendments to DCP21 became effective on 3 December 2007.

A key amendment was to append the Newport Commercial Centre Masterplan to DCP21 and prescribe that all *“Development in the Newport Commercial Centre shall be in accordance with the approved Masterplan for the Newport Commercial Centre”* (refer to Part D10.2 Character – Newport Commercial Centre and Appendix 12 of the DCP).

The ‘Newport Locality’ is addressed in Part D10 of DCP21 and the Newport Commercial Centre is recognised separately from the remainder of the Newport locality within this Part of the DCP. The desired character, the outcomes and the specific controls for the Newport Commercial Centre in Part D10 are informed directly by the Newport Masterplan.

The purpose of the [Newport Masterplan](#) is to establish a holistic and integrated vision document for Newport Village Commercial Centre, encompassing both the private and public domain. The document was developed with extensive community involvement.

The Newport Masterplan provides an urban design framework that aims to enhance the amenity and design quality of the centre, and to support social, economic and cultural activities. Its stated focus is on a high amenity and high quality environment to support social, economic and cultural activities and to contribute positively to Newport’s future.

The masterplan relates to the commercial core of Newport, along Barrenjoey Road and including the side streets, and also considers the existing and likely future character of Foamcrest Avenue.

Apart from road reserves, the land within the study area covered by the Newport Masterplan and referred to as the Newport Commercial Centre in DCP21 is comprised of 71 allotments zoned 3(a) (General Business “A”), 3 allotments zoned Open Space 6(a) (Existing Recreation “A”) and 4 allotments which are zoned 5(a) (Special Uses “A”).

Essentially the Newport Commercial Centre is zoned 3(a) (General Business “A”) apart from Council owned Open Space near Bramley Avenue and the Council owned Special Use land which is the subject of this Planning Proposal.

A set of over-arching masterplan principles, developed during the study of the Newport Village Commercial Centre, underpin the desired future character statements and controls.

The core principles encompass economic, social and cultural, environmental and design issues, to ensure that the masterplan will contribute to a sustainable outcome for Newport. The principles are outlined below:

Economic principles

- Revitalise Newport Village Centre
- Build on the existing strengths of the village
- Increase the mix and diversity of uses
- Increase visibility of the commercial centre from the beachfront to support visitor / tourism activities
- Provide sufficient parking to accommodate village users

Social and cultural principles

- Activate and enliven streets and public spaces to improve safety and security, and the perception of safety and security
- Create a village 'hub' for Newport where people can gather and interact
- Improve the experience of arriving and being in Newport
- Link public open spaces to create a legible and accessible pedestrian network
- Create clear and inviting connections to community facilities and to public transport
- Encourage walking and cycling
- Foster understanding of Newport's history, geography and community

Environmental principles

- Improve connections between the village and the beach
- "Green" Barrenjoey Road with street trees
- Provide sheltered, pleasant public spaces
- Optimise commercial and residential amenity
- Represent Newport as a leader in environmental sustainability

Character principles

- Design the public domain (footpaths, arcades and plazas) at a 'human' scale that supports the village character
- Reinforce the relaxed character created by varied building setbacks, heights, facades and roof forms
- Design buildings to respond to the climate, topography and setting
- Protect and share views to ocean and hills

The proposed rezoning of the subject site is consistent with the above set of principles.

In addition to the overarching principles the Newport Masterplan outlines strategies for 8 specific elements and these strategies are reinforced and implemented by development controls in the Masterplan and within DCP21. The strategies relate to the following 8 elements:

- Open Space
- Vehicle Movement and Public Parking
- Vehicular Access and Underground Parking
- Pedestrian and Cycle Network
- Land Uses

- Public Domain Character
- Landscape Character
- Built Form

Within the strategies of the Masterplan there are specific references to the subject site and the area which the subject site lies in, known as the 'car park precinct'. The most pertinent references are in Part 4.6 (Land Uses) and Part 4.9 (Built Form). The stated Land Use strategy in Part 4.6 identifies that the desired future land uses for the area that the site is in include mixed uses (retail, commercial, community and residential).

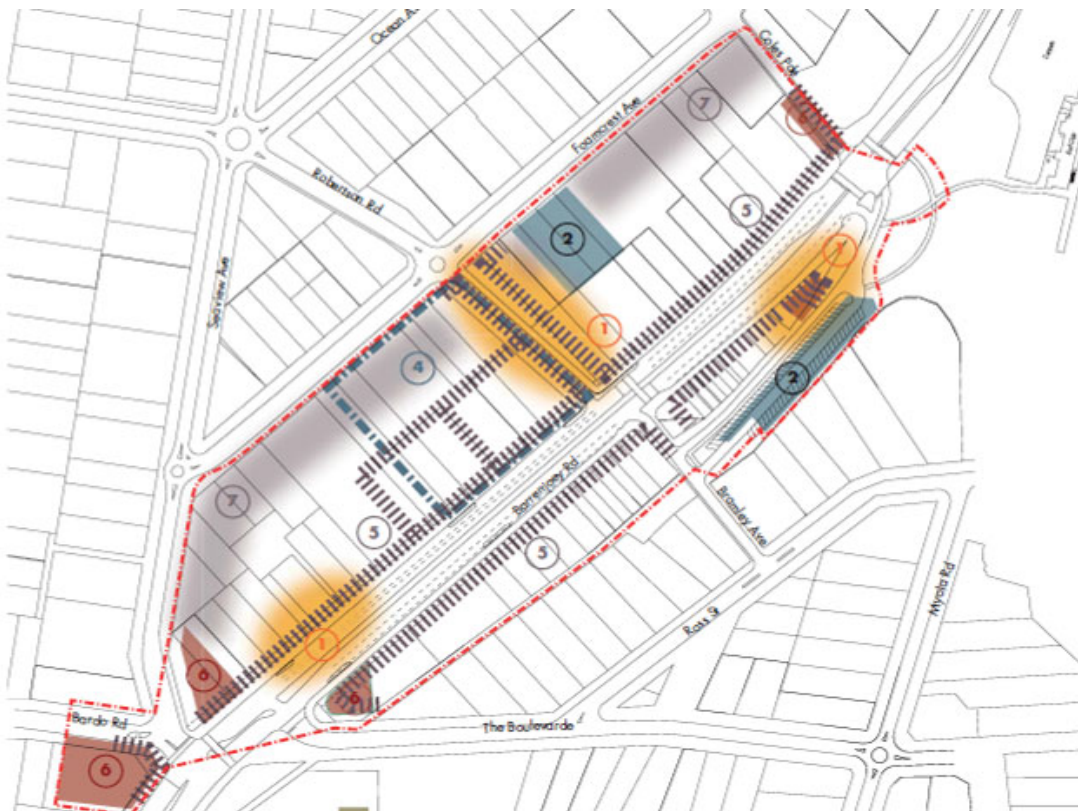
The strategy in Part 4.9 (Built Form) and the Figure 4.9.1 confirm that a form and scale of development commensurate with adjacent commercial development is envisaged across the site. The relevant extracts are detailed below:

"4.6 Land Uses

Mixed uses including retail, commercial, community and residential uses are appropriate for the village centre. The strategy includes retaining the focus on Barrenjoey Road and Robertson Road as the main retail streets. Foamcrest Avenue is not suitable for retail uses for two reasons: it interfaces with a residential area and it should not compete with the intensity of use on the main shopping street and side streets. Ground floor uses on Foamcrest could include commercial uses in the form of professional suites, and a higher proportion of residential use in mixed use buildings would not be out of place east of Robertson Road beyond the church.

4. Consider the 'car park precinct' including the Council-owned sites on Foamcrest Avenue as an aggregated site (or possibly 2 or 3 integrated sites), to rationalise land uses, optimise efficiencies and deliver high amenity, high quality built form. Integrate the sites fronting Robertson Road with the planning of this 'precinct' to ensure that no lots remain isolated and unable to be developed."

"Figure 4.6 Land Uses".



“Figure 4.9.1 Built Form’



The strategies for Land Use and Built Form for the site are supported by detailed development controls within Part D10 of DCP 21 (as amended). The detailed development controls in DCP21 originate, and have been adapted from, the draft development controls outlined in Part 5.8 (Proposed Amendments to DCP 21) of the Masterplan.

Numerous built form controls in Part D10 of DCP21 are exclusive to the car park precinct and reinforce the desired future development outcomes for the site are of a scale and form commensurate with commercial and mixed use development. One of the key built controls relevant to the site is reproduced below:

“D10.6 Height (Newport Commercial Centre)

The maximum height for the commercial centre varies from one to three storeys.

- *For one-storey buildings, limit the overall height in metres to 7 metres*
- *For two storey buildings, limit the overall height in metres to 8.5 metres.*
- *For three storey buildings, limit the overall height in metres to 11.5 metres.*

The following height restrictions also apply:

- *On Barrenjoey Road and 17-29 Foamcrest Avenue (including land fronting Foamcrest Avenue at 343 Barrenjoey Road), limit the street frontage height to 2 storeys, with a maximum height above the flood planning level of 7 metres to the top of the structure (equivalent to the floor level of the floor above). Above this, a balustrade is permitted to the top level so long as the balustrade is at least 50% transparent.*

- *On Barrenjoey Road and 17-29 Foamcrest Avenue (including land fronting Foamcrest Avenue at 343 Barrenjoey Road), limit the height at the 4 metre setback (to the topmost storey) to 10.5 metres above the flood planning level, with the roof form being contained within a height plane of 15 degrees, to a maximum overall height of 11.5 metres."*

Importantly the Newport Masterplan and DCP21, as demonstrated in the above examples, identify that the desired future land uses and building forms for the subject site accord with the site being rezoned from 5(a) (Special Uses "A") to 3(a) (General Business "A").

The identified desired future land uses and building forms are the result of a comprehensive strategic study of the area. Under the current zoning the desired future character for the site is unattainable as development for the purpose of mixed use development including commercial premises, retail and residential development are prohibited in the 5(a) (Special Uses "A").

(A2) Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Options include:

- 1 Maintaining current zoning.
- 2 Rezoning the land to a zone other than 3(a) (General Business "A") or 5(a) (Special Uses "A").
- 3 The proposal.

The first is the 'do nothing' option. This is not favoured as this option would not allow the site to be developed in any form other than the limited forms permissible in accordance with the current zoning tables for 5(a) Special uses zoning. As stated above, development for the purpose of commercial premises (including retail) and all forms residential development are prohibited in the 5(a) (Special Uses "A").

Option 1 would not enable the redevelopment of the site consistent with the surrounding commercial centre and land uses and would not achieve the desired future character as outlined in the Newport Commercial Centre Masterplan and the relevant DCP 21 Newport Locality controls.

The second option would be available, although it is not considered viable as it is likely to unreasonably constrain future redevelopment of the land. As with Option 1, other zonings such as Non-Urban, Open Space and Residential zones, have limited permissible land uses and would prevent the redevelopment of the site for the mixed use land uses desired for the site.

The proposal, or third option, is clearly the best outcome as it will allow the redevelopment of the site in a manner that is commensurate with the surrounding commercial centre and land uses and would achieve the desired future character as outlined in the Newport Commercial Centre Masterplan and the relevant DCP 21 Newport Locality controls.

The 3(a) (General Business "A") is the most appropriate business zone compared to the other available business zones as it is the same zone as the zoning of the immediately adjacent sites and the remainder of the Newport Village Commercial Centre.

The 3(a) (General Business "A") zone permits all the land uses identified in the desired future character for the site and will allow for the continued use of the site for public car parking and its future use for the purpose of community facilities if desired.

In summary, the proposal best achieves Council's objectives for the site.

(A3) Is there a net community benefit?

The Planning Proposal will facilitate improvements to the urban environment and public domain by allowing for the redevelopment of an existing public car park for mixed use land uses (including commercial, retail, residential and community) while maintaining the quantum of public car spaces.

Rezoning the site to 3(a) (General Business “A”) would enable redevelopment of the site in a manner which accords with the strategic vision, the desired future character and the finer grain development controls for the site as elucidated in the Newport Village Commercial Centre Masterplan and the Pittwater DCP 21. The realisation of the strategic vision and desired future character will result in a net community benefit.

The rezoning would not inhibit Council’s ability to maintain the quantum of public car spaces which currently exist at the site and it would not inhibit Council’s ability to maintain the pedestrian access through the site currently enjoyed by the public and therefore the existing community benefits realised from the site will also be maintained.

If the site were to be rezoned to 3(a) (General Business “A”) it would be consistent with the zoning of land immediately adjacent to the site and the remainder of land within the Newport Village Commercial Centre.

The rezoning of the land would also be consistent with Council’s economic, centres and corridors and housing requirements imposed by the Sydney Metropolitan Strategy and Draft North East Subregional Strategy (refer below in section B1).

It is noted that an initial application was made to Council for the rezoning of the site on behalf of Woolworths Ltd with the Planning Proposal objectives and intended outcomes focusing on the future development of the site for the purpose of a supermarket and a car park.

An analysis was carried out with respect to the potential economic and traffic related impacts based on the objective that the site is redeveloped for the purpose of a supermarket, speciality retail shops and a public car park.

While this is only one potential development outcome for the site, and it is not the objective of this Planning Proposal, the future development of the site for a supermarket is considered a relatively intense use and therefore the analysis undertaken for that scenario is relevant.

It is noted that the Planning Proposal which focused on the development of the site for a supermarket attracted significant objection within the community during non-statutory notification by Pittwater Council.

Many issues were raised with the key objections relating to the potential future development of the site for the purpose of a supermarket. Concerns were raised with regard to the economic impact upon existing individual retail outlets and the economic viability of the wider Newport Commercial Centre, traffic and parking implications for the centre, opportunity loss (such that the land could better be used for open space, ‘a town square’ and or community facilities) and the actual need for a new supermarket in the Newport locality.

While the analysis provided within the reports submitted with the Woolworths Ltd application is not exhaustive, the analysis and the subsequent independent peer reviews, provide an indication that redevelopment of the site for the purpose of a supermarket and a car park may be able to be carried in a manner that would not result in significant adverse impacts with regards to the economic viability of the Newport Village Commercial Centre and the local traffic network.

Therefore in terms of net community benefit, initial analysis indicates that in the event that the site is developed for relatively intense commercial uses in the future in accordance with the proposed 3(a) (General Business “A”) zoning, the proposal is likely to result in a positive benefit to the community.

To assist in determining the net community benefit the proposal was assessed against the evaluation criteria for ‘conducting a net community benefit test’ as outlined in the draft Centres Policy and is detailed below:

Evaluation Criteria	Y/N	Comment
Will the LEP be compatible with the agreed State and regional strategic direction for development in the area (e.g. land release, strategic corridors, development within 800m of a transit node)?	Y	The proposed rezoning is compatible with the applicable State and the regional strategic directions for the area including the Metropolitan Strategy, North East Sub Regional Strategy and SEPP (Infrastructure), 2007. The rezoning will result in additional business zoned land within an established commercial centre.
Is the LEP located in a global/regional city, strategic centre or corridor nominated within the Metropolitan Strategy or other regional/subregional strategy?	Y	The subject site is not identified within a key strategic centre or corridor. The site is identified as part of the Newport village within the North East Draft Subregional Strategy. While allowing the retention of the existing quantum of public parking at the site, the proposed rezoning is likely to facilitate the redevelopment of the site for the purpose of commercial premises and or mixed use purposes and thereby increase employment and access to additional services and facilities for the local community.
Is the LEP likely to create a precedent or create or change the expectations of the landowner or other landholders?	N	The proposed rezoning will not create a precedent within the locality because it represents the only remaining Special Uses land within the immediate vicinity of the site and within the wider locality of Newport. The site is located adjacent to, and straddles, existing 3(a) (General Business “A”) zoned land and its rezoning from Special Use to General Business is rational given its commercial context.
Have the cumulative effects of other spot rezoning proposals in the locality been considered? What was the outcome of these considerations?	Y	The site is owned by Council and used for the purpose of a public car park. There are no other 5(a) (Special Use “A”) zoned sites within the vicinity or wider locality and there have been no other recent ‘spot rezonings’ in the locality to refer to in terms of assessing any cumulative impact.
Will the LEP facilitate a permanent employment generating activity or result in a loss of employment lands?	Y	The proposal will result in the addition (albeit a relatively small addition) of employment lands within an established commercial centre.

		<p>The conversion of the land from a Special Use zone (for the purpose of car parking) to a General Business zone is likely to generate additional full and part time jobs upon its future rezoning and development.</p> <p>This will assist Council in meeting its employment targets set out within the Draft Subregional Strategy.</p>
Will the LEP impact upon the supply of residential land and therefore housing supply and affordability?	Y	<p>Residential development is prohibited at the site in accordance with the current zoning. The proposed rezoning will allow for some forms of residential development in the future (i.e. 'shop-top' development).</p> <p>The rezoning therefore provides the potential that the proposed amendment to the LEP will increase housing supply.</p>
Is the existing public infrastructure (roads, rail, and utilities) capable of servicing the proposed site? Is there good pedestrian and cycling access? Is public transport currently available or is there infrastructure capacity to support future transport?	Y	<p>The existing public infrastructure is adequate to meet the needs of the proposal.</p> <p>The site is fully serviced and is contained within an established urban area.</p> <p>The proposal will not inhibit Council's ability to maintain existing public parking at the site and exiting pedestrian links through the site.</p> <p>There is available public transport on Barrenjoey Road that has the ability to support the proposal.</p>
Will the proposal result in changes to the car distances travelled by customers, employees and suppliers? If so what are the likely impacts on the terms of greenhouse gas emissions, operating costs and road safety?	N	<p>The proposal is unlikely to result in changes to car distances travelled by customers, employees and suppliers as the site is located within the established commercial centre of the Newport village and therefore is already a local 'destination'. The redevelopment of the site for the purpose of commercial and mixed use development is likely to benefit from multi purpose trips to the commercial centre.</p>
Are the significant Government investments in infrastructure or services in the area where patronage will be affected by the proposal? If so what is the expected impact?	N	<p>The site is located within the commercial centre of Newport and has good access to public transport. The proposal is unlikely to have a negative impact on the surrounding infrastructure or services.</p>
Will the proposal impact on land that the Government has identified as a need to protect (e.g. land with high biodiversity values) or have other environmental impacts? Is the land constrained by environmental factors such as flooding?	N	<p>The site is currently a hardstand at grade car park and accordingly, the land does not contain any known critical habitat, threatened species or contain significant biodiversity values.</p> <p>Part of the site is flood affected. Council has provisions within its suite of development controls which deal with flood affected areas/sites including the Newport Commercial Centre.</p>

		<p>Detailed design solutions will be required at Development Application stage which demonstrate compliance with Council's requirements and which will ensure that future development at the site is designed to accord with the flood planning level.</p>
<p>Will the LEP be compatible/complementary with surrounding adjoining land uses? What is the impact on the amenity in the location and wider community? Will the public domain improve?</p>	Y	<p>The site is located in a street block within the Newport Commercial Centre. All other land parcels within the street block are zoned 3(a) (General Business "A")</p> <p>The proposal is compatible with the immediately adjacent land uses.</p> <p>Residential zoned land is located on the opposite of Foamcrest Avenue from the site; however the redevelopment of the site (post rezoning) for commercial and mixed use purposes is consistent with the remainder of the street block and the wider commercial centre.</p> <p>Any future development will be required to accord with general and specific development controls as set out in Council's consolidated DCP and within the locality specific Newport Village Commercial Centre Masterplan. These controls are aimed at mitigating adverse amenity impacts.</p> <p>Further, initial analysis of traffic and economic issues relating to the potential future development of the site for car parking and retail purposes indicate that it is likely that development of the site can be carried out without significant adverse impacts upon the location and wider community.</p> <p>The site currently operates as an 'at grade' asphalt public car park and its 'Special Use' zoning prohibits most other forms of development including for commercial premises and residential development. The public car park straddles a private land holding which is zoned 3(a) (General Business "A").</p> <p>The subject site currently relies upon the private land for vehicle access and manoeuvring within the car park. The rezoning of the land will provide the possibility for the land to be redeveloped in an integrated manner and consistent with the remainder of the commercial centre.</p>

		<p>The rezoning of the land will not inhibit Council's ability in any way to retain the quantum of public car parking spaces at the site and or the ability to maintain pedestrian access across the site. The rezoning of the land will provide the potential for the site to be redeveloped in a manner that is consistent with the desired future character for the site and wider locality as detailed in the Newport Village Commercial Centres Masterplan.</p> <p>As a result it is considered that the proposal is likely to result in improvements to the public domain through the potential for the realisation of built form and land use strategies and goals within the Masterplan.</p>
Will the proposal increase choice and competition by increasing the number of retail and commercial premises operating in the area	Y	<p>The proposal will enable development of the site for the purpose of commercial premises where currently such development is prohibited. Hence the proposal is likely to result in increased commercial and retail floor space and increased choice and competition.</p> <p>Initial analysis was carried out with respect to the potential economic impacts based on the sites future redevelopment for the purpose of retail use (primarily for a supermarket) and a public car park.</p> <p>While this is only one potential development outcome for the site, the initial analysis (which was independently peer reviewed), indicates that redevelopment of the site for the purpose relatively intense commercial uses may be able to be carried in a manner that would not result in significant adverse impacts with regards to the economic viability of the Newport Village Commercial Centre.</p>

B Relationship to Strategic Planning Framework

(B1) Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?

City of Cities (The Metropolitan Strategy)

Released in 2005, the strategy sets the direction for Sydney's planning until 2031. The strategy addresses a number of themes ranging from employment, centres and housing, and the environment. Its actions mainly revolve around implementation via other plans, such as LEPs prepared by Councils.

There is nothing in the strategy directly pertinent to the assessment of this Planning Proposal, although the Metropolitan Strategy states that its delivery is dependent upon more detailed plans as established in sub-regional strategies.

North East Sub-regional Strategy

The Metropolitan Strategy establishes 10 sub-regions; and Pittwater is in the North East sub-region along with Manly and Warringah.

Key targets outlined in the Sub-regional Strategy for Pittwater are targets of 4,600 new dwellings and 6,000 new jobs planned for the sub-region by 2031. To this end, the planning proposal, in adding to the amount of land that would be developable for mixed used purposes (including commercial, retail, residential and community uses), contributes not only locally and also regionally to the reaching these targets.

The sub-regional strategy is divided into sections addressing various planning issues. Economy and Employment, Centres and Corridors, and Housing are featured and the Proposal is considered against these sections below:

- *Employment.*

The Sub-regional Strategy outlines a target of 19,500 additional jobs for the North East subregion to 2031, with 6,000 of those jobs expected from the Pittwater LGA.

Overall the Sub-regional Strategy outlines that there is a relatively limited supply of employment lands in the North East subregion and identifies the areas of Mona Vale, North Narrabeen and Warriewood in Pittwater as locations of existing employment lands and areas for potential future expansion of employment lands.

The proposal would result in a relatively small increase in business zoned land within a recognised and well established commercial centre.

The proposal accords with Action A1 of the Sub-regional Strategy which states "*Provide suitable commercial sites and employment lands in strategic areas*".

- *Centres and Corridors*

Newport is identified as a 'Village' within the Sub-regional Strategy using the Metropolitan Strategies typology.

The North East subregion has one Strategic Centre (i.e. the Major Centre of Brookvale-Dee Why). All other centres in the subregion are local centres and the subregional strategy indicates that local centres are to be managed by local councils.

As stated above, the proposal would result in a relatively small increase in business zoned land within a recognised and well established commercial centre. The proposal is strategically rational and will reinforce the commercial nature of the Newport Village Commercial Centre with an emphasis on future commercial development while still allowing for the potential of residential use in conjunction with commercial development.

The proposal accords with the Action B1 (provide places and locations for all types of economic activity across the Sydney region) Action B2 (Increase densities in centres whilst improving liveability) and Action B4 (concentrate activities near public transport) of the Sub-regional Strategy.

- *Housing*

The Sub-regional Strategy outlines a target of 17,300 additional dwellings for the North East subregion to 2031, with 4,600 of those dwellings expected from the Pittwater LGA.

The proposal would result in a relatively small increase in business zoned land within a recognised and well established commercial centre. The identification of the site by the symbol "STH" on the Multi-Unit Housing Map as proposed would allow shop-top housing at the site in accordance with clauses 21L, 21M, 21O of the Pittwater Local Environmental Plan 1993.

The planning proposal accords with Action C1 (ensure adequate supply of land and sites for residential development), Action C2 (plan for a housing mix near jobs, transport and services) and Action C3 (renew local centres) by providing additional land within an existing Centre capable of being developed in the future for residential uses.

(B2) Is the planning proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?

This planning proposal is consistent with the Newport Village Commercial Centre Masterplan, which is the underlying strategic plan for the land in the Newport Commercial Centre as discussed above (A1).

In addition, the proposal is consistent with the community's vision as expressed in the Council's *Strategic Plan 2020 and Beyond*. This plan establishes five directions:

- Supporting and connecting our community
- Valuing and caring for our natural environmental
- Enhancing our working and learning
- Leading an effective and collaborative Council
- Integrating our built environment

Rezoning the Council owned land to allow for its redevelopment in a manner that maintains the existing quantum of public car parking at the site, while allowing for new mixed use development at the site commensurate with the remainder of the Newport Commercial Centre is consistent with the above five directions.

(B3) Is the planning proposal consistent with applicable state environmental planning policies?

This planning proposal is consistent with the applicable state environmental planning policies. See Appendix 2 and the discussion below.

SEPP 19 – Bushland in Urban Areas

SEPP 19 aims to protect and preserve bushland within certain urban areas for natural heritage or for recreational, educational and scientific purposes. The policy aims to protect bushland in public open space zones and reservations, and to ensure that bush preservation is given a high priority when local environmental plans for urban development are prepared (DoP, 2010).

Pittwater Council is not listed in the SEPP as an area to which the policy applies. However the SEPP was gazetted on 24 October 1986 at a time when the Pittwater local government area was part of the Warringah Shire. Therefore, the SEPP could be considered to apply to Pittwater, even though no amendments have been made to SEPP 19 to incorporate Pittwater Council into the policy since the formation of Pittwater Council on 2 May 1992. For the purpose of this assessment, we have proceeded on the basis that the policy applies to Pittwater.

There is no remnant bushland at the site and the planning proposal is considered to meet the aims and objectives of SEPP 19.

SEPP No. 32 – Urban Consolidation

The focus of this SEPP is aimed at enabling urban land which is no longer required for the purpose for which it is currently zoned or used, to be redeveloped for multi-unit housing and related development and therefore is indirectly related to the Planning Proposal.

Specifically, the objective of the Planning Proposal is to rezone the subject site from 5(a) (Special Uses "A") to 3(a) (General Business "A") to enable the redevelopment of the site consistent with the surrounding commercial centre and land uses while maintaining a public car park. It is therefore considered that there is a greater potential for the land to be developed for commercial and retail uses rather than residential uses.

Notwithstanding, the current zoning of the site prohibits use for residential purposes, while the proposed rezoning and identification of the site by the symbol "STH" on the Multi-Unit Housing Map would allow shop-top housing at the site in accordance with clauses 21L, 21M, 21O of the Pittwater Local Environmental Plan 1993.

The Planning Proposal is therefore consistent with SEPP 32 in providing the opportunity for the development of additional mixed land uses including for the purpose of residential development in a location where there is existing public infrastructure, transport and community facilities.

SEPP No. 55 - Remediation of Land

When carrying out planning functions under the Act (including undertaking LEP amendments), SEPP 55 requires that a planning authority must consider the possibility that a previous land use has caused contamination of the site as well as the potential risk to health or the environment from that contamination.

Council has considered the potential for contamination of the site as part of the preparation of the Planning Proposal.

Given the outcome of initial environmental testing and also that the land use history of the site involves its current car park use and previous residential use, Council is confident that the site is suitable, or can be remediated and made suitable, for the intended future land uses that would be permissible at the site in accordance with the proposed 3(a) (General Business "A") zoning.

SEPP (Infrastructure) 2007

The Infrastructure SEPP is not directly relevant to the Planning Proposal, although it is likely that the SEPP would be relevant to future redevelopment of the site made possible through the proposed rezoning.

In particular it is likely that future Development Applications for the redevelopment of the would involve 'traffic generating development' as defined in Clause 104 and Schedule 3 of the SEPP such as a car park for 50 or more car spaces, and or shops and commercial premises of a size and capacity of 1,000m² in area.

Such development types would require Council to refer such Development Applications to the RTA for comment.

Initial assessment of the traffic implications of future retail development at the site have been undertaken which were based upon a scenario for redevelopment of the site for the purpose of a car park and a retail development, primarily a supermarket. The conclusions of the initial traffic assessment (including a peer review) found that the local road network would be able to cater for additional traffic generated from a supermarket / retail development at the site.

It is noted that the traffic and parking scenario analysed is only one potential development outcome for the site in the event that it was to be rezoned and developed, however the analysis can give Council confidence that should the site be rezoned, then it is likely that it can be developed for mixed use purposes in the future in a manner that would not result in significant adverse impact upon the local traffic/road network.

It is proposed that further traffic and parking assessment would be undertaken following LEP Gateway determination, as part of any future Development Application as required.

The proposal is consistent with the Infrastructure SEPP.

Draft SEPP (Competition) 2010

A draft State Environmental Planning Policy has been prepared and was placed [on exhibition](#) for public comment from 27 July 2010 to 26 August 2010.

The aims of this draft SEPP are to promote economic growth and competition and to remove anti-competitive barriers in environmental planning and assessment. The new draft State Environmental Planning Policy (SEPP) proposes:

- The commercial viability of a proposed development may not be taken into consideration by a consent authority, usually the local council, when determining development applications;
- The likely impact of a proposed development on the commercial viability of other individual businesses may also not be considered unless the proposed development is likely to have an overall adverse impact on the extent and adequacy of local community services and facilities, taking into account those to be provided by the proposed development itself; and
- Any restrictions in local planning instruments on the number of a particular type of retail store in an area, or the distance between stores of the same type, will have no effect.

The provisions of the draft SEPP relate to specific Development Applications more so than the proposed rezoning of land and in this regard any future Development Application relating to the subject site will be considered against the provisions of the draft SEPP.

Notwithstanding, the proposal to rezone the subject site from 5(a) (Special Uses "A") to 3(a) (General Business "A") has also been considered against the provisions of the draft SEPP and has found to be consistent with those provisions.

The rezoning will result in a relatively minor increase in the quantum of 'business zoned' land within the wider Newport Commercial Centre and the rezoning is unlikely to have an overall adverse impact on the extent and adequacy of local community services and facilities.

No other State Environmental Planning Policies are considered relevant as summarised in the table at Appendix 2.

(B4) Is the planning proposal consistent with applicable Ministerial Directions (S117 Directions)?

This planning proposal is generally consistent with the applicable Ministerial Directions (S117 Directions). See Appendix 3.

C Environmental, social and economic impact

(C1) Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

No, the Planning Proposal site is located in an existing business precinct (commercial centre) in a built up area of Newport. The Planning Proposal does not apply to land that has been identified as containing critical habitat or threatened species, populations or ecological communities, or their habitats.

(C2) Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

Council's Flood Risk Map states the properties the subject of the Planning Proposal have been identified as being within a High Hazard Area, affected by a Flood Planning Level (FPL) and Probable Maximum Flood (PMF).

Council has a Flood Risk Management Policy which has been prepared in accordance with the principles and guidelines of the Floodplain Development Manual 2005. Future development will be subject to the provisions of the Policy and a flooding assessment of the site may be required.

Council's Engineer has reviewed the proposal and has confirmed that it is apparent that future development will be able to comply with flood related development controls.

Other likely environmental effects resulting from the planning proposal relate to traffic management, water management and potential impact on the amenity of adjoining residents.

It is however unlikely that the proposed amendment to the Pittwater LEP 1993 will result in development creating any environmental effects that cannot already be controlled as there are development controls within Council's suite of 'fine grain' planning provisions applying to the subject property in relation to such matters as traffic management, water management and amenity impacts. Any future development of the site will, when lodged as a DA, require assessment under Section 79C of the EP&A Act and be subject to Council's environmental development controls.

(C3) How has the planning proposal adequately addressed any social and economic effects?

Social effects

The Planning Proposal will provide an opportunity for the redevelopment of the site for land uses and activities commensurate with the surrounding Newport Commercial Centre. The proposed expansion of permissible uses and activities for the site has the potential to result in additional services and facilities which will benefit the wider community.

The above sections of this Planning Proposal demonstrate that the proposed rezoning accords with the relevant strategic planning framework and is likely to result in a net community benefit.

Economic effects

The economic effects are discussed within the Net Community Benefit Analysis.

Initial economic impact reporting relating to the potential redevelopment of the site for a one potential outcome being a supermarket, specialty retail shops and a car park (refer to Newport Commercial Centre Economic Assessment dated January 2010 and prepared by Hill PDA and Peer Review of Economic Assessment prepared by Leyshon Consulting dated April 2010) and broader economic analysis (refer to Chapter 6 in the SHOROC Regional Employment Study dated March 2008 and prepared by Hill PDA) indicate that the additional supply of commercial/retail floor space that would result from redevelopment of the site is unlikely to result in significant adverse impacts upon the economic viability of the Newport Village Commercial Centre or the viability of nearby centres.

The key positive economic effects being that the Planning Proposal will enable development of the site for the purpose of commercial premises where currently such development is prohibited. Hence the proposal is likely to result in increased commercial and retail floor space and increased choice and competition within the Newport Village Commercial Centre and employment generation.

D State and Commonwealth interests

(D1) Is there adequate public infrastructure for the planning proposal?

There is adequate public infrastructure servicing the Newport Commercial centre and the proposed rezoning does not generate the need for additional infrastructure.

(D2) What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?

At this stage of the Planning Proposal State and Commonwealth public authorities have yet to be consulted as the Gateway Determination has yet to be issued by the Minister for Planning.

This section will be completed following consultation with the State and Commonwealth Public Authorities identified in the gateway determination.

PART 4 COMMUNITY CONSULTATION

Preliminary consultation

Formal consultation with State and Commonwealth Authorities will be carried out as advised by the Department of Planning, and as proposed below.

Preliminary community consultation was undertaken with respect to rezoning the site in accordance with Council's Community Engagement Policy.

The consultation however related to a different Planning Proposal which sought to rezone the site in the same manner but with the specific stated objective and intended outcome for development of a supermarket and car park at the site (refer to discussion under the heading A3 in section 3 of this proposal).

The proposal for a rezoning for the purpose of a supermarket development at the site attracted significant objection within the community during the non-statutory notification and consultation carried out by Pittwater Council and this is summarised below:

The application was advertised between 7 September 2009 and 9 October 2009 with 1343 submissions received (1340 in objection and 3 in support). It is noted that 1019 of the 1340 objections received were in a 'pro-forma' style format

It is also noted that one of the 1340 objections had a petition attached with 2018 signatures.

Upon the amendment of the application and provision of additional information, the application was re-advertised between 28 April 2010 and 28 May 2010 with 1231 submissions received (1225 in objection and 6 in support). It is noted that 998 of the 1325 objections received were in a 'pro-forma' style format

It is also noted that one of the 6 submissions of support has a petition attached titled "*Letters From Newport Business Owners*" with signatures from the owners and / or operators of 60 businesses within Newport and 1 in Bilgola Plateau.

In total 2574 submissions were received (not including signatories to petitions). It has not been determined how many people lodged submissions in addition to signing petitions.

In addition to the notification periods outlined above a 'Public Information Session' was held (and independently facilitated) and a series of meetings were undertaken with identified 'Key Stakeholders' including the Newport Residents Association, the Newport vs Woolies Community Group, Pittwater Council Property Officer, and Woolworths Ltd representatives. It is noted that the Newport Chamber of Commerce were also invited to the Stakeholder meetings but did not attend.

The matters raised in the submissions are summarised below:

Objections raised:

- The proposal is inconsistent with the Newport Village Commercial Centre Masterplan.
- The proposal is inconsistent with controls within the Pittwater DCP 21 and the Pittwater LEP 1993.
- The proposal is inconsistent with Draft North East Draft Regional Strategy.
- The proposal is inconsistent with Section 117 Directions of the EP&A Act 1979.

- The proposal does not satisfy (or provide sufficient information to satisfy) the statutory requirements of a Planning Proposal.
- The Planning Proposal should not be considered without consideration of a DA because they are closely linked.
- Approval of the proposal effectively means approval of a future DA for a supermarket.
- There is no need for a second supermarket in Newport.
- Additional retail floor space will create over supply in Newport.
- A supermarket will negatively impact upon the viability of existing businesses within Newport.
- The economic report is inaccurate and or flawed.
- The proposal will lead to the loss of the sense of 'Village' that currently exists at Newport.
- The proposal will result in significant additional car and truck movements and will result in significant adverse impacts upon the local road network.
- Car parking should be provided below ground level (Note: The amended 'indicative concept' plans include below ground car parking).
- Additional parking is not required in Newport.
- The traffic reports submitted are inaccurate and or flawed.
- The proposal will not result in the highest and best land use of the site – for example an underground car park with public open space at ground level would be a better use of the site.
- The site should not be sold by Council.
- The site should be developed for the purpose of open space.
- The site should be developed for the purpose of 'green community space - as a focus for an off main road village centre'.
- The proposal will result in poor pedestrian outcomes in terms of safety and lack of pedestrian linkages through the site.
- The proposal will result in adverse built form/architectural outcomes.
- The proposal will result in a diminished streetscape for both Foamcrest Avenue and also to Barrenjoey Road.
- The proposal does not respond to the residential interface in Foamcrest Avenue and will result in adverse impacts to the residential amenity of nearby residential dwellings.
- Alternative proposals have not been fully or properly explored.
- The proposal will have adverse impacts upon wildlife.
- The proposal will have adverse upon existing infrastructure (roads, electricity, water sewerage and drainage).
- The proposal to rezone (and develop) the land is primarily for Council's economic and or financial purposes.
- There is concern about transparency with regard to the dealings of Council and Woolworths.
- There has been a lack of consultation with the community.
- The amended 'indicative concept drawings' do not address the issues raised in the first round of notification and submissions.

In support:

- Woolworths project will upgrade 'tired' buildings and improve the streetscape.
- Woolworths project will revitalise the Newport shopping strip.
- Woolworths project will attract larger pedestrian flow to Newport shops.
- Woolworths project will draw more customers to the area that currently shop elsewhere and increase economic activity for existing small businesses.
- Woolworths project will attract new small businesses that would otherwise not come to Newport.

- There are insufficient car spaces and no loading zones at the southern end of Newport to support small businesses and the Woolworths project would help address this problem.
- The “protesters” don’t speak for all small business owners in Newport.
- The amended design is considerably improved and is likely to be a good addition to Barrenjoey Road.
- Amended ‘indicative concept’ has addressed the majority of issues.
- The development of a Woolworths supermarket would provide choice and a balance to Coles.
- The long term benefits of a Woolworths store will outweigh the short term negative inconveniences.
- If Woolworths is unable to develop the site it will sell the land and the site will be developed for different purposes leaving the Council car park split and difficult to develop in the future.

The majority of matters raised relate to the future development of the site for the purpose of a supermarket. While recognising that the development of the site for the purpose of a supermarket is one potential development outcome, this Planning Proposal adopts a much wider strategic planning focus as detailed in the objectives and analysis in the sections above.

Further participation of the local community will be invited once the Minister for Planning has determined to commence the “Gateway” LEP process.

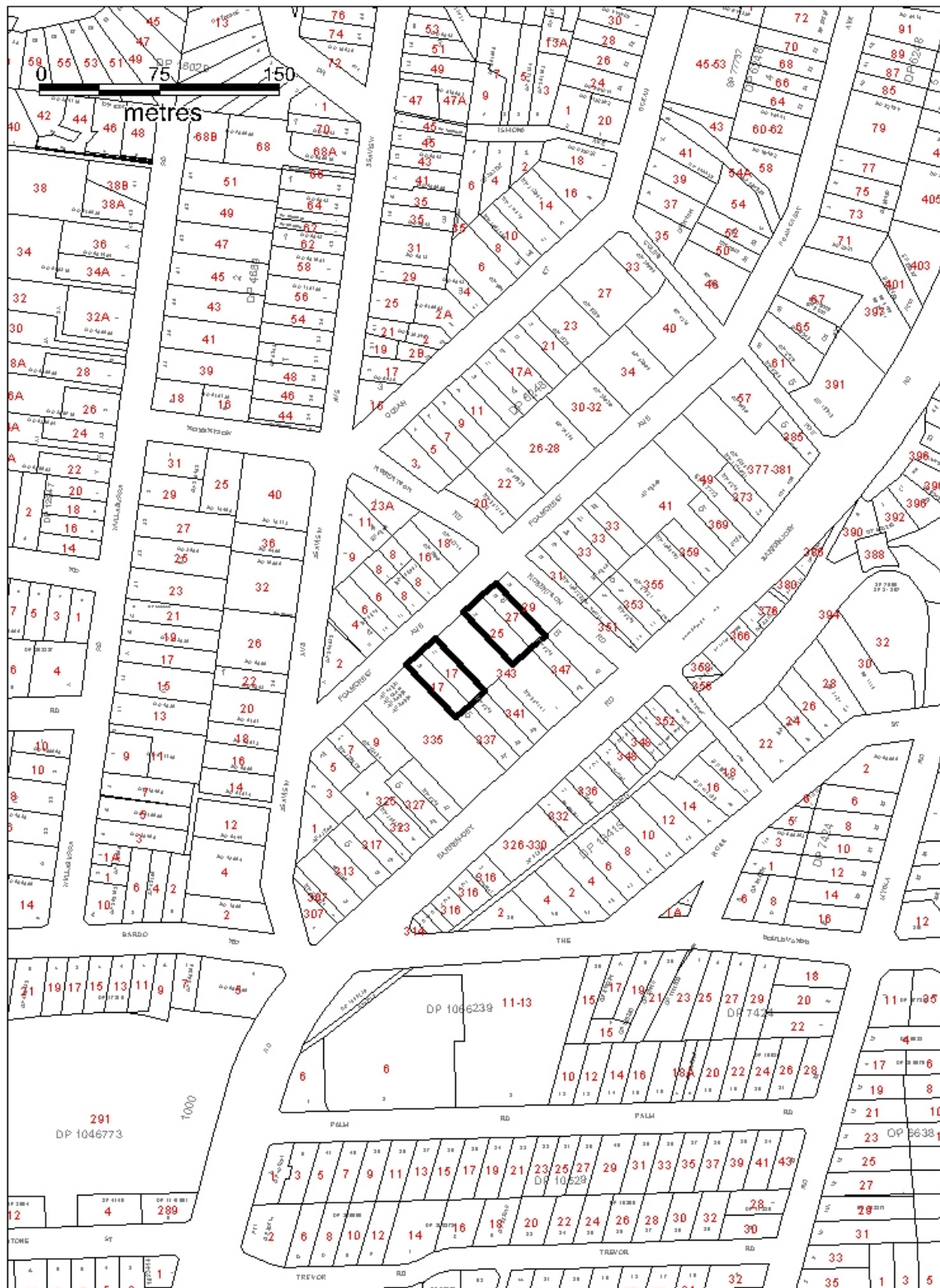
Proposed consultation

Government agencies will be formally consulted, as required by the Department of Planning. This is provided for by the Act, as part of the Department’s “Gateway” assessment and decision regarding the Planning Proposal.

Further public involvement will be carried out in accordance with Council’s adopted Community Engagement Policy, in the following manner:

As a minimum:

- advertising in the local newspaper and on Council’s website at the start of the exhibition period
- exhibition period as required by the Gateway determination, of 14 to 28 days
- notify adjoining property owners (within a 400m radius of the subject site) and those individuals and organisations that made submissions during the preliminary consultation period.



Location Map



Checklist - Consideration of State Environmental Planning Policies

The following SEPP's are relevant to the Pittwater Local Government Area.

Title of State Environmental Planning Policy (SEPP)	Applicable	Consistent	Reason for inconsistency
SEPP No 1 – Development Standards	NO	Not applicable	
SEPP No 4 – Development without consent...	NO	Not applicable	
SEPP No 6 – Number of Storeys in a Building	NO	Not applicable	
SEPP No 10 – Retention of Low-Cost Rental Accommodation	NO	Not applicable	
SEPP No 14 – Coastal Wetlands	NO	Not applicable	
SEPP No 21 – Caravan Parks	NO	Not applicable	
SEPP No 22 – Shops and Commercial Premises	NO	Not applicable	
SEPP No 26 – Littoral Rainforests	NO	Not applicable	
SEPP No 30 – Intensive Agriculture	NO	Not applicable	
SEPP No 32 – Urban Consolidation	YES	Yes	
SEPP No 33 – Hazardous and Offensive Development	NO	Not applicable	
SEPP No 44 – Koala Habitat Protection	NO	Not Applicable	
SEPP No 50 – Canal Estate Development	NO	Not applicable	
SEPP No 55 – Remediation of Land	YES	Yes	See below
SEPP No 62 – Sustainable Aquaculture	NO	Not applicable	
SEPP No 64 – Advertising and Signage	NO	Not applicable	

Title of State Environmental Planning Policy (SEPP)	Applicable	Consistent	Reason for inconsistency
SEPP No 65 – Design Quality of Residential Flat Development	NO	Not applicable	
SEPP No 70 – Affordable Housing (Revised Schemes)	NO	Not applicable	
SEPP (Building Sustainability Index: BASIX) 2004	NO	Not applicable	
SEPP (Exempt and Complying Development Codes) 2008	NO	Not applicable	
SEPP (Housing for Seniors or People with a Disability) 2004	NO	Not applicable	
SEPP (Infrastructure) 2007	YES	Yes	
SEPP (Major Development) 2005	NO	Not applicable	
SEPP (Mining, Petroleum Production and Extractive Industries) 2007	NO	Not applicable	
SEPP (Temporary Structures and Places of Public Entertainment) 2007	NO	Not applicable	

SEPP 55

Preliminary environmental assessment of the site has been undertaken. The testing was undertaken with a focus on potential future development of the site for the purpose of commercial uses and the results indicate that contaminants of potential concern were not detected in fill or native soils at concentrations in excess of the assessment criteria for a commercial/industrial setting.

It is noted that it is proposed that shop top housing be permissible at the site upon rezoning the land. Given the results of the initial testing, Council can be reasonably confident that the site is suitable, or can be made suitable for the future uses of the site consistent with the proposed rezoning. It is considered that additional testing and reporting can be carried out if and when a Development Application is lodged or alternatively upon moving to the gateway process.

The following is a list of the deemed SEPP's (formerly Sydney Regional Environmental Plans) relevant to the Pittwater Local Government Area.

Title of deemed SEPP, being Sydney Regional Environmental Plan (SREP)	Applicable	Consistent	Reason for inconsistency
SREP No 20 – Hawkesbury-Nepean River (No 2 -1997)	NO	Not applicable	

The following is a list of the draft SEPP's relevant to the Pittwater Local Government Area.

Title of draft State Environmental Planning Policy (SEPP)	Applicable	Consistent	Reason for inconsistency
Draft SEPP (Competition) 2010	YES	Yes	

Section 117 Ministerial Directions Checklist
(Directions as per DoP website September 2010)

Table

Compliance with Ministerial Directions, s117 Environmental Planning and Assessment Act, 1979.

1 Employment and Resources

	Applicable	Consistent	Reason for inconsistency
1.1 Business and Industrial Zones	YES	YES	
1.2 Rural Zones	NO	Not applicable	
1.3 Mining, Petroleum Production and Extractive Industries	NO	Not applicable	
1.4 Oyster Aquaculture	NO	Not applicable	
1.5 Rural Lands	NO	Not applicable	

2 Environment and Heritage

	Applicable	Consistent	Reason for inconsistency
2.1 Environment Protection Zones	NO	Not applicable	
2.2 Coastal Protection	NO	Not applicable	
2.3 Heritage Conservation	NO	Not applicable	
2.4 Recreation Vehicle Areas	NO	Not applicable	

3 Housing, Infrastructure and Urban Development

	Applicable	Consistent	Reason for inconsistency
3.1 Residential Zones	YES	YES	
3.2 Caravan Parks and Manufactured Home Estates	NO	Not applicable	
3.3 Home Occupations	NO	Not applicable	
3.4 Integrating Land Use and Transport	NO	Not applicable	
3.5 Development near Licensed Aerodromes	NO	Not applicable	

4 Hazard and Risk

	Applicable	Consistent	Reason for inconsistency
4.1 Acid Sulphate Soils	YES	YES	
4.2 Mine Subsidence and Unstable Land	NO	Not applicable	
4.3 Flood Prone Land	YES	NO	See below
4.4 Planning for Bushfire Protection	NO	Not applicable	

Directions 4.1 and 4.3

- (4.1) The site has a low probability of containing acid sulphate soils. The planning proposal itself does not include works. Notwithstanding, Council has in place planning provisions that ensure that any future development of the site proposed will be required to accord with the relevant development controls dealing with development on sites affected by acid sulfate soils.
- (4.3) Flooding to a high hazard classification is identified by Council's flood maps over part of the site. Despite this, and in accordance with clause 9 of Direction 4.3, the proposal is considered satisfactory, as a Flood Risk Management Policy has been prepared by Council in accordance with the principles and guidelines of the Floodplain Development Manual 2005, and future development will be subject to the provisions of the Policy and it is also considered exposure to flood risk will not change as a result of this proposal.

5 Regional Planning

	Applicable	Consistent	Reason for inconsistency
5.1 Implementation of Regional Strategies	NO	Not applicable	
5.2 Sydney Drinking Water Catchments	NO	Not applicable	
5.3 Farmland of State and Regional Significance on NSW Far North Coast	NO	Not applicable	
5.4 Commercial and Retail Development along the Pacific Hwy, North Coast	NO	Not applicable	
5.5 Development in the vicinity of Ellalong, Paxton and Millfield	NO	Not applicable	
5.8 Second Sydney Airport: Badgerys Creek	NO	Not applicable	

6 Local Plan Making

	Applicable	Consistent	Reason for inconsistency
6.1 Approval and Referral Requirements	YES	YES	
6.2 Reserving Land for Public Purposes	YES	YES	See below
6.3 Site Specific Purposes	YES	YES	See below

Directions 6.2 and 6.3

- (6.2) The proposal is not zoned as a public reserve or open space as such , notwithstanding the proposal seeks to rezone Council owned land to 3(a) (General Business “A”) from its current 5(a) (Special Uses “A”).

In accordance with the current zoning controls development of the site is limited to purposes relating to car parking and the site is currently used as an at grade public car park.

Car parking is a use/activity permitted with consent in accordance with the provisions of the 3(a) (General Business “A”) and therefore the proposed rezoning will not inhibit Council’s ability to maintain the quantum of public car spaces at the site.

As such the proposal does not represent the loss of land reserved for public purposes, rather it represents the widening of the permissible land uses and activities on Council owned land and as such the proposal accords with the objectives set out in clause 1 Direction 6.2.

- (6.3) The objective of the proposal is to enable the redevelopment of the site consistent with the surrounding commercial centre and land uses while maintaining a public car park. The site is proposed to be rezoned to 3(a) (General Business “A”) which is an existing zone within the Pittwater LEP 1993. The rezoning would enable the proposal’s objective to be realised without the need for imposing any development standards or requirements in addition to those already contained in that zone. The proposal accords with Direction 6.3.



C11.2 Council's Submission on Part 3A Preferred Project Application for 14-18 Boondah Road Warriewood

Meeting: Planning an Integrated Built Environment Committee

Date: 18 October 2010

STRATEGY: Land Use & Development

ACTION: Coordinate land use planning component of land release

PURPOSE OF REPORT

The purpose of this report is to inform Council of the issues regarding the Meriton Apartments Pty. Limited (Meriton) Major Project application (MP09-162) for 559 dwellings and associated development and forms the Preferred Project for 14-18 Boondah Road, Warriewood.

The Department of Planning advised Council that its Submission must be received by 8 October 2010. Given the timeframe, this report summarises the issues raised in Council's Submission (tabled) to the Preferred Project Application (as forwarded to the Department on 8 October 2010).

1.0 BACKGROUND

- 1.1 A Major Project under Part 3A of the *Environmental Planning & Assessment Act 1979* for a residential development at 14-18 Boondah Road, Warriewood was declared on 1 December 2009.

Meriton lodged the Application comprising a Concept Plan and Stage 1 Project Application for 600 dwellings, a childcare centre, two retail tenancies, a swimming pool, a gymnasium, associated landscaping and internal roads to the Department of Planning. The Major Project Application was exhibited from 14 April to 15 June 2010.

- 1.2 Concurrent with the Major Project Declaration, the Director-General of the Department of Planning also sought Council's approval to undertake a joint Strategic Review of Warriewood Valley.
- 1.3 A Preferred Project has now been submitted to the Department for a development of 559 Dwellings and ancillaries and a Childcare Centre. This report provides a summary of Council's response to the Preferred project and updates the status of the Strategic Review for the Warriewood Valley commissioned by the department of Planning..
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2.0 COUNCIL'S SUBMISSION (DATED JUNE 2010)

- 2.1 On its meeting of 7 June 2010, Council resolved inter-alia:

"2. That Council endorse the submission to the Department of Planning on the Major Project application (MP 09_0162) (as separately tabled), and forward it to the Department of Planning.

3. *That Council write to the Minister for Planning requesting that the Meriton Apartments Major Project Application for 600 residential dwellings and associated development at 14-18 Boondah Road, Warriewood, be considered by the Planning Assessment Commission, prior to the Minister's determination.*
4. *That Council give its delegated authority to the General Manager to make adjustments to Council's submission referred to in (2) above to address issues associated with the declaration last week with regard to Section 94 Contributions and flooding issues together with any editorial changes needed."*

Significant deficiencies and issues relevant to both the Concept Plan and Stage 1 Project Application proposed through the Major Project application was identified. Council's Submission to the Part 3A Major Project Application raised five (5) main areas of concern, being: Precedent & Equity; Orderly Planning; Infrastructure & Services Provision; Amenity, Community Expectations and Participation.

3.0 STATUTORY PROCESS – POST EXHIBITION

- 3.1 Following the close of the exhibition period and receipt of Council's and the Community submissions, the Department of Planning asked Meriton to prepare a Preferred Project Report addressing the issues raised in the submissions and the Department of Planning, and must demonstrate measures to minimise any environmental impacts of the proposal as well as a Revised Statement of Commitments (the Department's letter is **ATTACHMENT 1**).

Council was advised that copies of submissions received during the exhibition period were forwarded to Meriton.

- 3.2 Meriton, as the applicant, is obliged to respond to all issues raised in the submissions as well as those issues raised by the Department of Planning in accordance with Section 75H(6) of the *Environmental Planning and Assessment Act*.
- 3.3 On 31 August 2010, the Department of Planning advised Council that Meriton have lodged a Preferred Project Report accompanied by amended plans and supporting documents. The Department verbally invited Council to make a submission however, advised that there is no statutory requirement to exhibit the Preferred Project Report.

The Director-General of the Department of Planning wrote to Council advising that any submission on the Preferred Project Report would need to be forwarded to the Department by 8 October 2010. Given the timeframe, it has not been possible for Council staff to report this matter to Council.

Council staff, in preparing the Submission, has identified deficiencies and issues with the Preferred Project Report and are incorporated in Council's Submission. These are detailed in the body of this report.

- 3.4 Additionally, Council was also advised that the Minister for Planning has delegated the determination of the Preferred Project to the Planning Assessment Commission (PAC). The current chair of the PAC is Gabrielle Kibble.

The sitting members of the PAC for the Preferred Project Major Application will be selected from a list of panel members. At present, there has been no decision on the make-up of the PAC.

A letter from the Minister for Planning has since been received, confirming the role of the PAC in determining this application (see **ATTACHMENT 2**).

4.0 DESCRIPTION OF PREFERRED PROJECT (NOW UNDER CONSIDERATION)

- 4.1 The Preferred Project Major Project application for 14-18 Boondah Road, Warriewood, comprises a Preferred Project Concept Plan for overall development of the site and Stage 1 Preferred Project. Both are detailed below (a site plan of the proposed development is in **ATTACHMENT 3**).

The **Preferred Project Concept Plan** comprises:

- a total of 16 residential apartment buildings of 3, 4, Part 4/Part 5 and 5 storeys in height
- a total of 559 dwelling units,
- a gymnasium and swimming pool (in a single storey building),
- a childcare centre (in a single storey building, immediately fronting Macpherson Street),
- an internal network of public and private roads,
- a combined cycleway and pedestrian pathway,
- landscaping of private, communal and public open space and ecological rehabilitation works.

Stage 1 of the Preferred Project comprises:

- demolition of existing dwellings and structures and removal of vegetation on the subject site,
- excavation, earthworks and flood mitigation works,
- construction of 7 residential apartment buildings providing 295 dwellings, comprising 3 x 3 storey buildings (fronting Macpherson Street), 2 x Part 4 Part 5 storey buildings, and 2 x 5 storey buildings,
- basement parking for 471 cars comprising 429 resident car spaces and 42 visitor spaces, with vehicle ramps for entry egress into the basement parking area are proposed behind Building D and eastern side of Building G,
- a gymnasium and swimming pool (in a single storey building),
- construction of an internal access road and connection with Macpherson Street and Boondah Road, including utilities and services infrastructure within the road reserves for electricity, potable water, gas and telecommunications,
- landscape works to public, communal and private open space areas associated with the Stage 1 development and ecological rehabilitation works to Fern Creek corridor and the vegetated buffer to the Warriewood Wetlands,
- bushfire management works including vegetation removal associated with the proposed Asset Protection Zone,
- a public pedestrian cycle way through the site,
- flood mitigation works including bulk earthworks to establish flood storage areas and bio-retention basins.

- 4.2 For the purposes of assessing the impact of the Preferred Project's Concept Plan (559 units), the details of the Stage 1 Preferred Project (295 units) have been extrapolated across the site.

5.0 STATUS OF THE STRATEGIC REVIEW

5.1 The Department of Planning has commissioned Worley Parsons to undertake a review of residential development capacity of Buffer Areas 1, 2 and 3 having regard to environmental and infrastructure constraints, and was a two-fold exercise:

- (a) Review and provide advice on the robustness of the environmental constraints analysis carried out by Pittwater Council in 2010¹, including:
 - Test the suitability of the proposed density (of the Part 3A Proposal at 14-18 Boondah Road Warriewood) across all developable land in the three Buffer Areas excluding the Retirement Village,
 - Assess the implications of the residential density across all developable land in the three Buffer Areas on flooding and sea level rise, and
 - Consider the visual and locational impact of the form and scale of a residential density of 75 dwellings per hectare.
- (b) DoP is to liaise with the Roads and Traffic Authority regarding the local and regional traffic implications likely to arise from the total combined development within the buffer areas and other developable areas.

5.2 Council has reviewed the Draft Report prepared by Worley Parsons (June 2010) , and advised the Department of the deficiencies with the Draft Report that result in conclusions that are inaccurate and inadequate, raising flaws in the Department's strategic review process . These included:

- No assessment of the likely impacts of increasing density in the Buffer Areas, particularly impacts on groundwater given that multi-level underground parking structures will be essential to the development form likely from increased density.
- No assessment is made on infrastructure requirements external of the individual land holdings (within the Buffer Areas), or potential impact of density external of the Buffer Areas regarding equity and precedent, in terms of visual impact and vision/character of the Warriewood Valley Release Area that has been established and accepted by the wider community since 1997.
- No assessment on the impact of increased density within the Warriewood Valley Release Area (part of the Metropolitan Development Program).
- No consideration on the impact of increased density in a limited area and its relationship with the wider Pittwater LGA and in the strategic context of the SHOROC region in terms of housing, employment, transport and infrastructure; groundwater quality; urban design outcomes arising from proposed increase in density including the desired future character of the locality; impact on traffic and transport, and infrastructure including the capacity to deliver additional infrastructure due to increased population/demand.

Uncertainty remains as to whether Council's commentary will be incorporated in the Final Report by Worley Parsons.

¹ Pittwater Council, *Warriewood Valley Planning Framework 2010*, adopted 3 May 2010 (placed on exhibition 1 March to 1 April 2010)

- 5.3 Council has not been provided the final Strategic Review of the Buffer Areas including the traffic//transport. Uncertainty also remains whether Council's request that the following matters be included in the assessment of traffic and transport impacts as part this Strategic Review, namely:
- An assessment of the adequacy of parking rates and off-street parking provision for medium density development in conjunction with the specific criteria under the RTA's *Guide to Traffic Generating Developments*.
 - An assessment of the capacity of the existing road network and the potential impacts to the local road network, including the intersections approaching the Warriewood Valley Release Area.
 - An assessment of the capacity of, and likely impact on the regional road network as well as the ability to provide any required upgrades in the regional road network (outside of the local development contributions).
 - Assess likely traffic implications resulting from increased density and hence, an increased workforce-age population in regard to job containment issues, analyses of travel modes/patterns taking account the poor public transport system (local and direct regional or cross-regional), geographical isolation and topographical terrain of Pittwater, and the fact that only 20% of Pittwater residents (of workforce-age) work in Sydney CBD/ North Sydney.
- 5.4 Notwithstanding, the issues raised with the Draft Review Report and lack of opportunity afforded to Council to review any commentary or Draft findings, the Department has advised Council that the Strategic Review will form part of the consideration for the Preferred Project Application for 14-18 Boondah Road Warriewood. In fact Meriton's Preferred Project Report places heavy reliance on the Strategic Review as it relates for justification of increased densities as proposed.
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6.0 PRINCIPAL AREAS OF CONCERN WITH PREFERRED PROJECT

Council's submission to the Department dated 8 October 2010 raises major concerns and issues that can be characterised under five (5) headings as follows:

- ***Precedent & Equity***
- ***Orderly Planning***
- ***Infrastructure & Services Provision***
- ***Amenity***
- ***Community Expectations & Participation***

6.1 Precedent & Equity

Consideration of the Preferred Project on a "stand-alone" basis is not compliant with the Objects of the Act, which requires development to be responsive to, and in accord with, the framework of applicable strategic planning documents which together form the basis for coordinated and orderly planning and development.

It is essential to recognise that a consequence of this development proposal (if equity is to prevail) would be to establish a precedent for substantial increase in development yields in those sections of the Warriewood Valley Urban Land Release Area not already developed.

In addition, development that would occur either as a direct result of the Meriton Proposal or that which would flow from the precedent, is inconsistent with and at odds with the established and orderly planning at a Local and Sub-Regional level.

To not take into account the precedent approval of this Proposal would set for the similar areas of undeveloped land remaining in the Valley, would be to confer an unequitable and unjustifiable commercial advantage to the proponent. It is reasonable to also assume that questions will come from past developers as to why the applicant is being given an advantage outside of the planning framework with resultant increased profits.

In regard to the Department's Strategic Review, the principle of equity is contradicted given that the focus of the Strategic Review was limited to the Buffer Areas, with the Buffer Areas an inequitable development advantage by greatly increasing the potential of higher density development capability as a consequence of the Preferred Project being approved or the Department adopting the flawed outcomes presented by an incomplete Strategic Review.

The Department's Strategic Review on the Buffer Areas is incomplete as it has not addressed the likely impacts of increasing density in the Buffer Areas in terms of:

- visual amenity and urban design outcomes
- traffic and transport (in particular car parking),
- infrastructure and services requirements,
- groundwater impacts,
- impact from an increased workforce-age population resulting from an increased density, in terms of employment and job containment, and
- the strategic planning context, in terms of the Pittwater LGA and the SHOROC Region.

Accordingly, the Strategic Review Report should not be given any weight in the assessment of Meriton's Preferred Project MP 09_0162 for 14-18 Boondah Road Warriewood. Likewise it is Council's strong contention that Meriton has failed to address the Director General's requirement that Meriton justify the increase in residential density given that Meriton's justification is to rely on the Strategic Review outcome that is unknown and incomplete.

6.2 Orderly Planning in Warriewood Valley

The Objects of the Act require an orderly approach to planning and development and in this regard, it is appropriate to reflect on the planning process that has preceded this application at a Metropolitan, Sub-Regional and Local level.

The Metropolitan and Sub-Regional Planning Strategy outcomes and Warriewood Valley Planning Framework and the applicable Local Environmental Plan & Development Control Plan, encapsulate the intent of the "Objects" of the *Environmental Planning and Assessment Act 1979*.

The "Objects" of the Act contain terms such as: "proper management..., social and economic welfare of the community...orderly and economic use and development of land...coordination...to promote the sharing of responsibility for planning between the different levels of government in the State".

In relation to the Sydney Metropolitan Strategy, the then Premier of NSW stated:

"...The Plan is a broad framework to facilitate and manage growth and development over the next 25 years. It sets the scene for more detailed planning in the sub-regions of Metropolitan Sydney and in the regional areas of New South Wales. It sets the parameters for future residential development in new release and existing urban areas. It ensures that sufficient land is available for industrial and employment development. It also identifies how Local Government will work with State Government to translate the aims and actions into local plans... By identifying these needs, and ensuring adequate land is zoned and available, the Plan provides a sound basis for future investment. It allows the Government and the market to confidently respond to economic growth and housing and infrastructure needs, at the right time, and in the right location, to support Sydney in the next 25 years. The Plan has been prepared on the basis that well managed growth will strengthen and secure Sydney's economic competitiveness, and will make the city a better place to live for future generations."

As a result of the Metropolitan Strategy Manly, Warringah and Pittwater Council, in cooperation with the Department of Planning, achieved the North-East Sub-Regional Strategy. This Strategy provides a target of an additional 4,600 dwellings in Pittwater, including the completion of Warriewood Valley (but excluding Ingleside). The Warriewood Valley Planning Framework dwelling yields were incorporated into this Strategy. The then Premier of NSW in releasing this Sub-Regional Strategy stated:

"...The draft North-East Sub-Regional Strategy has been prepared on the basis that well managed growth will strengthen and enhance the North-East as an attractive place to live, work and visit. Above all, development must be managed sustainably - financially, economically, environmentally and socially..."

The then Minister for Planning stated in relation to the Sub-Regional Strategy:

"...Sub-Regional planning is vital to the implementation of the Metropolitan Strategy... This draft North-East Sub-Regional Strategy...will provide certainty for the community, Local Government, industry and business by identifying areas for future growth, areas for conservation, items of infrastructure and key corridors..."

It should be noted that since its inception, Pittwater Council has accepted its responsibility in regard to these planning policies and those abovementioned State Government planning policies, strategies and the directions that preceded them.

In particular, Pittwater Council has worked with the State Government to investigate, plan and deliver the Warriewood Valley Urban Land Release, which is an award winning example of coordinated delivery of sustainable development as part of the orderly planning process.

The Preferred Project disregards the outcomes and targets of the Metropolitan, Sub-Regional and Warriewood Valley strategic planning with consequential impacts on infrastructure, employment, transport and in effect, sets asunder the balance between residential development, employment generating development, traffic and transport issues - all so closely analysed and planned for at the State, Sub-Regional and Local level.

In relation to employment alone, the substantial increase in population as a result of the Preferred Project alone and/or the additional population which would likely flow from the precedent its approval would set, would either result in a need to create more employment opportunities within the Warringah Peninsula (already a difficult task to cater for existing growth) or cause additional traffic movement to external employment areas on already over-congested road systems.

6.3 Infrastructure Provision

In assessing the application, it is essential to recognise the role that Pittwater Council fulfils as the “long term manager” for the area in terms of future development control, traffic management, compliance management, provision of services and infrastructure etc.

It is Council, long after the developer has walked away, that will be left facing the existing and incoming community as to inadequate open space, overused playing fields, congested streets, lack of parking, environmental issues and community expectations, should this Proposal proceed in its current form.

Local Infrastructure and Services

The provision of local infrastructure and services for the Warriewood Valley Urban Land Release, like many other land release areas with fractionalised ownership, requires a method of funding common infrastructure and services that the developers of large land release areas under single ownership (or owners consortium) would otherwise directly provide.

In the case of Warriewood Valley, a strategy and plan to provide appropriate infrastructure and services has been an integral component of the development and implementation of the land release process for the Warriewood Valley since commencement of the investigation, planning and implementation process in 1993.

Without a complete review of the Strategic Land Use and Infrastructure & Services planning carried out as part of an orderly planning process for the Warriewood Valley, it is not possible to determine the impact of additional unplanned development (as proposed by Meriton and/or that which would result from the precedent its approval would set) or the ability to provide expanded infrastructure and services without significant cost and amenity impacts.

Meriton does not address this issue at all, rather, it proposes that there will be virtually no requirements for additional infrastructure and services as a result of the increase in dwellings and residents it proposes or the significantly expanded rate of development in the Valley which would likely result from the precedent approval of the Preferred Project would create.

Provision of active open space is one clear example of the unsatisfactory nature of the Preferred Project. The Preferred Project does not intend to provide ANY additional active open space for the additional population (beyond that contained in the Warriewood Valley Planning Framework 2010). Rather it proposes that further load be placed on existing facilities.

State Infrastructure and Services

Additional funding of State Infrastructure and service projects necessary to support the Warriewood Valley Urban Land Release in particular, and other further intensification of development in Pittwater LGA and the Warringah Peninsula and Ingleside area, referenced in projects the Draft North-East Sub-Regional Plan.

Pittwater Council understands that this levy applies to rezoning of land in Warriewood Valley, Ingleside, Pittwater and other Peninsula Council areas to the tune of \$20,000 per additional dwelling. This levy would contribute towards the State Infrastructure necessary and planned to support development in the Sub-Region.

If the opportunity to collect the State Infrastructure Levy from the significantly increased dwelling yield proposed by Meriton is set aside, then it would be so inequitable as to be beyond comprehension to continue to levy other proposed developments in the Warriewood Valley in particular, and the Warringah Peninsula in general.

The Preferred Project does not acknowledge that the State Infrastructure Levy should be applied to the number of additional dwellings approved beyond the current LEP zoning allowance of 142 dwellings for the site.

Utilities

In general, utilities are provided through direct agreements between the utility provider and developers at direct cost to the developer.

The Preferred Project in part, denies responsibility for the delivery of utility services to a standard commensurate with contemporary development as a direct part of the development process at full cost to Meriton.

“Capping” of Warriewood Sewage Treatment Plant

Residential development surrounding the Warriewood Sewerage Treatment Plant (STP) was contingent upon Sydney Water “capping” the Warriewood STP to prevent the emanation of offensive odours, which otherwise embargoes that area (which includes the Meriton site) from residential development.

As for other infrastructure items, should Meriton be able to increase its dwelling yields substantially as proposed, and other developable areas within the STP Buffer Area retain their current development density, then Meriton's contribution per dwelling for capping of the plant will significantly reduce and in effect, be subsidised by other developers.

Should the Meriton Proposal proceed, it is appropriate in determining the application that an equitable contribution rate towards capping of the STP is applied.

6.4 Amenity

Amenity is considered in two ways – issues within the development internal to the site that will affect its future residents and external issues that result from the development and will impact on the local and the wider Pittwater community.

To ascertain the amenity impacts, various elements of the built form including its layout, height, bulk, scale and appearance of the buildings, its relationship with the internal road system, open space and parking provision and its overall presentation to adjoining properties and the streetscape have been considered.

This assessment focuses on the details contained in the Stage 1 Project Plan and translates those characteristics of the proposal across the remainder of the site.

In particular, the fundamental built design elements in Warriewood Valley are residential buildings that do not exceed 8.5m in height and have a 2 storey appearance. Both fundamental elements affect the amenity of future residents within the site and the future amenity of residents in the wider community.

Amenity – internal of the site

The liveability of the proposed dwellings would be severely diminished as a result of poor visual privacy, acoustic privacy, and utility of private open space areas currently proposed. This will affect the enjoyment of future residents in their home and undoubtedly affect their amenity. Further, safety and security measures can affect amenity and should be considered accordingly.

No provision has been made for delivery or removalist vehicles, or designated areas for car washing. Further, the layout of the basement parking levels, the parking spaces themselves and storage areas do not make manoeuvring and access of the spaces or storage areas relatively easy. Certainly, the location of the spaces for persons with a disability is dispersed within the parking levels, and when combined with the parking layout, makes these spaces difficult to find. The utility and relative ease of manoeuvring within these areas are added convenience features for residents typically contributing towards resident's enjoyment of the development. None of these features however, are evident in Meriton's Preferred Project and it is likely to increase traffic congestion within the road system as delivery/removalist vehicles will compete for the limited street parking spaces available.

30% of dwellings will not receive sufficient solar access into the principal living areas. These dwellings are typically in the ground level of the buildings, with south and south-west facing dwellings or having single aspect, and affect the thermal comfort of residents in these dwellings.

The private open space areas for the majority of dwellings are below the minimum area and dimensions required, and are subsequently grossly insufficient in their utility as private open space areas. Additionally, these areas in the dwellings facing south and south-west will be predominantly shadowed, further affecting the utility and enjoyment of these areas by residents.

Very limited opportunities are given to effective landscaping in the private open space areas. The ground floor units include courtyard areas with 2m wide planters, which are insufficient to support vegetation over 3-4m in height due to restricted root volume and the extent of shadowing from adjacent buildings within the development. This also will affect the amenity of future residents to these dwellings.

The central open space area, triangular in shape, will be surrounded by buildings. Whilst this area provides opportunities for a safe and secure area for children to play, or an area for social interaction, it will likely result in noise disturbance for residents of those buildings. Overshadowing, wind effects and noise from the surrounding buildings also detracts from the utility of this space for residents. Given the context of the space and the inappropriate landscape treatment proposed, the design and treatment of the central open space area does not provide the amenity for residents and visitors alike to want to sit in the western section of this area for social gatherings, or result in noise disturbances emanating from the eastern, grassed section of this area (earmarked for informal play).

A children's play area is to be located adjacent to the swimming pool/gym building, seemingly at the same location as the proposed ramp into the basement car park and is inappropriately located. Another area designated as an outdoor 'exercise station' is proposed in Stage 2, surrounded by an internal road and readily visible from the surrounding buildings. The utility of this visible space as an outdoor 'exercise station' is unlikely to have a broad appeal, particularly if the alternate was a central landscaped area incorporating tree and shrub planting.

Stage 1 provides 471 off-street parking spaces including 42 visitor spaces for 295 dwellings. There is a shortfall of 133 parking spaces, including 17 visitor spaces. This shortfall of 17 visitor spaces for 295 dwellings equates to almost 102 metres of kerbside parking. In addition, the proposal does not provide any designated washbay areas for car washing, storage areas for individual dwellings or any designated spaces for removalist or delivery trucks.

It may be assumed that visitor parking provision for the remaining 264 dwellings (for Stage 2) is at the same rate used for Stage 1, and amounts to 53 spaces (as compared to the 88 spaces required under Council's DCP).

It is envisaged that Stage 2 will also have a short fall of residential spaces based on pro-rata calculations as per Stage One. The shortfall for Stage 2 is estimated to be 119 spaces. This would result in a total shortfall of 252 spaces for Stages 1 and 2, which equates to approximately 1608m of overflow on-street parking into adjacent local streets creating an unacceptable adverse impact on the community.

Any deficiency in on-site visitor parking results in greater demand on parking in the street (or surrounding streets). The shortfall in off-street parking cannot be accommodated within the main internal road.

There are 'knock on' effects from shortfalls in resident parking and visitor parking, and street parking (within the internal road system), no provision for removalist trucks or areas for car washing associated with residential developments of this size. The resultant parking shortfall therefore, is detrimental to the whole development, greatly affecting the amenity of residents in the development.

The main internal road is not sufficient to cater for the amount of traffic generated by the 559 dwellings. Additionally, likely conflicts will arise between the various non-residential uses and residential dwellings. The resultant impact is increased traffic congestion within the site, leading to adverse amenity impacts for residents of the development.

Amenity – external of the site

a) Height of Buildings and visual impact:

In regard to the wider community, the 16 residential buildings, in Stage 1, are 3 to 5 storeys high, well above 8.5m in height and the design does not, in any way, give the appearance of being two storey maximum either from Macpherson Street or Boondah Road. The height proposed combined with the extent of cut and fill on site means that the buildings will dominate the streetscape along Macpherson Street (and later, Boondah Road), will be highly visible in the surrounding area and become the dominant feature in the skyline.

The visual impacts resulting from this development, adversely affects the wider Pittwater community, in that it significantly departs from the planning vision for Warriewood Valley in particular and the Pittwater LGA in general. These planning visions as encapsulated in the various planning documents and policies that govern development in Pittwater are the result of an orderly planning process that involved extensive community involvement and consultation.

b) Traffic issues:

The total shortfall in visitor spaces for 559 dwellings is 52 spaces (based on Council's DCP). Any deficiency in on-site visitor parking results in greater demand on parking in the street (or surrounding streets). The shortfall of 17 visitor spaces for 295 dwellings equates to almost 102 metres of kerbside parking. The total shortfall of visitor spaces for 559 dwellings is 52 spaces and equates to 312 metres of kerbside parking.

As discussed already, the main internal road is insufficient to cater for the amount of traffic generated by the 559 dwellings and has not capacity to provide the necessary kerbside parking. Additionally, there is no vehicular access to the rear of the development at the southern portion of the site (adjacent Boondah Road) resulting in inadequate access arrangements for emergency vehicles to access the part of the site where potential hazard currently exists. This is inconsistent with the RFS own requirements, under section 4.1.2 entitled "Specific Objectives for Subdivisions" of the *Planning for Bushfire Protection 2006* and Council's own bushfire risk management planning for the Warriewood Valley Land Release.

The combined shortfalls in off-street parking and kerbside parking results in increased demand on the limited, available kerbside parking in the surrounding streets that, in turn, leads to serious impacts on the local road network, causing traffic congestion as it places further demand on the limited, available parking along Macpherson Street, Boondah Road and adjoining streets. Traffic congestion in the local road network adversely affects the amenity of existing and future residents of this area.

The resultant traffic congestion and amenity impact of existing and future residents on surrounding development is not acceptable.

c) Infrastructure provision:

The development in Warriewood Valley is now over half completed. If the additional population as a result of this development (and the precedent it sets) requires additional road and footpath infrastructure it is unclear as to whether it can actually be provided without significant impact on amenity and safety and/or additional costs.

Likewise, there is a difficulty in providing land suitable for "active open space" in the Warriewood Valley area under current provision arrangements for the planned dwelling yields.

Obviously additional demand created as a result of significantly expanded development in Warriewood Valley would require large additional areas of active open space or increase the "load" on already deficient resources.

Any additional active open space needs to be located reasonably near to (and be available for the use of) future residents. There is a shortage of available land suitable for active open space in the vicinity without moving into areas of existing residential development (where the cost of acquisition would be excessive) or forfeiting the development opportunity for land otherwise suitable (and assigned for) residential or employment development.

The Meriton proposal does not address this issue at all, rather, it proposes that there will be virtually no requirements for additional infrastructure and services as a result of the increase in dwellings it proposes to build or the significantly expanded rate of development in the Valley which would likely result from the precedent approval of the Meriton proposal would create.

Provision of active open space is one clear example of the unsatisfactory nature of the Meriton proposal, The Meriton proposal does not intend to provide ANY additional active open space for the additional population (beyond that contained in the Warriewood Valley planning Framework 2010). Rather it proposes that further load be placed on existing facilities.

7.5 Community Expectations & Participation

“Warriewood Valley Land Release Area will be developed into a desirable urban community in accordance with the Warriewood Valley Land Release Planning Framework, and will include a mix of low to medium density housing with dwelling houses a maximum of two storeys in any one place, attached and detached dual occupancy dwellings, multi-unit housing, a neighbourhood focal centre, industrial/commercial development and open space and community services...Development will incorporate native canopy trees and vegetation to minimise the bulk and scale of development and enhance the new community with a high quality landscape character. Development will integrate with the landform and landscape.”

This vision statement is Pittwater Council’s vision for Warriewood Valley. This vision is expressed in the original planning strategy for Warriewood Valley, the *Warriewood Valley Urban Land Release Draft Planning Framework 1997*, and is based on the extensive community consultation process that was an integral part of the orderly planning process, which continues through to *Pittwater Local Environmental Plan 1993*, Pittwater 21 Development Control Plan and the current planning strategy entitled *Warriewood Valley Planning Framework 2010*.

Given this long-held vision, Pittwater Council developed statutory provisions ensuring that its vision for Warriewood Valley can be achieved. The community was consulted during the planning and preparation of the strategic documents that led to their adoption.

To this end, residents should be able to rely on what has been planned for the Warriewood Valley Release Area - within which they live and they should be confident that they will be made aware of and actively encouraged to participate in proposals for the Valley.

Warriewood Valley continues to be developed as a mix of low to medium density housing, of up to 25 dwellings per hectare at certain locations in the Valley. With the exception of the Anglican Retirement Village development (which was not part of the land release and was approved under the former Seniors Housing SEPP), the form and scale of the residential development in the Valley has generally been 2 storeys or, generally has the appearance of 2 storeys at the street frontage (that is along Macpherson Street, Garden Street and Warriewood Road).

A clear example of the relevance of community expectation as a valued component of the planning process is a recent determination by the State Government’s Joint Regional Planning Panel (Sydney East Region). In planning the Warriewood Valley Release Area, a small scale retail offering was identified as being one of the facilities that would be required for the new community. This retail offering would take the form of a focal neighbourhood centre, to provide dual purpose of serving the daily retail convenience and becoming a community/social hub for residents of and employees in the Warriewood Valley Release Area.

The Joint Regional Planning Panel (Sydney East Region) when determining the Development Application for the Focal Neighbourhood Centre with a substantially greater floorspace to that planned for in the Warriewood Valley strategic planning documents and Pittwater 21 DCP stated:

“The Panel notes that DCP21 has a range of 800 to 2,222m² GFA, and the Panel puts major weight on this size range. This is because buyers into the area are likely to have consulted the DCP and made their decision on the basis that the maximum size of a shopping centre on the site will be 2,222m². To allow a shopping centre that is 75% larger than the maximum size indicated in the DCP, seems to us to breach the faith of those who relied on the DCP being upheld.”

Clearly the Meriton proposal varies widely from the community expectation for development of the site as encompassed in Pittwater Council's vision statement. Further, the precedent impact of the Meriton proposal would cause such a significant change to the form and scale of the envisioned style of development both on individual sites and for the Valley as a whole that it would be impossible to conclude that the outcome was consistent with that derived from the extensive community consultation process or was in any way consistent with established community expectation.

8.0 SUMMARY OF ASSESSMENT ISSUES

8.1 Permissibility and Density

- 8.1.1 The site is zoned 2(f) (Urban Purposes – Mixed Residential) under *Pittwater Local Environmental Plan 1993* as amended (PLEP). Clause 9 and the zoning table for the 2(f) Zone indicate that there is no development permissible in the Zone **without consent**. The table lists the following uses as being permissible **only with Development Consent**:

Residential buildings; associated community and urban infrastructure

Any other purpose, other than *residential buildings, associated community and urban infrastructure* is **prohibited**.

It is reasonable to contend that the residential component of the development would be either "multi-unit housing" or "residential flat buildings" as defined in PLEP 1993. Whilst not contained in the 2(f) Zone specifically, these could be characterised as "residential buildings" and therefore, would be permissible with consent.

The "childcare" facility falls under the definition of "educational establishment", which is separately defined under Pittwater LEP, and the use is not expressly listed as permissible development in the 2(f) zone. The "childcare" component is not permitted in the 2(f) Zone.

- 8.1.2 Clause 30C of Pittwater LEP prescribes a maximum dwelling yield of 142 dwellings for Buffer Area 3. The proposal comprises 559 dwellings, exceeding the maximum number permitted (by Clause 30C) by 417 dwellings.

Meriton, in justifying the increase in density, provides the following statement from the Preferred Project Report (p53):

"It is understand (sic) the Department of Planning are undertaking a review of the existing planning framework applying to the subject site and other sectors and buffer areas in the Warriewood Valley and the capacity to accommodate additional dwellings."

This statement is insufficient justification for requesting a substantial increase in density particularly in considering the resultant impacts likely from the increased density.

8.2 Built Form and Appearance

- 8.2.1 In terms of Stage 1, 3 x 3 storey buildings, greater than 10m in height, are to front Macpherson Street. Their design ensures that the buildings will be read as 3 storey buildings. Although setback 6.5m from Macpherson Street, the basement parking structure will encroach within this front setback area, resulting in minimal landscaping and little opportunity for canopy trees to be established along this street frontage that would have otherwise assisted in reducing the visual bulk and scale of these 3 storey buildings.

The taller buildings, 4 to 5 storeys in height will be behind these 3 storey buildings. The top levels of the taller buildings will be visible from the locality and from Macpherson Street. The development will also be highly visible from adjoining sectors (11 and 12) and from the Boondah Road sportsfields.

Additionally, the proposed setback from the main internal road is less than the 4m setback. This minimal setback area is insufficient for landscaping and canopy trees, and does not assist to minimise the visual bulk and scale of these buildings.

- 8.2.2 The single storey, child care centre building is to be built directly on the front property boundary and ignores the 6.5m front building setback established along Macpherson Street.

8.3 Common Open Space Areas

A landscaped area behind Buildings A, B and C replaces the internal road that provided vehicular access directly to the pedestrian entrances into Buildings D and E. The planting proposed in this area is limited to the pedestrian path meandering in a direction parallel to Macpherson Street. The loss of the internal road results in access difficulties for emergency services and delivery/removalist vehicles to efficiently service future residents of Buildings D and E, particularly as street parking along Macpherson Street will be limited and the nearest parking spaces available will be within the main internal road (within the development) located some distance away after the garbage turning area (beside Building F).

This common open space area comprises two distinct areas – a shade garden at the western end comprising palms, trees and 300m² area of crushed sandstone; while a large turfed area earmarked as an active area such informal ball sports, is in the eastern half. Concern is raised to the presentation of the shade garden, the use of materials and selection of plant species particularly as it is located adjacent to the 4 and 5 storey buildings.

This grassed area, earmarked for active informal play, is surrounded by 4 and 5 storey buildings, and any noise generated from any activity in this area (particularly children playing) will be amplified and audible to dwellings within these buildings.

The buildings surrounding this triangular shaped, grassed common area together with the scale of this space results in a canyoning-effect affected by wind and noise such that it may affect the amenity of residents in these dwellings.

Additionally, a children's play area is proposed outside the swimming pool/gym building at the same location as the proposed ramp into the basement car park. Siting a children's play area at the most inappropriate location seems ludicrous given the heightened risk and conflict placed between users of these areas.

An island, containing an 'exercise station', is proposed in Stage 2 as another common open space area for activity. This area will be surrounded by an internal road and readily visible from the surrounding buildings. Given its visibility from the internal roadway and surrounding dwellings, the utility of this space is questionable. There is a lack of communal/ passive open space area at this portion of the development and the island could be better utilised as a central landscape area incorporating tree and shrub planting, resulting in a higher aesthetic appeal to a broader range of users that overlook this space.

8.4 Car Parking and Public Transport

Council's Principal Engineer, Roads and Transport, has reviewed the public transport issues and advises as follows:

There is no satisfactory response to the Minister of Planning's requirement to show how future residents of the development would be able to make non-car choices of travel modes and appears to simply assume that the existing bus service will be improved in the future. Council does not agree with the NSW Transport and Infrastructure support for a low level of visitor parking and a reduced resident parking rate for this development.

Pittwater 21 DCP must remain as the operative control as this takes into account specific local influences, in particular remoteness of the area, poor provision of public transport and hence a high reliance on private vehicles. The report does not address such issues affecting the accessibility to/provision of bus services to the development such as:

- A footpath only exists for 250 metres of a 1km length of footpath between the site at Boondah Road, and the main transport corridor 1km away in Pittwater Road;
- A section of the existing route between Pittwater Road and Boondah Road that crosses Narrabeen Creek which is subject to frequent flooding and unlikely to be raised in the immediate future and not until sufficient Section 94 Contribution funds are collected to facilitate construction;
- Lack of off-peak, late night and weekend bus services;
- Lack of services to many areas within Pittwater, Warringah and adjacent areas;
- Crowding of buses, long travel times, lack of bus stop facilities including shelters;
- Need to use multiple, exposed interchanges to reach destinations;
- No direct convenient cross regional bus services to Chatswood and Macquarie;
- Existing road congestion on the main road system, long transport travel times with limited proposals to upgrade main roads in SHOROC region to alleviate congestion.

8.5 Road Network and Traffic Management

Council's Principal Engineer, Roads and Transport, has reviewed the Traffic Impact Assessment (prepared by Halcrow) and advised as follows:

- That the application does not demonstrate that the proposed roads in the development comply with the requirement of the Warriewood Valley Roads Master Plan;
- That the assessment of traffic impact is not valid, as it is based on the assumption that various road intersections (notably Pittwater Road/ Warriewood Road and Ponderosa Parade/ Mona Vale Road) are to be upgraded as part of the Traffic component of the Warriewood Valley S94 Contributions Plan, when in fact these items are proposed to be deleted from the Section 94 Plan to address the Minister of Planning's direction to reduce contribution rates;
- That the report does not propose measures to ensure pedestrian access is provided between the development site and the Regional Transport Corridor (Pittwater Road) which passes along a road that is subject to regular closures to pedestrians/vehicles due to flooding;
- That the report does not consider measures to ameliorate the impact of increased traffic volumes generated by this development on the roads and intersections within the Valley;
- That the report does not consider the impact on the road system of Warriewood Valley of increased traffic volumes, should the development density proposed for this site be adopted by future developers for the still undeveloped areas within the Valley.

8.6 Flooding, Drainage and Surface Water Management

Council's Project Leader - Stormwater Management, and Team Leader – Catchment Management and Climate Change, have reviewed the flooding, drainage and surface water management as reported in the Stormwater and Environmental Management Plan – Buffer Area 3 – Warriewood Valley – 14 to 18 Boondah Road, Warriewood (prepared by Brown Consulting) and advised as follows:

The Part 3A Application documentation currently does not fully address Key Issue 14 of the Director General's requirements.

Additionally, inconsistencies with the plans themselves, the lack of detail on the architectural and civil/infrastructure plans, make a definitive assessment of flood risks and comparison between previous and current proposals difficult.

8.7 Impacts from Climate Change (Sea Level Rise)

Council's Project Leader – Floodplain Management, and Team Leader – Catchment Management and Climate Change, have reviewed the Brown Consulting Report accompanying the Preferred Project Report and advised as follows:

The strategy of compensatory works, which balances the cut and fill within the site to ensure there is no net loss of flood storage below the level of the 1% AEP flood level, is considered reasonable from a floodplain management perspective where the minimum fill level in areas to be filled is at 4.32m AHD as stated in the Brown Consulting Report (Appendix F). Notwithstanding, significant environmental impacts from the excavation work for the flood storage area are likely on the Warriewood Wetlands and its Endangered Ecological Communities as well as the riparian corridor. Such a compromise is an untenable solution particularly as the Wetlands are a unique and valuable ecological community.

It is acknowledged that the current application does not consider the impacts of a probable maximum flood with a 2100 Climate Change Scenario. The recently released NSW Government Guideline entitled "Flood Risk Management Guide — incorporating sea level rise benchmarks in flood risk assessments" (DECCW, August 2010) now requires an assessment of the sea level rise impacts on the probable maximum flood.

This assessment will be incorporated into all new Flood Studies, including the Narrabeen Lagoon Flood Study. As this is such a recently released guideline, Pittwater Council currently does not require the impacts of a probable maximum flood with a 2100 Climate Change Scenario to be assessed as part of this development process. Nevertheless, a community flood emergency response plan does not appear to have been provided by the applicant, and will be required to address the impacts of a probable maximum flood in and around the entire site.

8.8 Ground Water Management

The Hydrogeological Assessment determines that groundwater is an issue for the proposed development in that "the basement carpark will extend into bedrock and will also intersect the groundwater".

There is no quantification of groundwater, although groundwater movement is partially considered, with indications that groundwater moves across the site from north east to the Warriewood Wetlands. Additionally, no assessment of groundwater quality impacts or procedures for the monitoring for groundwater quality has been detailed/provided, or any demonstration of commitment to monitor the groundwater regime during the construction and operational phases of the development. Further no evaluation has been made of the potential for shallow groundwater impacts on the bio-retention basins.

Key Issue 15 of Director-General's Requirements, to consider ground water management, still has not been adequately addressed.

8.9 Bushfire

Council's Natural Environment and Education Manager has reviewed the Bushfire Assessment Report (dated August 2010) and advised as follows:

- 8.9.1 The Asset Protection Zone still does not comply with *Planning for Bush Fire Protection 2006*. Additionally, significant environmental impacts as the proposed Asset Protection Zone are located:
- in an endangered ecological community (being the Warriewood Wetlands) and the impacts are unlikely to have been considered by the Preferred Project in accordance with the *Threatened Species Conservation Act*,
 - outside the development site and does not comply with RFS *Planning For Bushfire Protection 2006*, and
 - will reduce the adequacy of compensatory plantings.
- 8.9.2 Significant changes to the Preferred Project's Concept Plan has meant the relocation of the water quality basin 'B' and deletion of a continuous vehicular access to the rear of the development at the southern portion of the site (adjacent Boondah Road), resulting in inadequate access arrangements for emergency vehicles to access the part of the site where potential hazard currently exists. This is inconsistent with the RFS own requirements, under section 4.1.2 entitled "Specific Objectives for Subdivisions" of the *Planning for Bushfire Protection 2006* and Council's own bushfire risk management planning for the Warriewood Valley Land Release.

8.10 Flora

- 8.10.1 Council's Natural Environment and Education Manager has reviewed the revised Flora and Fauna Assessment Report (dated August 2010) and advised that the likely impacts on the Swamp Sclerophyll Forest and Freshwater Wetland communities, including existing trees/vegetation, and the Bangalay Sand Forest have not been satisfactorily carried out in accordance with the *Threatened Species Conservation Act*. Additionally, no assessment has been carried out on the likely impacts on the large wetland reserve adjacent to the site nor the impact on the proposed buffer zones as a result of the excavation works.

8.10.2 Swamp Sclerophyll Forest and Freshwater Wetland

The majority of the Swamp Sclerophyll Forest and Freshwater Wetland (both Endangered Ecological Communities) are proposed to be removed or modified:

- 33% of the 6023m² of Swamp Sclerophyll Forest being removed (or 2003m²),
- another 20.7% of Swamp Sclerophyll Forest will be modified (equating to 1247m²), and
- 40% of the 905m² of Freshwater Wetland will be removed (or 362m²).

These figures however, are conservative as both Endangered Ecological Communities are in the footprint of the proposed "flood storage area". The revised Report (p20) confirms that actual area for the flood storage area has not been quantified and in effect, the actual quantity of trees and native vegetation to be removed has not been quantified.

In addition, the volume of groundwater displaced as a result of the large and deep seated impervious areas associated with the basement carpark structure(s) along with the proposed deep well dewatering system will alter groundwater flows across the site and cause a groundwater draw down impact beyond the perimeter of the buildings.

This will adversely impact the ability of the development to provide and sustain native flora habitat given the loss of deep soil planting areas and impact on groundwater dependent native vegetation communities.

8.10.3 *Bangalay Sand Forest*

A number of *Angophora Costata* trees currently exist around the edges of the site, in particular along the Boondah Road reserve nature strip, and is a stand of the last remaining remnant *Angophoras* in the Warriewood Valley floor and as such has distinct genetics. This area, including the understorey, has now been classed as Bangalay Sand Forest.

No assessment, particularly the 7 Part Test, has been carried out.

8.10.4 *Impact on Warriewood Wetland*

(a) Asset Protection Zone

The Asset Protection Zone is not consistent with *Planning for Bushfire Protection 2006*. Incorrectly applying the inner protection zone to Warriewood Wetlands (as the hazard) rather than the proposed buildings (the asset) and then moving towards the asset, prevents the wetland protective measure of a fully vegetated 10m buffer to the Warriewood Wetland and appropriate native landscaping to minimise environmental impact to the wetland. Failure to provide this buffer could seriously impact the Ecological Endangered Communities in the Warriewood Wetland and the threatened species that utilise this area.

(b) Uncontrolled Discharges

The proposal indicates uncontrolled discharges to the Warriewood Wetlands. No assessment has been made on the quality of the groundwater and may seriously pollute the surface waters of the Warriewood Wetland. No amelioration or treatment details for this groundwater quality are provided in the assessment. Also, no impact assessment of the required excavation for flood storage has been provided in relation to potential problems on the adjacent wetlands.

Failure to adequately manage this and provide effective ongoing mitigation may cause a significant impact on the adjacent wetlands reserve. The area is likely to be invaded by exotic species which will quickly spread to the adjacent Warriewood Wetland and there is a threat of erosion and movement of sediment to the wetlands.

Given that Warriewood Wetlands is an Endangered Ecological Community, the deficiency in such assessment or mitigation continues to be a significant concern.

(c) Riparian Zone and Use as Offset

The initial "10m" wetland buffer developed between Council, DIPNR and DECCW in 2003 has been retained in this proposal as has the buffers to the creek.

However, a zone known as the "core riparian zone" of 20m adjacent to the southern wetland buffer has been created. This core riparian zone is mainly within Council's Warriewood Wetland Reserve as such any works within this zone would be at Pittwater Council's direction. Existing Council reserve land cannot be used as an offset against environmental impact on private land as a result of the proposal.

8.11 Fauna

No assessment has been made to the issue of companion animals impacting on the threatened species that utilise significant Warriewood Wetlands adjacent to 14-18 Boondah Road. Measures regarding the management of companion animals must be developed to ensure that no companion animals migrate from the proposed residential site into the wetlands. This must include the replacement of all trees to be removed during the development.

Exact details of habitat replacement on the site (i.e. artificial substrates, nest boxes etc) have been provided.

8.13 Assessment on Impacts from Excavation Works

No details are provided on the scale, extent or depth of excavation required for the flood storage area. This was specifically requested by the Department in response to the issues raised in the exhibition period.

Additionally, the impact of such a large excavation on either the site itself or the large wetland reserve adjacent to the site has not been addressed, nor the impact on the proposed buffer zones, landscaping or stormwater treatment structures. No sediment and erosion control plan has been submitted, or areolation plan for when it is completed.

8.14 Ecologically Sustainable Development (ESD)

Council contends that this issue is still outstanding and Meriton's Preferred Project has not addressed Key Issue 11 of the Director-General's Requirements to "...*demonstrate that the proposal has been assessed against a suitability accredited rating scheme to meet industry best practice.*"

8.15 Concluding Comments

As mentioned previously, there is a statutory requirement for Meriton, as the applicant, to address all the issues raised in the submissions as well as issues raised by the Department of Planning under Section 75H(6) of the *Environmental Planning and Assessment Act*.

Council challenges the validity and comprehensiveness of Meriton's Preferred Project Report in addressing the issues raised by Council in its Submission of 15 June 2010 and the Director General's requirements.

Additionally, the Department has advised that the Strategic Review of the Buffer Areas will be a matter for consideration for this application.

Given the issues raised with the Draft Report on the Strategic Review, the lack of opportunity afforded Council to review any commentary or Draft recommendations ,including traffic and transport matters and given Meriton's reliance on the Strategic review , the assessment by Council and the Community of the Preferred project has been prejudiced.

Council's submission to the Department on the Preferred Project recommended , that the Draft Strategic Review should not be given any weight in the assessment of Meriton's Preferred Project MP 09_0162 for 14-18 Boondah Road Warriewood, and that given the reliance by Meriton on the Strategic review outcome the application should be refused.

9.0 SUSTAINABILITY ASSESSMENT

9.1 Supporting & Connecting our Community (Social)

- 9.1.1 The Part 3A Application seriously erodes the community's expectations of what was to be developed on this site and the level of infrastructure. The design, scale, height and orientation of the buildings do not achieve reasonable amenity for those future residents living in these dwellings, and does not enhance the health and wellbeing of residents. The development at the density proposed provides no net community benefit

9.2 Valuing & Caring for our Natural Environment (Environmental)

- 9.2.1 The design, scale, height and orientation of the buildings do not achieve reasonable amenity for those future residents living in these dwellings, and does not have appropriate regard to impacts on the local environment- wetlands, flora and fauna and water management.

9.3 Enhancing our Working & Learning (Economic)

- 9.3.1 The Part 3A Application seriously undermines from the orderly planned development process implemented for Warriewood Valley by Council based on the Warriewood Valley Framework. The proposal for more dwellings in the Valley, without consideration for additional employment opportunities or increased public transport/alternative transport provision does little in assisting Council to achieve employment containment (Closer to home target, as set by the NSW Government).

9.4 Leading an Effective & Collaborative Council (Governance)

- 9.4.1 There is no statutory requirement to exhibit the Preferred Project, the subject of this report. This report highlights the issues and deficiencies with the Preferred Project identified by Council officers in preparing a Submission to the Department of Planning. In particular the lack of finalisation of the Strategic review of the Buffer Area by the DoP has not been finalised and the council has therefore not been afforded the opportunity to assess the merion's proposal against the Strategic Review.

Nonetheless, uncertainty remains on the level of transparency to the decision making process given that the Planning Assessment Commission may not be not an 'open' forum.

9.5 Integrating our Built Environment (Infrastructure)

- 9.5.1 The Part 3A Application significantly effects the amenity of residents, due to the scale of development proposed on the site, inconsistent with planning outcomes and vision for a sustainable community.

10.0 EXECUTIVE SUMMARY

- 10.1 Meriton has lodged, with the Department of Planning, a Preferred Project Report and plans in response to the issues raised in Submissions following the close of the exhibition period on 15 June 2010 to the Major Project Application MP 09_0162 for 14-18 Boondah Road Warriewood.
- 10.2 On 8 October 2010, Council forwarded its Submission to the Preferred Project MP 09_0162 to the Department of Planning.
- 10.3 This report highlights the deficiencies and issues raised in Council's Submission dated 8 October 2010, underpinned by the five (5) principal areas of concern:
- Equity and Precedent
 - Departure from the Orderly Planning Process
 - Inadequate infrastructure and services provision and funding
 - Impact on Amenity
 - Community expectation and participation.
- 10.4 The issues, summarised in this report, highlight the deficiencies with the Preferred Project Report and particularly as the issues raised by Council in its original Submission (dated 15 June 2010) were not addressed, are again raised in Council's latest Submission.

RECOMMENDATION

That the submission (as tabled), as summarised in this report, outlining Council's areas of concern arising from its assessment of the Meriton Apartments Pty. Limited Preferred Project Report for 559 residential dwellings and associated development at 14-18 Boondah Road, Warriewood, be noted.

Report prepared by
Liza Cordoba, Principal Officer Land Release

Lindsay Dyce
MANAGER, PLANNING AND ASSESSMENT



Walter Gordon
 Planning and Development Manager
 Meriton Apartments Pty Ltd
 Level 11, 528 Kent Street
 SYDNEY NSW 2000

Contact: Andrew Smith
 Phone: 02 92286369
 Fax: 02 9228 6455
 Email: andrew.smith@planning.nsw.gov.au
 Our ref: MP09_0162
 File: 09/00541-2

Dear Mr Gordon

**Concept Plan and Stage 1 Project Application for a residential development,
 14-18 Boondah Road, Warriewood (MP 09_0162)**

I refer to your Environmental Assessment (EA) for the proposed residential development in Warriewood Valley. The application has been placed on public exhibition and the Department has received submissions from Government Agencies, Pittwater Council and the public.

I note that copies of submissions received to date have been forwarded to you pursuant to Section 75H(5) of the *Environmental Planning and Assessment Act, 1979*. I have also enclosed a number of late submissions for your consideration.

The Director General, pursuant to Section 75H(6) of the Act, requires that you provide a response to the issues raised in these submissions, in addition to addressing any issues raised by the Department of Planning.

The Department has reviewed the submissions received and considered the proposal as detailed in the EA. The Department has identified a number of key issues with the proposal relating to environmental constraints, building layout and separation, future residential amenity and infrastructure. These issues are outlined in **Schedule 1**. The Department will also require additional information to complete its assessment as outlined in **Schedule 2**.

It is considered that a Preferred Project Report (PPR) should be prepared identifying how you have addressed issues raised by the submissions and the Department. The PPR must also demonstrate measures to minimise any environmental impacts of the proposal. A revised Statement of Commitments is also to be provided incorporating any amendments following your response to the submissions.

As you are aware, the Department has also commissioned an independent strategic review of the immediate locality relating to the potential for increased residential densities. The outcome of this review will also be considered in the Department's assessment of the application.

Departmental Officers are available to discuss the issues raised in the public submissions and this letter, and in this regard, please contact Andrew Smith, Team Leader, Metropolitan Projects on (02) 9228 6369 or email andrew.smith@planning.nsw.gov.au

Yours sincerely

A handwritten signature in black ink, appearing to read 'Michael Woodland', followed by the date '15/7/2010' written in a similar style.

Michael Woodland
 Director, Metropolitan Projects

NSW Department of Planning – Development Assessment & Systems Performance – Metropolitan Projects
 23-33 Bridge Street, Sydney NSW 2000 - GPO Box 39, Sydney NSW 2001
 Telephone: (02) 9228 6111 Fax: (02) 9228 6455 www.planning.nsw.gov.au

SCHEDULE 1 - DEPARTMENT OF PLANNING KEY ISSUES

1. Environmental constraints and future developable area

The agency submissions have identified that the site is affected by a range of environmental constraints relating to vegetation corridors, riparian setbacks, impact to water quality, flooding and high bushfire risk.

A review and further analysis of the capacity of the site should be provided, giving particular consideration to the submissions from the NSW Office of Water and the Department of Environment Climate Change and Water. Your response should address the inconsistencies regarding the width of the riparian land including the Creek Riparian Zone, land uses within these zones and inconsistencies in the flora and fauna report submitted with the EA.

It is noted that the outcome of this analysis may require some reduction to the developable area for the proposal.

2. Building layout, separation, future residential amenity and open space

Concern is raised regarding the proposed building layout, building separation, overshadowing, provision of open space and resultant impacts on future residential amenity of the proposal. Further assessment of these issues is required to justify the density being proposed by the Concept Plan and Stage 1 Project Application and some reduction to the scale of the proposal may be required.

In particular, the design and layout of the proposed 5 storey buildings (D, E, F and G) in the Stage 1 Project Application, and Concept Plan Buildings K and M should be reviewed in terms of building separation, solar access (for all apartments and open space) and amenity to future residents. Any amended layout should clearly demonstrate compliance with the provisions of the *Residential Flat Design Code (RFDC)* in regards to building separation and solar access (calculated for each building in the Project Application). The Concept Plan should also demonstrate buildings envelopes in future stages are capable of achieving adequate solar access consistent with the RFDC.

The shape and proportions of the proposed triangular open space between Buildings D, E, F and G also requires redesign to improve the utility and size of the area and reduce the impact of overshadowing. The required changes may involve amendments to the proposed footprint, layout and height of these buildings. This may involve options for potential redistribution of floor space to other parts of the site.

3. Traffic generation and road capacity

Further consideration is required in relation to the capacity of the local road network and road intersections to accommodate the additional traffic to be generated by the significant increase in density for the site.

In addition, the size and capacity of the proposed "local road" which is to be dedicated to Council should be reviewed having regard to the comments from Council, the RTA/SRDAC and the relevant provisions of the Warriewood Valley Roads Master Plan (2006 updated version).

4. Section 94 Contributions, Works-in-kind offsets and provision of infrastructure

Further clarification of Section 94 Contributions and provision of infrastructure for the site is required. The EA has not clearly identified proposed infrastructure works that are to be provided as a direct result of the proposal and works which are proposed to be offset against Section 94 contributions as works-in kind. Any works proposed to be offset against monetary Section 94 contributions should be fully justified.

It is also noted that the area of the site to be dedicated as public open space is the same as that proposed to be dedicated pursuant to the current Development Consent. The current proposal significantly increases the density on the developable area without a comparable increase in open space. A detailed justification for this disparity should be provided and should include consideration of the provision of any additional land dedications either on site or off-site for public open space, having regard to Council's controls, and in particular, the recently adopted *Warriewood Valley Planning Framework 2010*.

SCHEDULE 2 - ADDITIONAL INFORMATION REQUIRED

In addition to matters raised in **Schedule 1**, the following additional information is required:

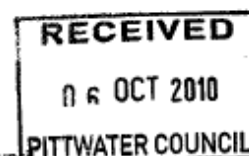
- The EA should address the "Warriewood Valley Planning Framework 2010" adopted by Pittwater Council on 3 May 2010.
- The following additional plans are required:
 - Plans, long sections and cross sections detailing the relationship of proposed finished ground levels and basement level with existing natural ground levels.
 - Plans and sections indicating the extent of cut and fill required across the site and adjacent all site boundaries, including adjacent the Fern Creek creekline corridor. This should include calculations of proposed fill to be placed on site.
 - The EA needs to adequately assess the potential impacts on the cut and fill on Fern Creek, the Warriewood Wetlands, the protection and rehabilitation of riparian land and local groundwater conditions.
- Additional details identifying potential impacts associated with the excavation, cut and fill.
- Confirmation that the pervious area percentage for the site (being the area of land excluding the Fern Creek creekline corridor) meets the 50% requirement and should include the footprint area of all basement car parking, roads, access driveways and paths as impervious area (based on a developable area of 7.05 hectares which excludes the creekline corridor).
- Additional photomontages prepared at eyelevel from Macpherson Street and Boondah Road looking into the site from the public domain, particularly at the intersection of the new public road with the aforementioned streets between the Daycare Centre and Building A, Buildings C and H, Buildings J and N, Buildings N and O (along the alignment of "Local Road").
- A schedule of unit sizes for all apartments in Stage 1 to demonstrate the units meet the minimum internal unit sizes within the RFDC.
- A solar access schedule for all apartments in Stage 1 to demonstrate the units meet the solar access provisions within the RFDC.
- The setback of Buildings A, B, C, D, E and H from the internal access roads should be increased to provide sufficient area for street trees and landscaping.
- A groundwater management plan/assessment addressing the post construction phases and the environmental impacts on the discharge of untreated groundwater to the wetlands.

Agency issues / Consultant Reports

- The Bushfire Risk Assessment is to be updated to assess the current proposal and increased residential densities and commercial facilities including the childcare centre. Any increase in the extent of APZs will require further environmental assessment.
- The Flora & Fauna Report contains a number of inconsistencies that need to be addressed to provide clarity to the environment protection measures, including:
 - Recommendations should include environmental management measures to be implemented before, during and after construction and to more clearly delineate what environmental protection measures will be undertaken for each stage of the development.
 - Reference should be made to 'Implement the Vegetation Management Plan prepared by Total Earth Care (Appendix AA)'.
 - The SOC should be revised in light of the updated Bushfire Risk Assessment Report.
- There are a number of inconsistencies in the EA in relation to the width of the riparian land (including the Creek Restoration Zone) around the Warriewood Wetland and proposed uses (Bio-Retention basin, and pathway). It is noted that the proposed Bio – Retention Basins are the same size as those approved under the current Development Consent (DA N0526/08). Confirmation that the location, capacity and design of these basins will have an appropriate increased capacity commensurate with the increased density.
- It appears the Brown Consulting Stormwater and Environmental Management Plan 2010 has not fully taken into consideration the increase in proposed density and site cover and reduction to impervious area arising from the current proposal. This report should be appropriately updated and include updated figures and calculations where required.
- The Environmental Site Assessment Report should confirm the site can be remediated to a standard which is suitable for the use of the land for the proposed residential and childcare uses.



Hon Tony Kelly MLC
Minister for Planning
Minister for Infrastructure
Minister for Lands
Deputy Leader of the Government in the Legislative Council
Leader of the House in the Legislative Council



Mr Mark Ferguson
General Manager
Pittwater Council
PO Box 882
Mona Vale NSW 1660

Our ref: Min 10/2771 and
10/3880

28 SEP 2010

Dear Mr Ferguson

I refer to your correspondence in relation to the proposed residential development at 14-18 Boondah Road, Warriewood (MP09_0162).

As you know the determination of the Concept Plan and Project Applications for Warriewood have been delegated to the Planning Assessment Commission as reportable political donations have been received in relation to the project.

The Commission has already indicated that it will meet with Pittwater Council to hear its concerns in relation to this proposal. It is also open to the Commission to meet with others who have made submissions on the proposal, although I am sure Council will do a good job of advocating the views of its residents.

I can assure you that the views of the Council and local community will be closely considered throughout the assessment and decision making processes.

I trust this information is of assistance.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Tony Kelly'.

Tony Kelly MLC
Minister for Planning





C11.3 Draft Environmental Planning & Assessment Regulation 2010

Meeting: Planning an Integrated Built Environment Committee

Date: 18 October 2010

STRATEGY: Land Use & Development

ACTION: Monitor legislative and regulatory changes relating to land use planning

PURPOSE OF REPORT

This report is to inform Council of the exhibition of the Draft Environmental Planning & Assessment Regulation 2010 and to provide an overview of the main changes that will be brought about through its operation. This report seeks a Council resolution to forward the attached submission to the Department of Planning.

1.0 BACKGROUND

- 1.1 Draft Development Assessment Guidelines were released by the Department of Planning in August 2009 and reported to the Council meeting on the 21st of September 2009. The Guidelines provided detail on proposed changes to the Environmental Planning & Assessment Act and Regulations as part of a series of planning reforms to promote best practice in the preparation and assessment of development applications.
- 1.2 The key changes proposed in 2009 included: removal of the “stop the clock” provisions; revised assessment timeframes of 50, 70 and 90 days, reduced timeframes for receiving responses from concurrence authorities and increased information and guidance for applicants at the pre-application stage.
- 1.3 The Draft Development Assessment Guidelines were exhibited in 2009 to allow feedback and comments from relevant stakeholders.
- 1.4 The Environmental Planning & Assessment Regulation 2000 is currently due to be automatically repealed under the provisions of the Subordinate Legislation Act 1989 on the 1 September 2011. Subsequently a new Environmental Planning & Assessment Regulation is required.
- 1.5 The Draft Environmental Planning & Assessment Regulation 2010 has been released, along with a regulatory impact statement, and is currently on exhibition until 5 November 2010.
- 1.6 While the majority of provisions in the Environmental Planning & Assessment Regulation 2000 are carried over to the Draft Regulation 2010 without significant amendment, the Draft Regulation 2010 has been drafted with substantive consideration for the planning reforms exhibited in the Draft Development Assessment Guidelines in 2009 and issues raised through the consultation process.

- 1.7 It is noted that not all of the proposed reforms that were exhibited in 2009 have been included in the Draft Regulation 2010 and many of the included reforms have been modified.
-

2.0 ISSUES

- 2.1 Comment on the Draft Environmental Planning & Assessment Regulation 2010 has been divided into the following relevant topics:

- Part 4 Development Application Assessment;
- Designated Development;
- Fees & Charges;
- Planning certificates;
- Part 5 Assessment;
- Development Control Plans;
- Development Contributions;
- Other Issues (including Existing Use Rights, Fire Safety & the BCA)

2.2 Part 4 Development Application Assessment

- 2.2.1 The Draft Environmental Planning & Assessment Regulation 2010 includes a number of provisions that would change components of the development assessment process undertaken by Council in accordance with Part 4 of the Environmental Planning & Assessment Act 1979.

- 2.2.2 Council would maintain the ability to reject applications within 14 days of lodgement if they are incomplete; however the Draft Regulation requires reasons for rejection to be provided in writing to the applicant. It is noted that this requirement is consistent with Council's existing practice.

2.2.3 *Timeframes for the assessment of Development Applications*

- 2.2.3.1 Deemed refusal timeframes for designated development, integrated development, or development involving concurrences, JRPPs, IHAPs or SEPP 65 panels would be revised to 90 days. Deemed refusal timeframes for all other applications would be revised to 50 days.

2.2.4 *'Stop the Clock'*

- 2.2.4.1 The Draft Regulation would only permit the clock to be stopped for additional information requested within 21 days of a DA being lodged. The applicant would have a maximum of 21 days in which to provide the information, after which the clock would automatically be restarted.

- 2.2.4.2 Concurrence authorities would also have 21 days to respond (from when a DA has been submitted to Council, not from when they receive the referral), unless we 'stop the clock'; in which case they would have 21 days from when the clock restarts.

- 2.2.4.3 Requests for additional information from concurrence authorities would also have to be made within 21 days of the DA being lodged with Council and the clock would only be permitted to stop for a maximum of 21 days.

- 2.2.4.4 For any DA the clock would only be able to be stopped once.

- 2.2.4.5 It was previously proposed under the Draft Development Assessment Guidelines (2009) to completely remove 'stop the clock' provisions, which would have severely reduced the ability for Council officers to negotiate outcomes with applicants.
- 2.2.4.6 While the proposed changes under the Draft Regulation 2010 are more acceptable than those previously proposed, negotiation will still be limited by the proposed 21 day time constraint. In the 2008-09 performance monitoring period the average number of stop the clock days for development applications being assessed by Pittwater Council was 55. It is likely that there will be circumstances where the provision of additional information cannot realistically be delivered within the prescribed period and the proposed Regulations could therefore result in an increased rate of refusal or poorer development outcomes.
- 2.2.4.7 Increased refusals may also lead to an increase in appeals to the Land and Environment Court and a subsequent increase in Council's legal budget.
- 2.2.4.8 If under the new Regulations Council does not enforce the 21 day time limit for the submission of additional information, there may be an increase in the Council's processing time for development applications and a failure to meet the statutory assessment timeframes.
- 2.2.4.9 Also of concern is the proposed reduction in the timeframe for requesting additional information. At present the Regulations give Council 25 days from the date an application is accepted to request additional information. For Council to determine if additional information is required, at the very least a preliminary assessment needs to have been completed. Further it is often necessary for the assessing officer to have received feedback from multiple departments of Council, such as Development Engineers and Environmental Officers who provide advice as to whether all required technical information has been submitted. It is also necessary to have conducted a site visit to ensure the accuracy of site plans, surveys and descriptions.
- 2.2.4.10 In light of the fact that assessing officers are often working on many applications at a time, it can be challenging to meet the current 25 day restriction. As such it is considered that any reduction to the timeframe for requesting additional information is likely to result in decisions being made without the benefit of all necessary information, which can only result in poorer outcomes for Council and the community.
- 2.2.4.11 Should these changes be adopted it is recommended that Council review internal practice to place increased importance on assessment within the first 14 days to ensure that applications lacking appropriate information are rejected outright.

2.2.5 *Additional section 79C considerations*

- 2.2.5.1 Under the Draft Regulation additional matters would be prescribed for consideration under section 79C of the Act. These include the following considerations:
- the provisions of Australian Standard AS 2601—2001: *The demolition of structures*—in the case of a development application for the demolition of a building;

- A consent authority must use the following projected sea level increases if it takes any future sea level increase into account in respect of a development application:

(a) 0.4 metres higher than the 1990 mean sea level by 2050

(b) 0.9 metres higher than the 1990 mean sea level by 2100

2.2.5.2 These matters would need to be considered under section 79C of the EP&A Act 1979 in the determination of any development application.

2.2.5.3 These changes can be accommodated by Council staff and may result in improved development outcomes.

2.3 **Designated Development**

2.3.1 No changes are proposed to the designated development processes, however minor changes to classes of designated development are proposed. These include:

- Standardising development classes to be consistent with the Protection of the Environment Operations Act 1997;
- Environmentally sensitive areas of State significance to be included as a designated development location trigger for certain developments;
- Amended thresholds for concrete works, extractive industries and livestock intensive industries;
- Removing turf farms from the schedule of designated development;
- Updated agency and legislative references.

2.3.2 There are no significant implications to Council relating to these proposed changes.

2.4 **Fees & Charges**

2.4.1 Of relevance to Council, the Draft Regulations 2010 would update fees and charges to account for movements in the Consumer Price Index (CPI) and prescribe a fee for BASIX certificates to provide for the ongoing administration and maintenance of the online system.

2.5 **Planning certificates**

2.5.1 Some information would no longer be required on basic planning certificates and some additional items would be added for inclusion. The Regulations would provide a list of prescribed matters for inclusion on full planning certificates and planning certificates would no longer be required to identify land affected by the operation of s38 or 39 of the Coastal Protection Act.

2.5.2 It is noted that the proposed changes may require changes to planning certificate templates and the reorganisation of information systems for generating certificates. It is considered that these changes can be managed by Council staff.

2.6 **Part 5 Assessment**

2.6.1 Activities assessed under Part 5 commonly include works undertaken by public authorities including Council, which do not need development consent such as infrastructure and public utilities.

2.6.2 The proposed Regulation will carry over most of the provisions of the current Regulation but with the following amendments:

- Clarifying the distinction between the general environmental assessment requirements under Part 5 ('review of environmental factors' of 'REF') and the specific requirements for EIS's;
- An additional factor is proposed to be inserted in the 'REF' provisions to cover impacts on coastal processes and coastal hazards, including climate change;
- Removal of Part 5 environmental assessment savings provisions for fishing activities;
- Amendments to Australian Rail Track Corporation specific provisions, including removal of provisions in relation to wetlands affected development and project specific provisions that are no longer required.

2.6.3 Council Officers undertaking Part 5 Assessments will need to make note of the additional considerations required for coastal processes, coastal hazards and climate change. Other than this additional requirement, there are no significant impacts to Council from the proposed changes.

2.7 Development Control Plans

2.7.1 The proposed Regulation will carry over all provisions in relation to Environmental Planning Instruments and Development Control Plans.

2.7.2 The only proposed regulatory change in the Draft Regulation 2010 related to plan making, relates to the requirement that only one DCP applies to any parcel of land. Currently there are savings provisions for DCPs that do not meet this requirement, that allow the DCPs to continue to have effect until such time as a Standard Instrument LEP is in place or until March 2011 (which ever occurs first).

2.7.3 As the timing for the roll-out of Standard Instrument LEPs has changed since the savings provision was made, an amendment to the Regulation is required to avoid invalidating existing DCPs.

2.7.4 The proposed Regulation will amend the savings provisions to allow DCPs to continue until 6 months after a Standard Instrument LEP is made.

2.7.5 Pittwater Council has two DCPs, the Pittwater 21 DCP and DCP 22 Exempt and Complying Development. The proposed change to the Regulation will allow these to continue to operate beyond March 2011 until 6 months after a new Pittwater LEP is made in accordance with the Standard Instrument.

2.8 Development Contributions

2.8.1 The Draft Regulation 2010 proposes to continue to use the Consumer Price Index for Sydney (CPI) as the indexation for recoupment of costs associated with Section 94 contributions.

2.8.2 In February 2010, Council made a submission to the Department of Planning regarding the *Draft Local Development Contributions Guidelines*. Council's Submission requested that the CPI be replaced by a more appropriate indexation measure, for the following reasons:

- General CPI historically reflects a general basket of consumable goods (bread, milk etc), and that CPI (at a fixed rate of 2.5%) is inappropriate as an inflationary measure/indicator for expenditure (works and land purchases) associated with an infrastructure development. This was confirmed by Council's Independent Review of the Warriewood Valley Section 94 Plan (prepared by Hill PDA, December 2009) who recommends the use of Building Price Index rather than the CPI.

- The Sydney CPI is inappropriate for use in rural/regional areas outside the Sydney Metropolitan Area.
 - The fixed 2.5% CPI in the Net Present Value method is inappropriate.
 - CPI is inappropriate for land, a more appropriate index be used for land that accurately reflects the actual and projected land costs increases in an area (such as the Land Price Index).
- 2.8.3 The Draft Regulation 2010 has not incorporated other proposed (exhibited) changes in regard to the development contributions, released in December 2009. Given the recent State Government decisions regarding local development contributions, Council recognises that further legislative changes regarding development contributions are likely.
- 2.9 Other Issues (including Existing Use Rights, Fire Safety & the BCA)**
- 2.9.1 In relation to existing use rights, the current Regulations allow an existing use to change from a commercial use to another commercial use, or a light industrial use, as long as it meets a range of criteria. This includes a floor space less than 1000 square metres.
- 2.9.2 The Regulation 2010 proposes to remove this requirement.
- 2.9.3 The Draft Regulation includes a description of the circumstances in which work is not taken to be physically commenced. It states that a 'survey' is not 'physical commencement' of works for the purposes of determining when consent has lapsed.
- 2.9.4 It also states that this clause only applies to a development consent granted after the date of commencement of this Regulation. Concern is raised that as a result of this clause, it may be interpreted that a 'survey' could be considered 'physical commencement' of works for the purposes of determining when consent has lapsed for any consents granted prior to the commencement of this Regulation. This situation may be considered undesirable and the attached submissions requests clarification that this is not the intention of the clause, or a likely outcome.
- 2.9.5 The Regulation 2010 proposes administrative changes to building and other certification procedures including:
- Requirements on the generation of BASIX completion receipts associated with dwellings will be fast tracked so that the generation of these reports occur before the issue of occupation certificates;
 - It has been clarified that councils have discretion in deciding on whether or not to impose full or partial compliance with BCA fire safety provisions on development applications involving substantial rebuilding work;
 - Existing and new moveable dwellings (caravans and campervans) would be subject to new requirements to install smoke alarms;
 - Current exemptions from requirements for a construction certificate and an occupation certificate for the erection of certain temporary structures, set to expire on 26 October 2011, will be extended until 1 September 2016; and
 - Minor administrative amendments related to certification procedures.
- 2.9.6 No changes are proposed to the 2000 Regulation in relation to reviews and appeals, post-determination notification and other matters dealing with development consents (extension, completion and modifications).
- 2.9.7 The proposed changes to the Regulations in relation to existing use rights, fire safety and the BCA should not pose any significant problems for Council.

- 2.10 It is likely that the new Regulations will be adopted sometime before the 1st of September 2011, when the current Regulations are due to be automatically repealed.
-

3.0 SUSTAINABILITY ASSESSMENT

3.1 Supporting & Connecting our Community (Social)

- 3.1.1 The proposed changes to the Regulations are generally aimed at improving the planning system, including a reduction in the assessment timeframes for development applications, in order to appease community dissatisfaction with the length of the current process.

3.2 Valuing & Caring for our Natural Environment (Environmental)

- 3.2.1 It is considered that the proposed changes to the Regulations, in general, would continue to give appropriate consideration to environmental constraints and include provisions for increased consideration of environmental factors such as sea level rise and climate change.

3.3 Enhancing our Working & Learning (Economic)

- 3.3.1 The proposed changes to the Regulations aim to provide shorter assessment timeframes for development applications with the potential benefit of increasing the efficiency and capacity of the planning system and better facilitating the building industry and local economies.

3.4 Leading an Effective & Collaborative Council (Governance)

- 3.4.1 The proposed changes to the Regulations aim to provide shorter assessment timeframes for development applications with the potential benefit of increasing the efficiency and capacity of the planning system. However, some issues regarding the time limits for receiving additional information have been highlighted in the above report and the attached submission.

3.5 Integrating our Built Environment (Infrastructure)

- 3.5.1 The proposed changes to the Regulations have been developed to provide shorter assessment timeframes for development applications. Some potential issues with the proposed Regulations have been highlighted in the above report and the attached submission. It is therefore recommended that the attached submission be forwarded to the Department of Planning with the aim of ensuring that any changes to the Regulations will result in acceptable planning outcomes for the built environment.
-

4.0 EXECUTIVE SUMMARY

- 4.1 The Draft Environmental Planning & Assessment Regulation 2010 has been released, along with a regulatory impact statement, and is currently on exhibition until 5 November 2010.
- 4.2 The majority of provisions in the Environmental Planning & Assessment Regulation 2000 are carried over to the Draft Regulation 2010 without significant amendment, however some administrative changes are proposed. These include some changes relating to the planning reforms exhibited in the Draft Development Assessment Guidelines in 2009.

- 4.3 The most significant changes relate to timeframes for the assessment of Development Applications, requests for additional information and 'stop the clock' provisions.
- 4.4 Other minor changes are proposed to provisions relating to designated development, fees and charges, planning certificates development control plans, existing use rights, fire safety and the BCA.
- 4.5 It is likely that the new Regulations will be adopted sometime before 1 September 2011, when the current Regulations are due to be automatically repealed.
- 4.6 The closing date for submissions is 5 November 2010.

RECOMMENDATION

- 1. That Council note the contents of the above report and submission in relation to the Draft Environmental Planning & Assessment Regulation 2010.
- 2. That Council resolve to forward the attached submission to the Department of Planning.

Report prepared by
Monique Tite, Strategic Planner

Lindsay Dyce
MANAGER, PLANNING AND ASSESSMENT

Overview of changes to the assessment of DAs and CDC applications

(Source: *Environmental Planning and Assessment Regulation 2010 Regulatory Impact Statement*)

	Existing 2000 Regulation	Proposed 2010 Regulation
DA Application procedure		
Receipt of DAs	Consent Authority and Approval Authorities can either or both reject	Only Consent Authority can reject. Approval Authorities (i.e. State Agencies) can only advise Consent Authority to reject
	Reject in 7 or 14 days	Reject in 14 days
	No written justification for rejection	Consent Authority to advise in writing the reasons for rejection
	Schedule 1 of the 2000 Regulation outlines DA form and contents	Minor changes proposed to Schedule 1 to improve DA quality (see Appendix B)
Stop the clock period	Clock stopped if request for additional information within 25 days of application being accepted	Clock stopped if request for additional information made within 21 days of application being submitted
Requests for additional information by consent authorities — stop the clock	Assessment process can be stopped indefinitely until applicant responds	Applicant has 21 days to respond — if additional information not received, consent authority continues assessment
	Clock stopped by agencies if they require additional information	Agencies must request consent authority to ask the applicant for additional information
	Additional information must be requested within 25 days of application being made.	Additional information must be requested (via the consent authority) within 21 days of application being submitted
Requests for additional information by agencies (referral agencies, concurrence agencies and approval agencies for integrated development) stop the clock	Agencies have 21 days (IDA) or 40 days (concurrences) from when they receive the last public submission to respond	Agencies have 21 days to respond after the DA has been submitted to the Consent Authority. If Consent Authority 'stops the clock' then 21 days after the clock restarts
Deemed refusal period	<ul style="list-style-type: none"> • 60 days — if integrated development or designated development, or • 40 days – for other DAs 	<ul style="list-style-type: none"> • 90 days — if designated development, integrated development, or development involving concurrences, JRPPs, IHAPs or SEPP 65 panels, or • 50 days — for other DAs
Determination of Development Applications	Section 79C of the Act and Division 8 of Part 6 of the 2000 Regulation indicate what matters a consent authority is to take into consideration when determining a DA	Proposed 2010 Regulation includes minor changes to Division 8 of Part 6 including: <ul style="list-style-type: none"> • Updated Australian Standard for demolition of structures • Use of sea level rise planning benchmarks, if considering sea level rise when assessing a DA • Consideration of scale and nature of proposed building works when determining level of BCA conformity required

Classes of designated development	Classes of designated development outlined in Schedule	Minor changes to classes of designated development proposed
Complying development certificate applications		
<i>Procedural requirements</i>	Applications previously can only be hand delivered, posted or emailed.	Some applications can now be submitted by fax. The impact of this amendment is negligible (it should speed up the certification process marginally).
	No requirement to link approved plans and documentation to the relevant certificate.	Certificates covered are required to list all relevant plans, specifications and other reports relied on, to be stamped or annotated with details and where the certifying authority is a council, to include accreditation and other details.
	Schedule 1 of the 2000 Regulation outlines CDC form and contents	Minor changes proposed to Schedule 1 to improve CDC quality (see Appendix B)

SUBMISSION ON THE DRAFT ENVIRONMENTAL PLANNING & ASSESSMENT REGULATION 2010 BY PITTWATER COUNCIL

Pittwater Council welcomes the opportunity to provide comment on the Draft Environmental Planning & Assessment Regulation 2010.

The following submission provides comment on areas of the Draft Regulation 2010 that Pittwater Council believes need further consideration.

INTRODUCTION

Pittwater Council generally supports the intention of the proposed changes to the Regulations for the purpose of streamlining the DA process, encouraging applicants to provide correct information up front and encouraging the timely submission of any additional information requested. However, some concern is raised regarding the likely impacts of the provisions relating to the development assessment process and the definition of 'physical commencement', as discussed below.

PART 4 DEVELOPMENT ASSESSMENT

The Draft Environmental Planning & Assessment Regulation 2010 includes a number of provisions that would change components of the development assessment process undertaken by Council in accordance with Part 4 of the Environmental Planning & Assessment Act 1979.

Of particular concern to Council are the proposed provisions that would reduce the timeframe for requesting additional information to 21 days.

At present the Regulations give Council 25 days from the date an application is accepted, to request additional information. For Council to determine if additional information is required, at the very least a preliminary assessment needs to have been completed. Further it is often necessary for the assessing officer to have received feedback from multiple departments of Council, such as Development Engineers and Environmental Officers who provide advice as to whether all required technical information has been submitted. It is also necessary to have conducted a site visit to ensure the accuracy of site plans, surveys and descriptions. In light of the fact that assessing officers are often working on many applications at a time, Council can find it challenging to meet the current 25 day restriction.

It is considered that any reduction to the timeframe for requesting additional information is likely to result in decisions being made without the benefit of all necessary information, which can only result in poorer outcomes for Council and the community. To avoid this situation some Councils may consider it necessary to request information above and beyond what might be necessary in order to avoid Council being put in the aforementioned situation. If this occurs it may result in additional costs for applicants.

Also of concern to Council is the proposal to reduce the time an applicant has to provide additional information to a maximum of 21 days ('stop the clock'), after which the clock would automatically be restarted.

In the 2008-09 performance monitoring period the average number of stop the clock days for development applications being assessed by Pittwater Council was 55. As the maximum stop the clock timeframe under the proposed Regulations is 21 days, it is likely that there will be circumstances where the provision of additional information cannot realistically be delivered within the prescribed period.

The proposed Regulations could therefore result in an increased rate of refusal (and subsequent appeals to the Land and Environment Court), poorer development outcomes or the failure of Council to meet statutory assessment timeframes.

It is noted that it was previously proposed under the Draft Development Assessment Guidelines (2009) to completely remove 'stop the clock' provisions, which would have severely reduced the ability for Council officers to negotiate outcomes with applicants. And while the proposed changes under the Draft Regulation 2010 are more acceptable than those previously proposed, negotiation will still be limited by the proposed 21 day time constraint.

While the proposed changes may result in a superficial reduction to assessment timeframes based on the new calculation formula, this will not automatically translate to a better planning service for the community. The reality may be that Council will be forced to refuse applications that may otherwise (with further information and amendments) have been able to be approved. This could easily result in less customer satisfaction and increased cost to applicants who may have to submit a second application or otherwise appeal to the Land and Environment Court.

It is noted that the recent and proposed planning reforms have not reduced the number of considerations that Council officers are required to assess when making determinations. There is also a limit to the amount of time that can be saved by reducing inefficiencies within Council's administrative processes. It is also noted that in many cases where Council exceeds statutory timeframes for assessment it is as a direct result of efforts made by Council staff to negotiate with applicants regarding non-compliances in order to avoid unnecessary refusals. Without substantial changes to the Planning System it is unrealistic to assume that Council officers can maintain the quality of assessments and continue to reduce assessment times, without there being an increase in the rate of refusals and Land & Environment Court appeals.

In many cases numbers alone do not tell the whole story and the quickest outcome is not always the best one for Council or the community.

PHYSICAL COMMENCEMENT

Clause 160 of the Draft Regulation 2010 includes a description of the circumstances in which work is not taken to be physically commenced. It states that a 'survey' is not 'physical commencement' of works for the purposes of determining when consent has lapsed. It also states that this clause only applies to a development consent granted after the date of commencement of this Regulation.

Concern is raised that as a result of this clause, it may be interpreted that a 'survey' could be considered 'physical commencement' of works for the purposes of determining when consent has lapsed for any consents granted prior to the commencement of this Regulation. Pittwater Council requests clarification that this is not the intention of the proposed clause, or a likely outcome.

DEVELOPMENT CONTRIBUTIONS (PART 5)

Clause 47 of the Draft Regulation 2010 proposes to continue to use the Consumer Price Index for Sydney (CPI) as the indexation for recoupment of costs associated with Section 94 contributions. This is despite the numerous submissions/concerns already raised by Local Government and other bodies regarding the inappropriateness of the CPI as the indexation measure for local development contributions (to the release of the Department of Planning's *Draft Local Development Contributions Guidelines*, in December 2009).

The CPI is not an appropriate measure/indicator for expenditure (works and land purchases) associated with an infrastructure development as it historically reflects a general basket of consumable goods (bread, milk etc).

In this regard, the more appropriate index for civil engineering works is the Building Price Index, while the Land Price Index should be used for land costs (reflecting the actual and projected land costs increases in an area).

The Sydney CPI is inappropriate for use in rural/regional areas outside the Sydney Metropolitan Area.

Council notes that the Draft Regulation 2010 has not incorporated the previously exhibited changes in regard to the development contributions, released in December 2009, and hopes that any further legislative changes are re-exhibited.

CONCLUSION

Thank you for the opportunity to comment of the Draft Environmental Planning & Assessment Regulation 2010. Please consider the above mentioned issues prior to the commencement of any new Regulation.

C11.4 Update on the North Narrabeen Village Masterplan

Meeting: Planning an Integrated Built Environment Committee

Date: 18 October 2010

STRATEGY: Town & Village

ACTION: Develop and implement master plans and supplementary public domain style guides

PURPOSE OF REPORT

The purpose of the report is to provide an update on the progress and challenges to the finalisation of the North Narrabeen Village Masterplan Project.

1.0 BACKGROUND

1.1 At the meeting of 15 February 2010 Council resolved as follows:

1. That Council defer finalisation of the North Narrabeen Village Masterplan until the adoption of the:
 - NSW Department of Planning “*Draft NSW Coastal Planning Guideline: Adapting to Sea Level Rise*”, and
 - Nareen Creek and the Narrabeen Lagoon Flood Risk Management Studies

to allow consideration of the appropriate planning responses.

2. That a report be presented to Council by 30 June 2010 on the status of the deferral.

1.2 At the meeting of 21 June 2010 a report on the status of the deferral was presented and Council resolved as follows:

1. That the information provided in the report be noted.
2. That a further status report on the North Narrabeen Village masterplan be provided to Council by 31 October 2010.

1.3 Council resolved on 8 October 2007 to prepare the North Narrabeen Village Masterplan as part of the overall investigation and planning process for the retail centres in Pittwater.

The purpose of the North Narrabeen Village Masterplan Project (the Masterplan) was to establish a holistic and integrated vision document for North Narrabeen Village Commercial Centre with the community. The Masterplan was to encompass both the private and public domain. Council commissioned urban design consultants HBO+EMTB to prepare the Masterplan.

The Masterplan was to provide an urban design framework that aimed to enhance the amenity and design quality of the centre, and to support social, economic, environmental and cultural activities. The Masterplan was to respond to flooding, traffic and parking constraints.

Until both the Nareen Creek and the Narrabeen Lagoon Flood Risk Management Studies have been completed and adopted, Council is not in a position to fully understand the impacts of flood behaviour, its duration, the emergency response requirements, if flood mitigation measures can be installed, and as a result what the appropriate planning responses should be in the Masterplan study area.

The release of the NSW Department of Planning "*Draft NSW Coastal Planning Guideline: Adapting to Sea Level Rise*" provides Council with a proposed framework to address sea level rise in strategic and land use planning as well as development assessment. The planning for North Narrabeen Village and the Masterplan process needs to take stock and account for the coastal planning principles once they are finalised. Council needs sound flooding information to provide sound justification for any proposed changes as a result of the Masterplan process.

This report provides an update on the guideline and flood studies that were subject of the resolution.

2.0 ISSUES

An update of the relevant documents is provided as follows:

2.1 NSW Department of Planning "*NSW Coastal Planning Guideline: Adapting to Sea Level Rise*"

As reported at the Council meeting of 5 October 2010, the Department of Planning finalised the NSW Coastal Planning Guideline: Adapting to Sea Level Rise on the 20 August 2010. The Guideline covers the State's 1,500 kilometre coastline.

As resolved at the meeting of 5 October 2010, the suite of NSW Coastal Planning Guidelines will be utilised by Council for the purposes of all future strategic land use planning, development assessment and flood and coastal risk assessment and management across all parts of the Pittwater Local Government Area that are likely to be affected by sea level rise

2.2 Nareen (North Narrabeen) Floodplain Risk Management Study and Plan

The timing of the Nareen Floodplain Risk Management Study and Plan will be reviewed as part of the update of the programs relating to the Pittwater Flood Risk Strategy and Pittwater Coastal Risk Strategy to incorporate the specific issues of the new Guidelines. This will include interim measures to be considered, such as "Sea Level Rise Investigation Areas", pending completion of the various coastal hazard and coastal flood risk studies.

2.3 Narrabeen Lagoon Flood Study Update

The Narrabeen Lagoon Flood Study Update will be reviewed as part of the update of the programs relating to the Pittwater Flood Risk Strategy and Pittwater Coastal Risk Strategy to incorporate the specific issues of the new Guidelines and timing. This will include interim measures to be considered, such as "Sea Level Rise Investigation Areas", pending completion of the various coastal hazard and coastal flood risk studies.

- 2.4 A further report on the Pittwater Flood Risk Strategy and Pittwater Coastal Risk Strategy will be presented to Council by the Catchment Management and Climate Change unit.
-

3.0 SUSTAINABILITY ASSESSMENT

3.1 Supporting & Connecting our Community (Social)

- 3.1.1 The incorporation of flooding and adopted SLR benchmarks into Council land-use planning requires informing, consulting, engaging and preparing the Pittwater community.

3.2 Valuing & Caring for our Natural Environment (Environmental)

- 3.2.1 Assessing the predicted impacts of flooding and climate change will allow for future planning of impacts on tidal ecosystems, threatened species and coastal erosion.

3.3 Enhancing our Working & Learning (Economic)

- 3.3.1 Requiring the adopted sea level rise benchmarks and flooding to be incorporated into Councils land use planning will reduce the potential risk to future development in relation to current predictions of climate change impacts.

3.4 Leading an Effective & Collaborative Council (Governance)

- 3.4.1 The implementation of current sea level rise benchmarks and incorporation into Councils hazard management planning will provide compliance with Councils obligations under the NSW Coastal Policy, NSW Flood Prone Land Policy and the Environmental Planning and Assessment Act 1979.

3.5 Integrating our Built Environment (Infrastructure)

- 3.5.1 Incorporation of flooding and the adopted benchmarks for sea level rise will allow Council to make informed decisions for the management of current and provision of future development.
-

4.0 EXECUTIVE SUMMARY

- 4.1 At the meeting of 15 February, Council resolved that it was inappropriate to proceed with the Masterplan because of the current degree of planning uncertainty in light of the NSW State Government coastal planning guideline and local flood studies affecting North Narrabeen Village.
- 4.2 On 20 August 2010 the NSW Department of Planning adopted the “*NSW Coastal Planning Guideline: Adapting to Sea Level Rise*”.
- 4.3 The timing of the Nareen Floodplain Risk Management Study and Plan will be reviewed as part of the update of the programs relating to the Pittwater Flood Risk Strategy and Pittwater Coastal Risk Strategy to incorporate the specific issues of the new Guidelines.
- 4.4 The Warringah Council Narrabeen Lagoon Flood Study Update will be reviewed to incorporate the specific issues of the new Guidelines.

RECOMMENDATION

1. That the information provided in the report be noted.
2. That a further status report on the North Narrabeen Village masterplan be provided to Council by 31 March 2011.

Report prepared by

David Haron
Executive Strategic Planner

Lindsay Dyce
MANAGER, PLANNING AND ASSESSMENT

C11.5 Minutes of the Planning an Integrated Built Environment Reference Group Meeting held on 18 August 2010

Meeting: Planning an Integrated Built Environment Committee

Date: 18 October 2010

STRATEGY: Business Management

ACTION: Maintain and Service Council's Range of Committees

PURPOSE OF REPORT

To present to Council for consideration, the Planning an Integrated Built Environment Reference Group Minutes of 18 August 2010.

1.0 BACKGROUND

- 1.1 The Planning an Integrated Built Environment Reference Group was established by Council to consider matters involving goals and initiatives contained in the key direction of Council's Strategic Plan – Integrating Our Built Environment.
- 1.2 The strategic objectives within the associated key direction are:
- Asset Management Coordination Strategy
 - Energy Efficiency Strategy
 - Land Use & Development Strategy
 - Town & Village Strategy
 - Transport & Traffic Strategy
- 1.3 To fulfil its role, the Planning an Integrated Built Environment Reference Group provides:
- a link between Council and the community which enhances communication about the strategic direction of Council initiatives;
 - input from Council and the community (historical, social and environmental) when considering possible solutions;
 - consideration of implications from strategic initiatives and their likely impact on the local community; and
 - feedback to Council on behalf of the community.
-

2.0 ISSUES

- 2.1 Presentation by CEO Green Buildings Council, Ms Romilly Madew

REFERENCE POINT

- The Group thank Ms Madew for the interesting presentation

2.2 PIBE4.1 - Land Use Planning Strategy - Residential Capacity

REFERENCE POINTS

- That the Group be updated on the Meritons proposal and Strategic Review of the Warriewood Valley by the Department of Planning
- That the Reference Group be updated on the Section 94 Direction

2.3 PIBE4.2 - Pittwater Sustainability Principles & Checklist

REFERENCE POINTS

- A Pittwater Sustainability Principles and checklist brochure to be distributed for comment by the Reference group members within 2 weeks.
- The Group acknowledges Greg Roberts submission and endorses the proposition that Council staff encourage the use of the sustainability checklist by residents to assess their own homes not just as a development tool.
- Jo Tulau to coordinate the community engagement with Council's Community Engagement Officer relating to the Sustainability checklist, eg:-
 - Targeting schools (public and private) with the sustainable schools program by introducing competitions and workshops to raise awareness. Peninsula Community Schools have already been connected with this project
 - Meeting to be scheduled for additional assistance and input from members (Linda Haefeli, Greg Roberts, Selena Webber, Merinda Rose and Jacqui Marlow).
 - Avalon Market Day may be a good place to advertise
 - Sustainability Expo 10 October 2010 will also be another good place to discuss/advertise guidelines
 - School Competitions – Projects for children to audit their own homes.
 - Jo Tulau to bring plan on community engagement to the next meeting

2.4 PIBE4.3 - Update on the North Narrabeen Village Masterplan

REFERENCE POINT

- The Group acknowledged that staff update Councillors on the Narrabeen Village Masterplan matter regularly

2.5 PIBE 5.0 – Emerging Business

REFERENCE POINTS

- Pittwater apply to the Green Building Council of Australia to become part of its Pilot Study for the Green Star Communities Project
- That the Reference Group note that Ms Jo Tulau will investigate appropriate venue for the screening of the film “Future Makers” and panel discussion on local renewable energy. To be discussed at the next meeting.
- That the Group agree to move on from the first two goals and that the next two goals be noted being:

“To encourage Pittwater’s Villages to be liveable and amenable”

“To encourage the use of public transport and alternative travel means”

- That a discussion paper be presented to the next Reference Group meeting on 17 November, 2010 by the Reserves and Recreation team in relation to :-

“To encourage Pittwater’s Villages to be liveable and amenable”

3.0 SUSTAINABILITY ASSESSMENT

This report does not require a sustainability assessment.

4.0 EXECUTIVE SUMMARY

- 4.1 To present to Council the Reference Points of the Planning an Integrated Built Environment Reference group contained in the minutes of the meeting of 18 August 2010.

RECOMMENDATION

1. That the Minutes of the Planning an Integrated Built Environment Reference Group meeting of 18 August 2010 be noted.
2. That the Reference Points relating to Items PIBE4.1, PIBE4.2, PIBE4.3 and PIBE5.0 within the Minutes be specifically noted.

Report prepared by

Steve Evans

DIRECTOR, ENVIRONMENTAL PLANNING & COMMUNITY

Minutes

Planning an Integrated Built Environment Reference Group Meeting

held in the Training Room at the Coastal
Environment Centre, Lake Park Road, North
Narrabeen on

18 August 2010

Commencing at 4.10pm

Attendance:

Cr Bob Dunbar, Chairperson

Members:

Avalon Preservation Association, Mr Peter Mayman
Clareville and Bilgola Residents Association, Mr Geoff Sheppard
Friends of Narrabeen Lagoon Catchment, Ms Jacqui Marlow
Climate Action Pittwater, Ms Linda Haefeli
Ingleside Residents Landcare Group Inc., Mr David Palmer
Newport Residents Association, Ms Selena Webber
Newport Residents Association, Ms Susan Young
Palm Beach and Whale Beach Association, Ms Merinda Rose
Palm Beach and Whale Beach Association, Mr Greg Roberts
Warriewood Valley Rezoning Association Inc., Mr Richard McIntyre
West Pittwater Community Association, Ms Lesley Stevens

Council Advisors

Mr Lindsay Dyce, Planning and Assessment
Mr Andrew Pigott, Principal Strategic Planner
Mr David Haron, Executive Strategic Planner
Ms Karen Chapman, Strategic Planner
Ms Monique Tite, Strategic Planner
Mr Paul Davies, Urban Infrastructure
Ms Jo Tulau, Natural Environment & Education
Ms Jane Mulroney, Community Engagement Officer - Corporate Strategy
Ms Sherryn McPherson, Administration Officer/Minute Secretary
Ms Pamela Tasker, Administration Officer/Minute Secretary

Observer / Guest Speaker

Ms Romilly Madew, Chief Executive Officer – Green Building Council of Australia

Planning an Integrated Built Environment Committee Meeting

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The Planning an Integrated Built Environment opened with a presentation from Ms Romilly Madew, Chief Executive Officer of Green Building Council of Australia (GBCA) on Green Star ratings.

GBCA is a national, not-for-profit organisation that is committed to developing a sustainable property industry for Australia by encouraging the adoption of green building practices.

Green Star is a comprehensive, national, voluntary environmental rating system that evaluates the environmental design and construction of buildings and, with 11 per cent of Australia's CBD commercial office buildings Green Star certified, building green is now a business imperative.

REFERENCE POINT

- The Group thank Ms Madew for the interesting presentation

1.0 Apologies

Notes:

1. Apologies were received from Mr Michael Wiener (West Pittwater Community Association), Mr Ray Mills (Clareville and Bilgola Plateau Residents Association) and Mrs Evelyn Adams (Bayview-Church Point Association Incorporated) and leave of absence was granted from the Planning an Integrated Built Environment Reference Group Meeting held on 18 August, 2010.
2. The Reference Group members accepted the apologies.
3. Mrs Evelyn Adams tendered her resignation from the Planning an Integrated Built Environment Reference Group
4. The Bayview-Church Point Residents Association Incorporated nominated Mr Stephen Richmond as the replacement delegate
5. The Planning an Integrated Built Environment Reference Group Members accepted Mrs Evelyn Adams resignation and Mr Stephen Richmond's nomination as the replacement delegate of the Bayview-Church Point Residents Association

2.0 Declarations of Pecuniary Interest -

3.0 Confirmation of Minutes

REFERENCE GROUP RECOMMENDATION

That the Minutes of the Planning an Integrated Built Environment Reference Group Meeting held on 19 May 2010, be confirmed as a true and accurate record of that meeting.

(Mr Richard McIntyre / Mr David Palmer)

4.0 Discussion Topics

Proceedings in Brief

1. Mr Andrew Pigott opened the meeting, welcomed the members and gave a brief outline of how the meeting would proceed.
2. Mr Andrew Pigott introduced item 4.1 and Ms Monique Tite addressed the meeting on PIBE4.1

PIBE4.1 Land Use Planning Strategy - Residential Capacity

Discussion Paper on Goal 5: To Encourage Land Use That Caters for All Community Needs

Discussion took place on:-

- Residential and employment targets
- S94 Shop Top Housing areas will comply within the \$20,000 levy
- the decrease in S94 contributions resulting from Ministerial direction
- Unreasonable for Council to charge the community for improvements instead of by developers upfront.
- Council to update Reference Group Members on the Meriton Development and Section 94 issues
- Future SEPP Senior Living dwellings - where are they going to be situated? Are they going to be in bushland areas? If so Developers should be asked to provide for bush management strategy
- Based on previous take up rates, Council has revised the take up rates and it indicates that it may not reach that figure. These figures are set by the State Government.
- SEPP SL Developments need to be assessed and located in an appropriate area to maintain environment and safety concerns. Developers need to be reasonable when approving SEPP SL development areas and locating dwellings in bushland areas. For example, strategies would need to be implemented as it would be hard to evacuate and protect the elderly in these areas.

REFERENCE POINTS

- That the Group be updated on the Meriton proposal and Strategic Review of the Warriewood Valley by the Department of Planning
- That the Reference Group be updated on the Section 94 Direction

PIBE4.2 Pittwater Sustainability Principles & Checklist

REFERENCE POINTS

- A Pittwater Sustainability Principles and checklist brochure distributed for comment by the Reference group members within 2 weeks.
- The Group acknowledges Mr Greg Roberts' submission and endorses the proposition that Council staff encourage the use of the sustainability checklist by residents to assess their own homes and not just as a development tool.
- Ms Jo Tulau to coordinate the community engagement with Council's Community Engagement Officer relating to the Sustainability checklist eg:-
 - Targeting schools (public and private) with the sustainable schools program by introducing competitions and workshops to raise awareness. Peninsula Community Schools have already been connected with this project
 - Meeting to be scheduled for additional assistance and input from members (Ms Linda Haefeli, Mr Greg Roberts, Ms Selena Webber, Ms Merinda Rose and Ms Jacqui Marlow).
 - Avalon Market Day may be a good place to advertise
 - Sustainability Expo 10 October 2010 will also be another good place to discuss/advertise guidelines
 - School Competitions – Projects for children to audit their own homes.
 - Ms Jo Tulau to bring plan on community engagement to the next meeting

PIBE4.3 Update on the North Narrabeen Village Master plan to Reference Group Meeting

Proceedings in Brief

Mr Andrew Pigott introduced Mr David Haron, Executive Strategic Planner who addressed the meeting on this discussion paper.

Discussion Points

- Climate change and sea level rise are key difficulties with the and Council can not progress with the Masterplan until the following items have been resolved;
 - Department Planning Guidelines (Draft guidelines from Department of Planning have not been adopted and proving difficult to traverse).
 - Flood Study of Nareen Creek and Narrabeen Lagoon
- Estimating 1-2 years before any progress can take place. It is possible to continue development under existing controls but little incentive for re-development.
- Investigation is ongoing regarding the flooding issues surround Nareen Creek however further data required for the Narrabeen Lagoon.

- Preliminary calculations currently show 0.7m above existing flood planning levels is the estimate for Nareen creek, which make ground floor level over 2 metres. Council has adopted 0.9 by 2100.
- Insurance Council of Australia will be increasing premiums to cover sea level rise and has been adopted by Council

REFERENCE POINT

- The Group acknowledged that staff update Councillors on the Narrabeen Village Masterplan matter regularly

5.0 Emerging Business

Green Star Residential / Non Residential developments to be listed as an agenda item at the next meeting.

Sustainability to investigate a maintenance succession plan for the next estimated 30yrs – relating to trees, providing solar access and keeping the area attractive etc

This could be included into the Green Star pilot project

PIBE to remain focus on our 4 goals – identify and choose goals that the group would like to be addressed next

Zero Carbon Australia Stationary Energy Plan – highly recommended for the members to refer to the [Beyond Zero Emissions Website](#). Initiative to be supported by Pittwater and set example to other councils.

Future Makers film (www.thefuturemakers.com.au) – Screen film at an expo at Avalon theatre.

Members to volunteer to and organize a working group for the Expo and to assist in organising the project to contact Ms Jo Tulau

Ms Jo Tulau to report back to the next reference group meeting regarding the film and surrounding issues.

Expressions of interest sought for volunteers/speakers/experts to assist with the Expo

REFERENCE POINT

Pittwater apply to the Green Building Council of Australia to become part of its Pilot Study for the Green Star Communities Project

(Ms Linda Haefeli / Mr Richard McIntyre)

REFERENCE POINT

That the Reference Group note that Ms Jo Tulau will investigate appropriate venue for the screening of the film “Future Makers” and panel discussion on local renewable energy. To be discussed at the next meeting.

(Ms Jacqui Marlow / Ms Merinda Rose)

REFERENCE POINT

That the Group agree to move on from the first two goals and that the next two goals be noted, being:

- To encourage Pittwater's Villages to be liveable and amenable
- To encourage the use of public transport and alternative travel means.

And that a discussion paper be presented to the next Reference Group Meeting on 17 November 2010 by the Reserves and Recreation team in relation to:-

“To encourage Pittwater's Villages to be liveable and amenable”

(Mr Richard McIntyre / Mr David Palmer)

6.0 Next Meeting

That the next meeting of the Planning an Integrated Built Environment Reference Group will be held on 17 November 2010 at The Coastal Environment Centre, commencing at 4:00pm.

The next goal to be addressed by the reference group will be:

“To encourage Pittwater's Villages to be liveable and amenable”

**THERE BEING NO FURTHER BUSINESS
THE MEETING CONCLUDED AT 6.16pm
ON WEDNESDAY 18 AUGUST 2010**

Council Meeting

12.0 Adoption of Governance Committee Recommendations

**13.0 Adoption of Planning an Integrated Built Environment
Committee Recommendations**

14.0 Councillor Questions