



WARRINGAH
COUNCIL

ATTACHMENT BOOKLET

ORDINARY COUNCIL MEETING

TUESDAY 22 MARCH 2016



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PLANNING PROPOSAL

BP Forestville

Prepared by Warringah Council

March 2016

TRIM 2016/048575

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Acronyms used in this Report

Council	Warringah Council
CSP	Community Strategic Plan
Department	Department of Planning and Environment
SEPP	State Environmental Planning Policy
WLEP 2011	Warringah Local Environmental Plan 2011

Introduction

On 15 December 2015, Council received a Planning Proposal Application for Lots 8 and 9, DP 25052, known as 632-634 Warringah Road, Forestville (the site). The purpose of the application was to amend *Warringah Local Environmental Plan 2011* (WLEP 2011), Schedule 1 – Additional Permitted Uses to formalise the use of ‘service station’ across the site and permit a ‘neighbourhood shop’ with a floor area not exceeding 240sqm.

The site is located along Warringah Road in Forestville, the major east-west connection between the strategic centres of Dee Why-Brookvale and Chatswood. The site also lies between Chatswood and the future Northern Beaches Hospital, making the corridor of high strategic value. The site currently consists of a vacant lot (Lot 8 DP 25052) and a service station approved in the early 1960s. The land is zoned as R2 – Low Density Residential, with the service station appearing to rely on existing use rights for continued operation.

The Planning Proposal requests an amendment to WLEP 2011 to allow for a ‘service station’ and a 240sqm ‘neighbourhood shop’ on the site, with both uses occurring concurrently. In effect, the Planning Proposal formalises the service station use and allows for a larger store than currently permitted by WLEP 2011 (80sqm). This will allow for redevelopment of the site for a similar purpose and of higher quality than that which would be permitted by were the service station deemed to be an existing use.

Council has assessed the merits of the Planning Proposal Application and undertaken initial community consultation with surrounding land owners and residents. As a result of that work, Council has found that the Planning Proposal Application has merit to proceed to the Department of Planning and Environment for Gateway Determination.

Site Context and Location

Location	632-634 Warringah Road, Forestville
Legal Description	Lots 8 and 9, DP 25052
Site Area	2,850sqm
WLEP 2011 Zone	R2 – Low Density Residential



Figure A: Aerial photography identifying the site (site outlined in red)

Current Uses

634 Warringah Road (Lot 8, DP 25052): Vacant Lot

632 Warringah Road (Lot 9, DP 25052): Service station with five pumps, service station shop and storage building (60sqm), disused workshop building (120sqm).

Surrounding Uses

Development immediately surrounding the site consists predominantly of low density residential and townhouse style development. It is noted that limited commercial use, such as service stations, are also found in the R2 zone along Warringah Road. Additional land uses exist along Darley St to the south, including a B2 – Local Centre retail and service cluster (Forestville Shops) and a Primary School (Forestville Public School).

Statutory Context

The site and the majority of the surrounding area is zoned R2 – Low Density Residential. While the site's current use of 'service station' is prohibited in that zone, the use appears to rely on 'existing use rights'. Historical records include a development consent for a 'service station' dated 4 April 1962.

While the current shop associated with the 'service station' is permitted by the 'service station' definition, the Applicant's Proposal notes that a larger convenience store may not fit within the definition. In addition, WLEP 2011 Clause 5.4 states that a neighbourhood shop must not exceed 80sqm.



Figure B: Land Zoning Map identifying the site (site outlined in red)

The Applicant's Planning Proposal Application has requested that WLEP 2011 Schedule 1 – Additional Permitted Uses be amended to allow for the uses of 'service station' and 'neighbourhood shop no larger than 240sqm', with the uses required to operate concurrently.

WLEP 2011 contains the following relevant information:

WLEP 2011 Excerpts (Dictionary and Clause 5.4)
<p>"service station" means a building or place used for the sale by retail of fuels and lubricants for motor vehicles, whether or not the building or place is also used for any one or more of the following:</p> <ul style="list-style-type: none"> (a) the ancillary sale by retail of spare parts and accessories for motor vehicles, (b) the cleaning of motor vehicles, (c) installation of accessories, (d) inspecting, repairing and servicing of motor vehicles (other than body building, panel beating, spray painting, or chassis restoration), (e) the ancillary retail selling or hiring of general merchandise or services or both.
<p>"neighbourhood shop" means premises used for the purposes of selling general merchandise such as foodstuffs, personal care products, newspapers and the like to provide for the day-to-day needs of people who live or work in the local area, and may include ancillary services such as a post office, bank or dry cleaning, but does not include restricted premises.</p> <p>Note : See clause 5.4 for controls relating to the retail floor area of neighbourhood shops.</p>
<p>5.4 Controls relating to miscellaneous permissible uses</p> <p>(7) Neighbourhood shops If development for the purposes of a neighbourhood shop is permitted under this Plan, the retail floor area must not exceed 80 square metres.</p>

Table 1: Warringah Local Environmental Plan 2011 excerpts

Strategic Justification

Council has undertaken a review of the Applicant's Planning Proposal Application and has found merit in advancing this Planning Proposal for Gateway Consideration. Support for this finding is outlined below.

The additional permitted use of 'service station' is suitable for the site as it:

- is the current use of Lot 9, DP 25052
- is in keeping of the character of Warringah Road as a major transport corridor
- will enable better environmental outcomes than potential expansion via existing use provisions

The additional permitted use of 'neighbourhood shop no larger than 240sqm' is suitable for the site as it:

- will lead to more multi-purpose trips in the area
- will allow for small purchases by households within a short walking distance
- will be tied to the use of 'service station', ensuring that neither use will dominate the site
- will enable modernisation of the site

Further, Council has found no inconsistency with current State Environmental Planning Policies or Section 117 Directions.

The amendments to WLEP 2011 Schedule 1 – Additional Permitted Uses recognises the validity of the existing 'service station' use on the site and the benefits of an expanded 'neighbourhood shop'. In addition to benefits for the surrounding area, it will also allow for a predictable development pathway without the need to rely on existing use provisions.

The Planning Proposal

This Planning Proposal comprises parts consistent with the *A Guide to Preparing Planning Proposals* (October 2012) and *A Guide to Preparing Local Environmental Plans* (April 2013):

Part 1 - Objectives or Intended Outcomes

Part 2 - Explanation of Provisions

Part 3 - Justification

Part 4 - Community Consultation

Part 1: Objectives or Intended Outcomes

Lot 9 DP 25052, known as 634 Warringah Road, operates as a service station, appearing to rely on existing use rights and is not permitted by Warringah Local Environmental Plan 2011. The Planning Proposal seeks to address this by acknowledging the use as compatible with the local character via the 'additional permitted use' mechanism.

The intended outcomes of the Planning Proposal are as follows:

- Formalising the use of service station on Warringah Road
- Enabling redevelopment of the site to incorporate adjacent land
- Modernisation of the site by way of a larger convenience store (i.e. neighbourhood shop)
- Ensuring that both the convenience store and service station occur concurrently, acknowledging the strategic importance of each use

Part 2: Explanation of Provisions

Subject to future consultation with Parliamentary Counsel's Office for legal drafting of the amendment, Council foreshadows that the Planning Proposal would involve the following amendments to WLEP 2011:

Relevant sections of WLEP2011	Proposed Amendments
Schedule 1 – Additional Permitted Uses	<p>Insert new clause applying to lots 8 and 9, DP 25052, permitting development of a 'service station' and 'neighbourhood shop' with consent, if:</p> <ul style="list-style-type: none"> - The neighbourhood shop is no larger than 240 square metres, and - Uses of 'service station' and 'neighbourhood shop' occur concurrently
Additional Permitted Uses Map	Identification of lots 8 and 9, DP 25052 for the purposes of the above clause

Table 2: Explanations of Provisions

Part 3: Justification

Section A - Need for the Planning Proposal.

Is the Planning Proposal a result of any strategic study or report?

The Planning Proposal is the result of an application by the land owner following an initial pre-lodgement meeting in June 2015. It is not the result of a strategic study or report.

Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

The Planning Proposal is an appropriate means of achieving the objective listed in Part 1.

As the land is zoned R2 – Low Density Residential, neither the use of 'service station' or 'neighbourhood shop' are permitted. The current usage of service station appears to rely on 'existing use' rights on Lot 9 DP 25052. As the applicant's goal is to expand the service station across both Lot 8 and 9 DP 25052, this may result in issues during the development application process and with future applications.

Further, the scale of the applicant's proposed convenience store falls outside of the small associated shop included in the service station definition.

Reliance on existing and ancillary use provisions would result in uncertain development potential for the site. Instead, formalisation of the 'service station' and 'neighbourhood shop' uses will provide more flexibility for future development applications while ensuring that other uses associated with business zones are not permitted.

Is there a net community benefit?

The Planning Proposal will deliver a net community benefit. The key community benefits include:

- Improved access to fuelling area
- Additional multi-purpose car based trips (e.g. fuel and convenience shopping), reducing kilometres driven
- Improved walkable access to convenience shopping for local residents
- Improved certainty for usage on the site with the rescinding of existing use rights for the existing service station
- Modern conditions of consent and regulatory controls for the redeveloped service station, including amenity protections for neighbouring properties

Section B - Relationship to Strategic Planning Framework

Is the planning proposal consistent with the objectives and actions of the applicable regional or sub-regional strategy, including the Sydney Metropolitan Strategy and exhibited draft strategies?

1. A Plan For Growing Sydney (2014)

A *Plan for Growing Sydney* (Plan) is the latest metropolitan strategy released by the Department of Planning and Environment to set the framework for Sydney's growth to 2031 and beyond. Due to the small scale of the Planning Proposal, overlaps with the larger vision statements of the Plan are limited.

However, 'Goal 3: A great place to live with communities that are strong, healthy and well connected' and 'Goal 4: A sustainable and resilient city that protects the natural environment and has a balanced approach to the use of land and resources' provide points where the Plan and Planning Proposal are aligned.

A Plan For Growing Sydney Action	Consistency
Direction 3.1 Revitalise existing suburbs	The Planning Proposal is generally in alignment with this goal, as it allows for development that will promote more street-visible (e.g. customers using the service station) and street-level (e.g. customers walking near the service station) activities. It will also enable development of a more modern and higher quality than currently exists on the site.
Direction 3.3 Create healthy built environments	The site will enable development of a convenience store on the northern side of Warringah road. While the majority of customers will be arriving by car, this will provide an option for close by residents to walk for small purchases and postpone driving for larger purchases.
Goal 4: Sydney's sustainable and resilient environment	Regulations and conditions for service stations have improved dramatically since the service station was originally approved in the early 1960s. The redevelopment and level of remediation of the site will enable these improvements to be applied to the site, resulting in better built and natural environment outcomes for the area.

Table 3: A Plan for Growing Sydney Actions Summary

2. Draft North East Subregional Strategy (2007)

The draft *North East Subregional Strategy* is not applicable as it has been made redundant by A *Plan for Growing Sydney*.

Is the Planning Proposal consistent with council's local strategy or other local strategic plan?

The Planning Proposal is consistent with the Community Strategic Plan, specifically regarding the Outcome Area 'Liveable Neighbourhoods'. The relevant Community Objective is noted in Table 4 below.

Objective	Consistency
5.2 We encourage and support a diversity of businesses that provide a range of services and employment opportunities	The Planning Proposal will allow for a preservation of the 'service station' land use on the site. It will also allow for provision of a wider array of services and employment opportunities via expansion of a convenience store.

Table 4: CSP Objective Summary

Is the Planning Proposal consistent with applicable State Environmental Planning Policies (SEPP's)?

The Planning Proposal is consistent with relevant SEPPs, summarised below:

SEPP	Consistency
SEPP (Infrastructure 2007)	As the Planning Proposal affects the development potential of land adjacent to a classified road, Council acknowledges the Roads and Maritime Service's (RMS) interest in the matter. It is recommended that consultation with the RMS be required as part of the Gateway determination.
SEPP 55 (Remediation of Land)	Council has been notified by the Environment Protection Authority (EPA) that the site is significantly contaminated land under the Contaminated Land Management Act 1998. The owner, BP Australia, is undertaking a voluntary management plan at this time. As such, it is recommended that consultation with the EPA be required as part of the Gateway determination. Further, Council notes its responsibilities under clause 6 of SEPP 55 to be undertaken as

	part of the preparation of an environmental planning instrument.
SEPP 33 (Hazardous and Offensive Development)	The use of 'service station' is acknowledged to be a potentially hazardous industry due to the risks to the biophysical environment. However, SEPP 33 and <i>Hazardous and Offensive Development Guidelines: Applying SEPP 33 (2011)</i> require consent authorities to consider matters during the development application phase.

Table 5: SEPP Summary

Is the Planning Proposal consistent with applicable Ministerial Directions (s117 directions)?

The following Ministerial Directions are applicable to the proposal:

- 1.1 Business and Industrial Zones
- 2.1 Environment Protection Zones
- 2.3 Heritage Conservation
- 3.1 Residential Zones
- 3.4 Integrating Land Use and Transport
- 4.1 Acid Sulfate Soils
- 4.3 Flood Prone Land
- 4.4 Planning for Bushfire Protection
- 6.1 Approval and Referral Requirements
- 6.3 Site Specific Provisions
- 7.1 Implementation of the Metropolitan Strategy

Ministerial Direction	Objectives	Comment
1.1 Business and Industrial Zones	a) encourage employment growth in suitable locations b) protect employment land in business and industrial zones, and c) support the viability of identified strategic centres	An economic impact assessment has been undertaken by the applicant. It has found that development associated with the Planning Proposal will have negligible impact on the business zoned land at the Forestville shops. As such, it is consistent with the direction.
2.1 Environment Protection Zones	Protect and conserve environmentally sensitive areas	As noted above, the EPA has identified the site as being significantly contaminated. In addition, the future/continued use of the site is proposed to be a 'service station', a potentially hazardous industry. The applicant has provided a study detailing remediation activities. These activities are argued to be more effective with a comprehensive redevelopment of the site. In addition, modernisation of the site is expected to have more favourable environmental outcomes due to improvements in infrastructure, compared to the infrastructure on the site currently.
2.3 Heritage Conservation	Conserve items, areas objects an places of environmental heritage significance and indigenous heritage significance	The site is not identified as having heritage significance.
3.1 Residential Zones	(a) to encourage a variety and choice of housing types to provide for	While the Planning Proposal seeks to add business uses to the site via the

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Ministerial Direction	Objectives	Comment
	<p>existing and future housing needs</p> <p>(b) to make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services</p> <p>(c) to minimise the impact of residential development on the environment and resource lands</p>	<p>Additional Permitted Use process, it does not preclude future development permitted by the R2 – Low Density Residential zoning.</p> <p>In addition, given that the site encompasses two Low Density Residential lots, neither used for residential purposes, the outcome should be considered of minor significance and not inconsistent with the direction.</p>
3.4 Integrating Land Use and Transport	<p>(a) improving access to housing, jobs and services by walking, cycling and public transport</p> <p>(b) increasing the choice of available transport and reducing dependence on cars</p> <p>(c) reducing travel demand including the number of trips generated by development and the distances travelled, especially by car</p> <p>(d) supporting the efficient and viable operation of public transport services</p> <p>(e) providing for the efficient movement of freight.</p>	<p>Due to the enhanced multi-purpose nature of development that would be enabled by the development, the Planning Proposal may lead to reduced trips for small scale purchases.</p> <p>While it is expected that this effect would be minimal, increasing the opportunities for multi-purpose trips is an important part of reducing vehicle trips in the local area.</p>
4.1 Acid Sulfate Soils	avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulfate soils.	The land is not in the vicinity of land identified as of acid sulfate soils risk in WLEP 2011.
4.3 Flood Prone Land	<p>(a) to ensure that development of flood prone land is consistent with the NSW Government's Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005</p> <p>(b) to ensure that the provisions of an LEP on flood prone land is commensurate with flood hazard and includes consideration of the potential flood impacts both on and off the subject land.</p>	The subject land is not flood prone land.
4.4 Planning for Bushfire Protection	<p>(a) to protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas</p> <p>(b) to encourage sound management of bush fire prone areas.</p>	The subject land is not bush fire prone land.
6.1 Approval and Referral Requirements	Ensure that LEP provisions encourage the efficient and appropriate assessment of development.	The Planning Proposal does not include any provisions involving public authorities beyond those associated with the nature of the 'service station' use proposed for the site.
6.3 Site Specific Provisions	Discourage unnecessarily restrictive site specific planning controls.	The purpose of the Planning Proposal is to expand planning controls on the site to include the current use on lot 9 DP 25052 (service station) and to allow for a

Ministerial Direction	Objectives	Comment
		'neighbourhood shop' beyond the floor area requirements included in WLEP 2011. For these reasons, the Planning Proposal is expanding development standards beyond WLEP 2011 and not inconsistent with the direction.
7.1 Implementation of the Metropolitan Strategy	Give legal effect to the planning principles; directions; and priorities for subregions, strategic centres and transport gateways contained in A Plan for Growing Sydney.	As outlined above, the Planning Proposal is consistent with the intent of <i>A Plan for Growing Sydney</i> .

Table 6: S117 Summary

Section C - Environmental, Social and Economic Impact.

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 site is not known to include critical habitat or threatened species, populations or ecological communities, or their habitats. Given the urbanised nature of the area, it is unlikely that any of these restrictions apply to the site.

Are there any other likely environmental effects as a result of the Planning Proposal and how are they proposed to be managed?

As noted above, the site is identified as significantly contaminated land by the EPA. The need for remediation has been acknowledged by the applicant and outlined in a submitted remedial action plan. The applicant has stated that an outcome of the Planning Proposal will be a more robust remediation than a smaller redevelopment based on alleged existing use rights.

Further, the 'service station' use is highly regulated as a potential hazardous industry. Any future development application will be subject to the relevant environmental protections associated with that use.

Has the Planning Proposal adequately addressed any social and economic effects?

Due to the scale of the Planning Proposal, and the limited expansion of the existing use on the site, there are unlikely to be sizeable social or economic effects. However, the applicant has noted that an expanded development will provide neighbours with favourable outcomes, compared to the current site. This includes the opportunity for Council to ensure that negative effects, such as those associated with noise and lighting, are appropriately mitigated.

Section D - State and Commonwealth Interests.

Is there adequate public infrastructure for the Planning Proposal?

Due to the scale of the Planning Proposal, the need for the provision of public infrastructure is minor and largely associated with safe access to and from Warringah Road. This, among any other issues would be suitable for consideration at the Development Application phase.

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

The views of State and Commonwealth agencies will be known after the gateway determination.

Part 4: Community Consultation

Council will exhibit the Planning Proposal in accordance with the requirements of section 57 of the *Environmental Planning and Assessment Act (1979)*.

Council also proposes to undertake community consultation in accordance with Council's adopted Community Engagement Policy, in the following manner:

- Advertise the Planning Proposal in a local newspaper and on Council's website at the start of the exhibition period
- Exhibit the Planning Proposal for the period of time stipulated by the Gateway Determination.

Planning Proposal Submission

BP FORESTVILLE

632-634 WARRINGAH ROAD



for submission to Warringah Council

Applicant BP Australia

Submission prepared by

**Walsh Consulting
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with
GTA Consultants – Traffic
Macroplan - Economics

December 2015

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Introduction

Purpose and Structure of this report

This report accompanies a Planning Proposal application to Warringah Council (Council) for land described as 632-634 Warringah Rd, Forestville. The property description for the subject land is Lots 8 and 9 in DP 25052. The subject land is partly occupied by BP Forestville: an older style service station and workshop which enjoys existing use rights (Lot 9); and is partly vacant (Lot 8). Both parcels have been in the long term ownership of BP Australia Pty Ltd (BP).

This report starts with this introductory section and then moves through the required inclusions for Planning Proposals documented in the Department of Planning's *Guide to Preparing Planning Proposals* (2013), as follows:

- Part 1 - Objectives or intended outcomes
- Part 2 - Explanation of provisions
- Part 3 - Justification
- Part 4 - Mapping
- Part 5 - Community consultation
- Part 6 - Project timeline.

Overview

The applicant's objective with this proposal is to bring about a position where the subject land would be able to be used as a service station/convenience store which met contemporary customer expectations. At a pre-lodgement meeting, held at Council on 17 June 2015, the suggested statutory mechanism for this proposal's consideration was through adding additional permissible uses to the subject land through Schedule 1 of Warringah Local Environmental Plan (WLEP) 2011¹. In turn this Planning Proposal application seeks to amend Schedule 1 in the following three ways:

- Adding *service station* and *neighbourhood shop* as permissible uses on the subject land
- "Tieing" the two uses together, that is requiring both uses to occur in conjunction with each other (ie to prevent a future standalone operation)
- Varying the permissible retail floor area of the *neighbourhood shop* component of the use on the subject land to accommodate convenience store standards (240m² max).

Apart from this report, the Planning Proposal application is accompanied by the following documents:

- Concept plan
- Site analysis plan

¹ Warringah Council, Notes from Pre-lodgement meeting (Strategic Planning Team) PLM 2015/0066 - 634 Warringah Road, Forestville (Lot 8 DP 25052), in association with existing development at 632 Warringah Road (Lot 9 DP 25052), 17 June 2015, p6.

- Detail survey
- Traffic impact statement (by traffic and transport specialists GTA Consultants)²
- Statement of economic impact (prepared Macroplan Dimasi)³.

Site analysis

Site description and location

The subject land is described as 632-634 Warringah Rd, Forestville, or Lots 8 and 9 in DP 25052. Site consolidation has been indicated by Council as a pre-requisite for DA approval, and the applicants will be supporting this step. In this report when reference is made to the “subject land” it is to the consolidated parcels.



Figure 1 - Subject land and near context

Location and site context

The site is located in Forestville, some 12km north of the Sydney CBD, about 7km west of Dee Why town centre and about 5km north-east of Chatswood centre. In the vicinity, Warringah Rd runs more or less along a ridgeline defining topographical and drainage sub-catchments for this district, both sides of which ultimately drain towards the upper reaches of middle harbour. Warringah Rd is a significant transport corridor for the local area, and there is a public bus stop on the approach to the site.

² GTA Consultants, BP Forestville 632-634 Warringah Rd Transport Impact Assessment, 14/12/2015

³ Macroplan Dimasi, Forestville BP Service Station – Economic Impact Statement, December 2015

The subject land is just 150m north of Forestville shopping centre, which is set in from, and south of, Warringah Rd. Forestway shopping centre is some 1.5km north-east along Warringah Rd. There are a number of other service-oriented activities along Warringah Rd in the site vicinity, and also smatterings of higher density residential development, including between the subject land and Forestville shopping centre. Away from Warringah Rd the prevailing urban character is low density residential.

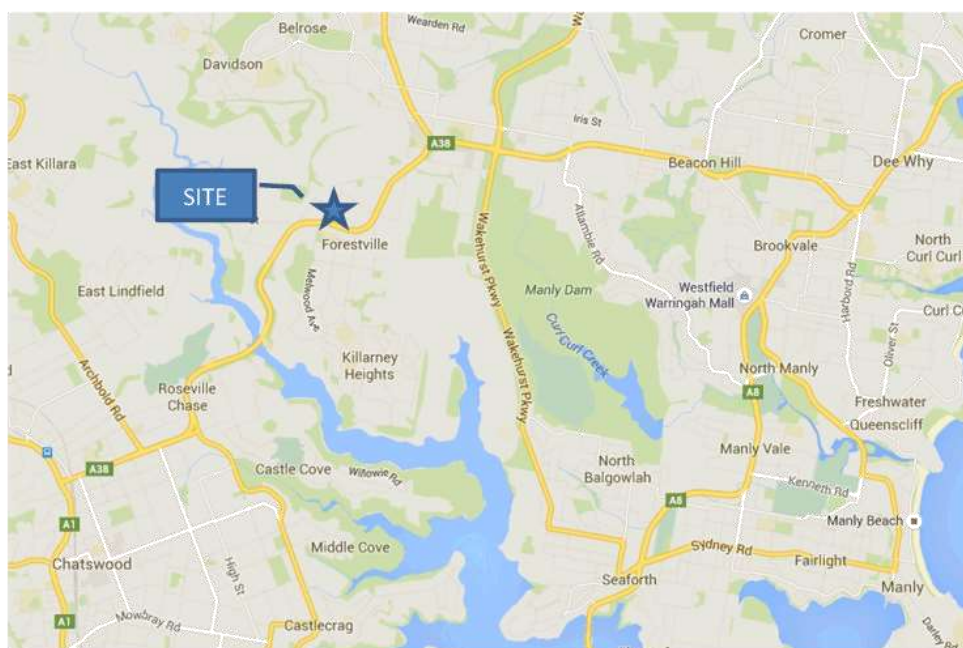


Figure 2- Site context

The subject land has an area of approximately 2839m², and has a frontage of some 55.9m to Warringah Road. The site depth is irregular, varying between 48.09m along the eastern boundary and 66.255 along the western boundary.

Statutory setting

The site is zoned R2 Low Density under WLEP 2011. It is subject to a height of buildings control with a maximum building height of 8.5m above existing surface levels. The site also falls within Area A within WLEP 2011 Landslip Risk Map - this denotes the low risk areas (slopes < 5 degrees). The site is not affected by the Land Reservation and Acquisition map or Acid Sulfate Soils map. There are no sites or areas of heritage significance in the site vicinity.



Figure 3- Zoning in site environs

Existing development

The eastern “two-thirds” of the subject land (lot 9) operates as a service station. It includes five pumps (four under canopy, including one for LPG gas, and one diesel pump at the western boundary). There is a tall above-ground LPG storage tank near a retaining wall and a concrete driveway which links the upper level fuelling area (finished levels similar to Warringah Rd) to a workshop at the rear. The workshop sits within a large asphalt hardstand area at a grade near to natural surface level (see site survey). The upper level service station building and storage area is about 60m², and the workshop building is about 120m². There is scattered vegetation around the service station site perimeter.

The western “third” of the subject land (Lot 8) is vacant, with some intermittent use by the adjoining property owner in evidence. It also has scattered vegetation particular along its perimeter.

Of background relevance to the proposal is the fact that BP has entered a voluntary management agreement with the Environment Protection Authority (EPA) in order to remediate and prevent potential hydrocarbon impact beneath and adjacent to the BP site. In the conception of the remediation proposals for the site and surrounds, it has become clear that the best options for clean-up are co-dependent on a more significant change to the site configuration. BP has already had a good level of discussions with the most adjacent owners both on Warringah Rd and Ferguson St to the rear, where an outline of the intentions has been provided.

Nearby development

There is a two storey timber-frame residential building to the west of the site and a single storey cement rendered building to the east. Further low density residential development abuts the site to the north. There is standard residential (timber and colorbond) fencing along these boundaries. But there is a mix of development form along Warringah Rd in the

site vicinity. There is higher density residential development across Warringah Rd (three level apartments plus loft) which separate the subject land from the Forestville Shopping Centre. There is also townhouse and villa development complexes two blocks west of the site along Warringah Rd, and another (independent) service station about 200m to the west. The recent developments have also brought along traffic signalisation at the intersection of Darley Street and Warringah Road in the site vicinity. Figure 4 provides a site analysis drawing.



Photo 1 - Site entry



Photo 2 – LPG tank and southern part of workshop building



Photo 3 - Rear hardstand area



Photo 4 - Vacant (western portion of) site



Photo 5 – Traffic signals and view towards Forestville shopping centre

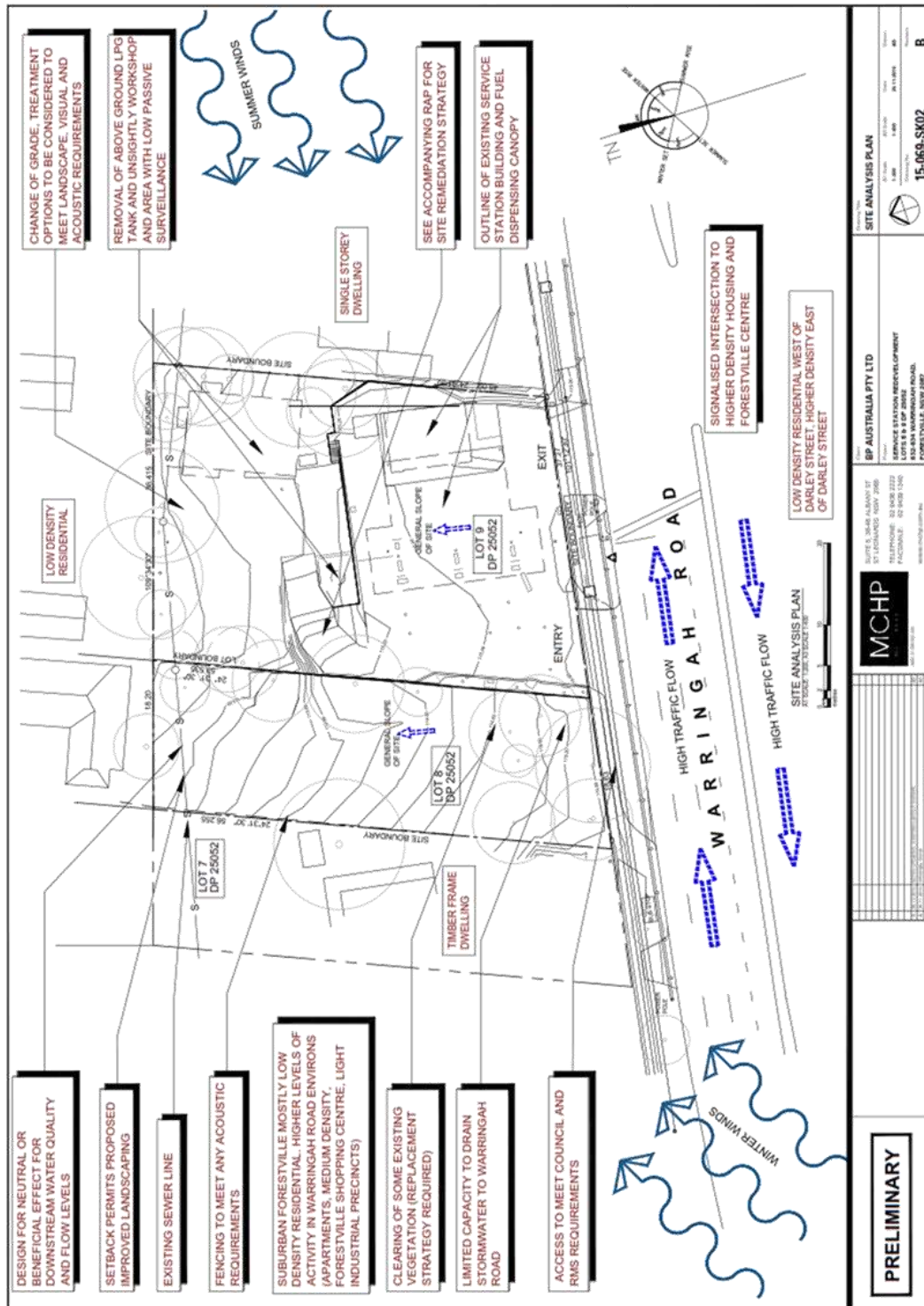


Figure 4 - Site analysis plan

Part 1 - Objectives or intended outcomes

As introduced above, the core objective of this proposal is to bring about a position where the subject land might be able to transition from its current status as an older style service station/workshop to a contemporary integrated service station-convenience store which meets modern customer standards. The concept plan for the proposal is presented at Figure 5, and explained further below. Having regard to urban planning principles this objective sits with a requirement to meet reasonable neighbourhood amenity standards in this local setting. A further, Council administration objective, with the proposal as presented is to bring about the cessation of existing use rights on the current site (as discussed in Part 2 below). So the objectives of the Planning Proposal can be summarised as follows:

- To enable the modernisation of the existing BP service station at Forestville in order to improve local fuel and convenience goods shopping and meet contemporary customer expectations
- To ensure that any site modernisation brings no unreasonable impacts to local residential amenity
- To regularise the statutory position in regard to the approved service station use on the site (ie existing use rights would be set aside with this proposal), providing additional certainty to local residents as to future development scenarios for the subject land.

Consequent intended outcomes of this work would include both statutory changes and then, with a subsequent development, changes in spatial outcomes on the subject land:

Intended outcomes - statutory

- Modifications to Schedule 1 of WLEP 2011 and the relevant LEP Map as specified below.

Intended outcomes - spatial

- Improved service and convenience of access to fuel and convenience shopping for local and wider residents through new fuel offerings and shop
- Increased capacity for multi-purpose car-based trips which leads to savings in time, fuel and thus reduced kilometres driven with implications for safety and GHG emissions
- Improved (walkable) access to convenience goods for residents in the immediate locality (as raised in the applicant's discussions with local residents)
- Removing and upgrading outmoded tanking and infrastructure to higher environmental standards, with improved practical possibilities here (including in the execution of site remediation works) as a consequence of the site changes
- Removal of existing above-ground LPG tank (no LPG gas would be available from the modernised site)
- Improved site visual presentation, including through contemporary store presentation and provision of a landscape zone at the site frontage between ingress and egress points (as requested in pre-lodgement meeting)
- Removal of the workshop, and reduced hardstand at the rear of the site
- No unreasonable amenity implications for local residents
- Rescinding of existing use rights and thus improved land use certainty.

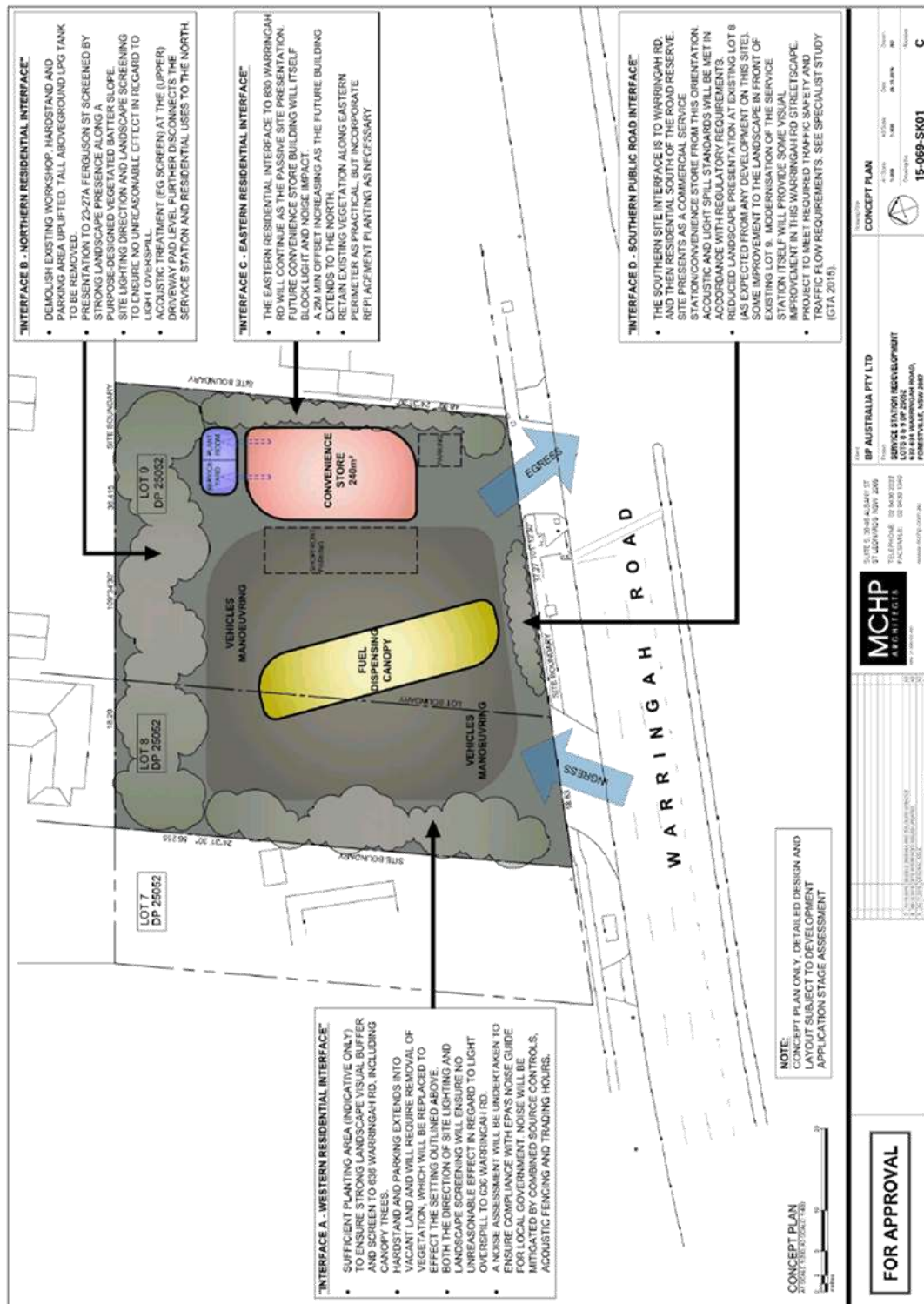


Figure 5 - Concept plan

Part 2 - Explanation of provisions

The objectives and intended outcomes would be achieved by an amendment to WLEP 2011. There are two amendments needed:

Amendment to Schedule 1 (Additional Permitted Uses) of WLEP 2011

Clause 2.5 of WLEP 2011 includes provisions relating to additional permitted uses for particular land beyond those which may be otherwise permitted in the land use table.

Clause 2.5 provides as follows:

- (1) Development on particular land that is described or referred to in Schedule 1 may be carried out:*
 - (a) with development consent, or*
 - (b) if the Schedule so provides—without development consent, in accordance with the conditions (if any) specified in that Schedule in relation to that development.*
- (2) This clause has effect despite anything to the contrary in the Land Use Table or other provision of this Plan.*

Under this Planning Proposal, Schedule 1 to WLEP 2011 would be amended by adding an additional item to the schedule (for the purposes here this is referenced as clause “X”), as indicated below:

X. Use of certain land at 632-634 Warringah Road, Forestville

- (1) This clause applies to land at 632-634 Warringah Road, Forestville, being Lots 8 and 9 in DP 25052, shown as “Area X” on the Additional Permitted Uses Map.*
- (2) Development for the purposes of service station and neighbourhood shop is permitted with consent (provided that the retail floor area of the neighbourhood shop does not exceed 240m², and the uses generally occur concurrently).*

The Schedule 1 amendment would correctly identify the subject land’s property description. That is, when Lots 8 and 9 DP 25052 are consolidated into a single lot, the consolidated property description would be referenced in the schedule.

Amendment to the ‘Additional Permitted Uses Map’

In addition, the associated modification would be made to WLEP 2011’s ‘Additional Permitted Uses’ Map.

Part 3 - Justification

Section A - Need for the Planning Proposal.

Is the Planning Proposal a result of any strategic study or report?

The Planning Proposal is not the result of any strategic study or report. It comes about following a pre-lodgement meeting with Council on 17 June 2015 where the intentions of the applicant were expressed, and Council administration gave guidance on what might be needed, in principle, for the proposal to be fully assessed. This report has been prepared in accordance with the guidance provided by Council's planning and other technical staff in attendance at the meeting, and provides the strategic context for the proposal.

Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

The question of "means" to the achievement of the stated objectives and intended outcomes can be considered having regard to: (1) the statutory or procedural question and (2) the more substantive question of spatial outcome.

"Best means" in spatial terms

There is a continuing background demand to improve the convenience of access to goods and services for increasingly time poor members of the community. There is capacity for retail outlets like service station/convenience stores to assist here, meeting one sector of the raft of wider community demands. At present, for eastbound traffic travelling along Warringah Rd, there is no access to a service station/convenience store with any reasonable range of convenience shopping goods between Roseville and Beacon Hill. This is a distance of about 8km. There is an obvious demand in terms of the question of convenience.

In our pre-lodgement meeting with Council, the question of the potential of effects on local retailing was raised. That is whether the expanded retail offer which would be available from a future 240m² convenience store, with its increase of around 180m² compared to the existing BP Forestville shop, might have unintended impacts in regard to the wider retailing experience in the local area. This question has been examined by retail analysts Macroplan and a specialist economic impact statement accompanies this Planning Proposal. The statement indicates that the effect of the Planning Proposal on the existing Forestville Shopping Centre (some 150m south of the site, south again from Warringah Rd) would be less than 1% of trade, and thus of no significance in planning terms. It is noteworthy that the Macroplan report takes a very conservative approach to its estimates as explained in the document itself. The analysis also suggests no retail impacts of planning significance at other sites.

Traffic management was also raised in our pre-lodgement meeting with Council. A traffic impact statement has been prepared by GTA Consultants, expert traffic and transport engineers and planners. The report concludes that the additional traffic generated by the development proposal could not be expected to compromise the safety or function of Warringah Rd or the surrounding road network.

From the *geographic* point of view, the location of the site is appropriate, and can be considered the best means of achieving the objectives and intended outcomes.

There are also *site specific* factors which support the current proposal as the best means of achieving the stated objectives in this instance. These factors are each centred on the point that the site has ample space to accommodate the service which is intended from the site while also meeting amenity standards. These factors are: (1) the site's approved use as a workshop would terminate with a future approval consistent with the Planning Proposal - this frees up land, (2) the owners of the existing service station (the applicants - BP Australia) already own the land immediately adjacent to the west (Lot 8) and thus there is the obvious capacity to consolidate the existing service station (Lot 9) and Lot 8 to enlarge the site, (3) the changes which would come about in regard to both the existing workshop area and the current vacant Lot 8 both have potential to bring their own amenity benefits: in the case of Lot 8 - this vacant area has already proven to sometimes attract inappropriate behaviours (eg rubbish dumping activity); in the case of the rear workshop area - the loss of this activity and/or any possibility of a redevelopment under existing use rights at the rear of the site removes a potential to adversely affect amenity for neighbours to the north. Each of the above premises factor in a requirement that a future service station/convenience store development, in accordance with the Planning Proposal, does not bring its own unreasonable adverse effects. This is already factored into the Planning Proposal objectives, and particular provisions in consideration of this are outlined in the consideration of "net community benefits" below.

"Best means" in statutory terms

The applicant's original proposal to Council was to add the permissible use of *service station* to the current vacant site (Lot 8). It would then rely on the current existing use rights for the future consolidated site redevelopment. Council's advice at the pre-lodgement meeting had two points to it. The first point was that it was concerned about the permissibility of a contemporary "service station/convenience store" (in this case 240m² floor area) under WLEP 2011's *service station* definition. It was suggested that the Planning Proposal factor in the additional use of *neighbourhood shop* with a customised floor space control in accordance with the provisions of WLEP 2011 cl 2.5(2). The second point was to request that the Schedule 1 modification applies to the entire development site. Council was interested in regularising the statutory position and thus bringing about a situation where existing use rights for Lot 9 were set aside. The applicant has agreed to follow Council's suggestion as the best means of achieving the Planning Proposal objectives.

Is there a net community benefit?

A Planning Proposal in accordance with the stated objectives and intended outcomes will bring about a net community benefit. The key benefits are:

- Improved service and convenience of access to fuel and convenience shopping for local and wider residents through provision of a contemporary service station/convenience store.
- Increased multi-purpose car-based trips (fuel and convenience goods - rather than individual fragmented trips) which leads to savings in time, fuel and thus reduced kilometres driven. Consequent community benefits in terms of safety and reduced GHG emissions.

- Improved (walkable) access to convenience goods for residents in the immediate locality (as has been raised already in the applicant's discussions with local residents).
- A modernisation exercise would include replacement of tanking and infrastructure to higher environmental standards. Some of this work is already required due to current site remediation works but there are improved practical possibilities with the changes which would become available with the approval of the Planning Proposal.
- Removal of existing above-ground LPG tank with its higher risk levels (no LPG gas would be available from the modernised site).
- Improved site visual presentation, including through contemporary store presentation and provision of a landscape zone at the site frontage between ingress and egress points (as requested in pre-lodgement meeting).
- Removal of the workshop, and reduced hardstand at the rear of the existing service station site.
- Improved certainty for local residents with regard to future development on Lot 9 as a consequence of the rescinding of existing use rights which would follow the LEP amendment.

There is also a need to ensure the detail of the site development does not bring about its own local adverse implications. The concept scheme addresses this question through the provision of the set of suggested site specific provisions, which form part of the concept plan (see Figure 5).

Section B - Relationship to Strategic Planning Framework

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

The strategic planning documents referred to by Council in the notes to the prelodgement meeting with potential relevance to this planning proposal included:

- A Plan for Growing Sydney (2014)
- Draft North East Subregional Strategy (2007).

A Plan for Growing Sydney

The secondary title of the current metropolitan strategy, and the government's overall vision for Sydney's future, is defined by the phrase: "a strong global city, a great place to live". This vision is to be realised by Sydney achieving the following goals:

- Goal 1: A competitive economy with world-class services and transport •
- Goal 2: A city of housing choice with homes that meet our needs and lifestyles
- Goal 3: A great place to live with communities that are strong, healthy and well connected
- Goal 4: A sustainable and resilient city that protects the natural environment and has a balanced approach to the use of land and resources

In the main, the scale of this Planning Proposal has little resonance in regard to these wider city planning ambitions. But below a set of pertinent points are noted which suggest the proposal as sympathetic to the government's intentions for "growing Sydney" and the plan's suggested "directions and actions".

Goal 3: A great place to live with communities that are strong, healthy and well connected

Table 1 - Metro Strategy Goal 3

Item	Comment
Revitalise existing suburbs (Direction 3.1 - Building safe communities (p84))	<p>Local service station/convenience stores provide the capacity to contribute to local street safety, especially during the evening. The open nature of the design provides for good sightlines between public and private spaces, and as a point of public activity and surveillance. This can be a public safety factor along the Warringah Rd corridor which can be otherwise short on street level human activity apart from (somewhat anonymous) passing cars.</p> <p>Part of the change involved in the project involves the removal of an existing above ground LPG tank which also naturally reduces hazard levels.</p>
Create healthy built environments (Direction 3.3)	<p>One of the key contributors to a healthier built environment is increased active transport (especially walking). While there is no doubt this use is principally concerned with motor vehicle transport, paradoxically, at a small scale this proposal will also encourage walk-in visits from residents in the immediate locality⁴.</p>
Other factors	<p>A further factor for consideration, under the goal of "a great place to live" is the general improvements to convenience of access to convenience shopping and fuel for local and wider residents through provision of a contemporary service station/convenience store.</p>

⁴ Initial dialogue with residents in the site vicinity indicated the capacity to walk to the site for convenience shopping as having some appeal.

Goal 4: A sustainable and resilient city that protects the natural environment and has a balanced approach to the use of land and resources

Table 2 - Metro Strategy Goal 4

Item	Comment
Protecting the natural environment and biodiversity (Direction 4.1) & Managing the impacts of development on the environment (Direction 4.3)	Support for the Planning Proposal would facilitate an entire redevelopment of the sites fuel storage and management system. It would provide for removal of existing earlier technology tanking and piping systems with modern technology which involves double-lined tanks and pipes and modern leak-monitoring systems. These changes would reduce any potential environmental risks.
Other factors	A further factor for consideration, under the goal of “a sustainable and resilient city” is the incidental effects on emissions with are encouraged by this Planning Proposal. As indicated in the statement prepared by retail specialists Macroplan (2015, p16), a feature of a future expanded convenience store at the site would be its potential to encourage multi-purpose trips, where “consumers can double up a purchase of fuel with a convenience/top-up shopping trip, potentially reducing the amount of kilometres driven on the road. This leads to savings on time and fuel for main trade area residents, as well as broader community benefits such as reduced pollution/emissions and improved safety on the roads etc.” The subject proposal is consistent with this direction.

Priorities for “North” district within Sydney Metropolitan Region

Subsequent to the release of the Plan for Growing Sydney, the Department has released a set of priorities for each of the new designated Districts which have been established. The subject land falls within the “North District”. There is little of pertinence to the Planning Proposal although the intent to “improve connections from the Northern Beaches to Global Sydney and to the Global Economic Corridor” is noted. In that sense the importance of Warringah Rd as a transport link is only likely to increase over time.

Draft North East Subregional Strategy (2007).

While we note Council's reference to the Draft North East Subregional Strategy, it appears this document is no longer referenced as part of the metropolitan strategic planning documentation⁵.

Is the planning proposal consistent with Council's local strategy or other local strategic plan?

Warringah Council Community Strategic Plan

The community vision of the Warringah Community Strategic Plan 2023 (CSP) is:

A vibrant, caring community, thriving in a unique beach and bush environment, supporting a balance of lifestyle, business and recreation.

Six community outcomes are described: a vibrant community; lifestyle and recreation opportunities; a healthy environment; connected transport; working together for the greater good of all; and liveable neighbourhoods.

The Planning Proposal is seen to be consistent with Community Outcome 5.2 (Liveable Neighbourhoods) in that it will help provide a diversity of businesses that provide a range of services and employment opportunities.

Is the planning proposal consistent with applicable State Environmental Planning Policies (SEPP's)?

There is a limited number of SEPPs of relevance to the Planning Proposal (see table below). There appears to be no relevant inconsistencies.

Table 3 - Considering State Environmental Planning Policies

SEPP	Comment
State Environmental Planning Policy (Infrastructure) 2007	Division 17 of the SEPP is concerned with "Roads and traffic". It provides certain controls on DA processes for development like the subject proposal which has frontage to a classified road. This is a Planning Proposal rather than a DA and Council has indicated the RMS will be involved in the assessment of the Planning Proposal.
State Environmental Planning Policy No. 71 - Coastal Protection	The site does not fall within the "coastal zone", as defined in the coastal zone maps as available on the DPE website ⁶ .

⁵ This is based on our search of the Department of Planning and Environment website on 4 December 2015

⁶ The relevant map is Map 14 and is accessible at: <http://www.planning.nsw.gov.au/~media/Files/DPE/Maps/map-coastal-zone-map-14.ashx>. Accessed 4/12/2015.

SEPP	Comment
State Environmental Planning Policy No. 64 - Advertising and Signage	Another matter for consideration at DA stage.
State Environmental Planning Policy No. 55 - Remediation of Land	Council is already aware that this site is subject to an Environmental Protection Agency order.
State Environmental Planning Policy No. 33 - Hazardous and Offensive Development	This is a further matter for consideration at the DA stage. Site upgrading would reduce potential risks.

Is the planning proposal consistent with applicable Ministerial Directions (s117 directions)?

It is considered that the planning proposal is consistent with the relevant Ministerial Directions issued under Section 117(2) of the EPA Act, 1979, as demonstrated in the table below.

Below the relevant Directions issued by the Minister for Planning under section 117(2) of the Environmental Planning and Assessment Act 1979 are given consideration⁷.

1. Employment and Resources

1.1 Business and Industrial Zones

Objectives

The objectives of this direction are to:

- (a) encourage employment growth in suitable locations,
- (b) protect employment land in business and industrial zones, and
- (c) support the viability of identified strategic centres.

When this direction applies

This direction applies when a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed business or industrial zone (including the alteration of any existing business or industrial zone boundary).

What a relevant planning authority must do if this direction applies

A planning proposal must:

- (a) give effect to the objectives of this direction,
- (b) retain the areas and locations of existing business and industrial zones,
- (c) not reduce the total potential floor space area for employment uses and related public services in business zones,
- (d) not reduce the total potential floor space area for industrial uses in industrial zones, and
- (e) ensure that proposed new employment areas are in accordance with a strategy that is approved by the Director-General of the Department of Planning.

⁷ Source of directions is DPE website: <http://www.planning.nsw.gov.au/~media/Files/DPE/Directions/local-planning-directions-section-117-2015-09-22.ashx>. Accessed 4/12/2015.

Statement of Consistency

A specialist economic impact assessment has been undertaken by Macroplan indicating that the subject proposal will not have any unreasonable effect on existing employment land in business or industrial zones. As such the Planning Proposal is not inconsistent with this direction.

2. Environment and Heritage

2.1 Environment Protection Zones

Objective

The objective of this direction is to protect and conserve environmentally sensitive areas.

What a relevant planning authority must do if this direction applies

A planning proposal must include provisions that facilitate the protection and conservation of environmentally sensitive areas.

Statement of Consistency

This Planning Proposal facilitates the upgrading of the current service station which brings a range of improvements to the fuel management system and thus improved protection of downstream environmentally sensitive areas. The subject proposal is consistent with this direction.

2.3 Heritage Conservation

Objective

The objective of this direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.

When this direction applies

This direction applies when a relevant planning authority prepares a planning proposal.

Statement of Consistency

The subject land is not identified as including, or being in the vicinity of, matters of heritage significance. The subject proposal is not inconsistent with this direction.

3. Housing, Infrastructure & Urban Development

3.1 Residential Zones

Objectives

The objectives of this direction are:

- (a) *to encourage a variety and choice of housing types to provide for existing and future housing needs,*
- (b) *to make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services, and*

- (c) to minimise the impact of residential development on the environment and resource lands.

When this direction applies

This direction applies when a relevant planning authority prepares a planning proposal that will affect land within:

- (a) an existing or proposed residential zone (including the alteration of any existing residential zone boundary),
- (b) any other zone in which significant residential development is permitted or proposed to be permitted.

What a relevant planning authority must do if this direction applies

A planning proposal must include provisions that encourage the provision of housing that will:

- (a) broaden the choice of building types and locations available in the housing market, and
- (b) make more efficient use of existing infrastructure and services, and
- (c) reduce the consumption of land for housing and associated urban development on the urban fringe, and
- (d) be of good design.

A planning proposal must, in relation to land to which this direction applies:

- (a) contain a requirement that residential development is not permitted until land is adequately serviced (or arrangements satisfactory to the council, or other appropriate authority, have been made to service it), and
- (b) not contain provisions which will reduce the permissible residential density of land.

Statement of Consistency

The Planning Proposal does not amend the current residential zoning. By meeting the stated Planning Proposal objective through the use of Schedule 1 of WLEP 2011, the potential for future residential use of the land remains. In any event existing use rights apply to Lot 9 (which occupies the service station and workshop), and Lot 8 is a single vacant parcel of land and thus would meet the test of “minor significance”, as provided at in the direction. The subject proposal is not inconsistent with this direction.

3.4 Integrating Land Use and Transport

Objective

The objective of this direction is to ensure that urban structures, building forms, land use locations, development designs, subdivision and street layouts achieve the following planning objectives:

- (a) improving access to housing, jobs and services by walking, cycling and public transport, and
- (b) increasing the choice of available transport and reducing dependence on cars, and
- (c) reducing travel demand including the number of trips generated by development and the distances travelled, especially by car, and
- (d) supporting the efficient and viable operation of public transport services, and
- (e) providing for the efficient movement of freight.

Statement of Consistency

As indicated in the statement prepared by retail specialists Macroplan (2015, p16), a feature of a future expanded convenience store at the site would be its potential to encourage multi-purpose trips, where “consumers can double up a purchase of fuel with a convenience/top-up shopping trip, potentially reducing the amount of kilometres driven on the road. This leads to savings on time and fuel for main trade area residents, as well as broader community benefits such as reduced pollution/emissions and improved safety on the roads etc.” The subject proposal is consistent with this direction.

4. Hazard and Risk

4.1 Acid Sulfate Soils

Objective

The objective of this direction is to avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulfate soils.

Statement of Consistency

The subject land is not in the vicinity of land identified as of acid sulfate soils risk in WLEP 2011.

4.3 Flood Prone Land

Objectives

The objectives of this direction are:

- (a) *to ensure that development of flood prone land is consistent with the NSW Government's Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005, and*
- (b) *to ensure that the provisions of an LEP on flood prone land is commensurate with flood hazard and includes consideration of the potential flood impacts both on and off the subject land.*

Statement of Consistency

The subject land is not flood prone land. The subject proposal is not inconsistent with this direction.

4.4 Planning for Bushfire Protection

Objectives

The objectives of this direction are:

- (a) *to protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas, and*
- (b) *to encourage sound management of bush fire prone areas.*

Statement of Consistency

The subject land is not bushfire prone land. The subject proposal is not inconsistent with this direction.

5. Regional Planning

These Section 5 directions do not apply to the subject proposal.

6. Local Plan Making

6.1 Approval and Referral Requirements

Objective

The objective of this direction is to ensure that LEP provisions encourage the efficient and appropriate assessment of development.

Statement of Consistency

The subject proposal does not include any provisions involving public authorities beyond those already existing.

6.3 Site Specific Provisions

Objective

The objective of this direction is to discourage unnecessarily restrictive site specific planning controls.

What a relevant planning authority must do if this direction applies

A planning proposal that will amend another environmental planning instrument in order to allow a particular development proposal to be carried out must either:

- (a) *allow that land use to be carried out in the zone the land is situated on, or*
- (b) *rezone the site to an existing zone already applying in the environmental planning instrument that allows that land use without imposing any development standards or requirements in addition to those already contained in that zone, or*
- (c) *allow that land use on the relevant land without imposing any development standards or requirements in addition to those already contained in the principal environmental planning instrument being amended.*

A planning proposal must not contain or refer to drawings that show details of the development proposal.

Consistency

A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the planning proposal that are inconsistent are of minor significance.

Statement of Consistency

The subject proposal would allow a current land use to become a permissible use within the background residential zone. In this sense it is directly consistent with the direction. The proposal would also allow the use to be permissible on an adjoining parcel as part of a future intended consolidated development in accordance with the Planning Proposal objectives, which is also consistent with the direction.

The inclusion of the use “neighbourhood shop” and a variation to the standard floor area control on that use, is as means of addressing an interpretative gap in the standard land use definitions. That is, the intention of the Planning Proposal is quite clear: to allow the provision of a contemporary service station/convenience store on the subject land. However, as things stand there is no definition to suite this particular use. It may be interpreted that the land use definition “service station” encompasses the convenience store use. However, Council has had experience where this interpretation has been questioned.

In this setting the course which seems most suitable is that which has been suggested in the Planning Proposal. It is not seen to be inconsistent with the direction due to its context and the minor significance in regard to the stated objective.

7. Metropolitan Planning

7.1 *Implementation of the Metropolitan Strategy*

Objective

- (1) *The objective of this direction is to give legal effect to the planning principles; directions; and priorities for subregions, strategic centres and transport gateways contained in A Plan for Growing Sydney.*

Statement of Consistency

The proposal is consistent with the provisions of *A Plan for Growing Sydney* as outlined at the start of Section B.

Section C - Environmental, social and economic impact

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 site is located in an urbanised area of the Warringah LGA and there would not seem to be any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, would be adversely affected as a result of the proposal. In recognition of the largely cleared nature of the site it is unlikely that it would require an assessment of significance under Part 5A of the EPA Act.

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

None identified during pre-lodgement discussions with Council.

Has the planning proposal adequately addressed any social and economic effects?

In our pre-lodgement meeting with Council the sequential aspects of the project were acknowledged. That is, it is recognised that there may be further studies required as the project proceeds through the Gateway determination and then any eventual DA level analysis. Mindful of the level of analysis undertaken at this Gateway stage, and again in accordance with advice from the pre-lodgement meeting, reference can be made to Warringah DCP 2011 provisions, and relevant non-compliances or potential non-compliances noted and considered.

Table 4 – Considering Warringah DCP 2011

Provision	Comment
B3 Side boundary envelope – 0.9m for a height of 4m then a projecting plane of 45 degrees.	– Council DA staff have requested a 2m side boundary offset to the east to assist retain existing trees. This has been factored into the concept plan.
B7 Front boundary setback – 6.5m	– The existing site canopy and identification signage both exceed this control now. The concept plan indicates that there would be no increased impingement into the setback area.
C4 Stormwater – no increased flow off-site, qualitative standards	– Council indicates in the pre-lodgement meeting that site drainage was to be directed to the rear. It was also indicated that it was satisfactory that the particulars of this matter be resolved at the DA stage.
C7 Excavation and landfill – qualitative standards	– The project would involve landfill to the rear of the site for the driveway pad, but retain sufficient rear boundary offset to enable suitable landscaping to effect a suitable visual appearance from the rear. – Landscape detailing would be provided at the DA stage.
D1 Landscaped Open Space and Bushland Setting – 40% landscaped open space provision	– Approximately 2/3 of the site (Lot 9 – existing service station/workshop site) is currently hardstand. There will be opportunity to improve site landscaping at this portion of the site, both in the rear, and in a frontage planting area as discussed at the pre-lodgement meeting. – However, an underpinning feature of the Planning Proposal is its involvement of Lot 8 for commercial purposes which will require clearing of some

	<p>existing vegetation (including both exotic and native species) on this parcel to enable the ingress changes indicated in the concept plan, parking and internal site movement.</p> <ul style="list-style-type: none"> – The details of site landscaping will be resolved later in the process and there will be the opportunity for considerable landscaping on the site, more than is typical of this kind of use. However, acknowledging the use characteristics, it is reasonable to place emphasis on the DCP performance standards rather than strict numerical compliance with a 40% landscape site cover control.
D8 Privacy – retain high levels of visual and acoustic privacy	<ul style="list-style-type: none"> – Landscape and acoustic screening will provide for the retention of expected levels of visual and acoustic privacy.
D12 Glare and reflection – ensure development will not result in overspill or glare	<ul style="list-style-type: none"> – The potential for light overspill from the site will be managed by the combined design effort of the direction of site lighting, and luminance levels. There have been significant improvements in technical capacities to <i>direct</i> lighting to the intended task since the original service station development. This is seen as a manageable consideration which will be attended to and assessed at the DA stage.

But for this stage of the proposal there is merit in establishing the development principles which should underpin this Planning proposal stage. We are suggesting these are best captured as points to be addressed with respect to each of the “interfaces” for the project into the future. Interface principles are suggested below (and summarised in the Concept Plan) for each of the four boundary “relationships” as follows:

Interface A – Western residential interface

- Sufficient landscape area will be available to ensure a strong landscape visual buffer and screen to 636 Warringah Rd, including canopy trees.
- The service station hardstand and parking will extend into Lot 8 and will require removal of some existing vegetation, which will be replaced to effect the setting outlined above.
- Both the direction of site lighting and landscape screening will ensure no unreasonable effect in regard to light overspill to 636 Warringah Rd.
- A noise assessment will be undertaken to ensure compliance with EPA’s Noise Guide for Local Government. Noise will be mitigated by combined source controls, acoustic fencing and trading hours.

Interface B – Northern residential interface

- The existing workshop building will be demolished and hardstand and parking area uplifted. The tall aboveground LPG tank prominent in this space will be removed. The presentation of the site from 23-27A Ferguson St will be screened by strong landscape presence along a purpose-designed vegetated batter slope.
- Site lighting and landscape screening will ensure no unreasonable effect in regard to light overspill to 23-27A Ferguson St.
- It is expected that noise assessment will encourage provision of an acoustic fence at the (upper) driveway pad level to further disconnect the service station and residential uses.

Interface C – Eastern residential interface

- The eastern residential interface to 630 Warringah Rd will continue as the passive site presentation. That is, the future convenience store building will itself block light and noise impact.
- The adopted building offset will exceed the 0.9m DCP control to allow sufficient area for landscape treatment. A 2m offset will be adopted which increases to a wider offset as the future building extends to the north.
- Efforts will be made to retain existing vegetation along the eastern perimeter, but replacement planting will be incorporated in any event.

Interface D – Southern public road interface

- The southern site interface is to Warringah Rd, and then residential along the southern side of the considerable road reserve. The site will present as a commercial service station/convenience store from this orientation. Acoustic and light spill standards will be met in accordance with regulatory requirements.
- There will be a reduced landscape presentation at existing Lot 8. This will be somewhat offset by some improvement to the landscape in front of existing Lot 9. The modernisation of the service station itself will provide visual improvement in this portion of the Warringah Rd streetscape.
- A traffic impact assessment has indicated that there is a capacity for the Planning Proposal to meet required traffic safety and traffic flow requirements (GTA 2015). Council has requested further traffic particulars as the project proceed through the Gateway and DA processes.

Section D - State and Commonwealth interests

Is there adequate public infrastructure for the planning proposal

This proposal does not seem to involve State or Commonwealth interests in that it does not involve residential subdivision in excess of 150 lots, substantial urban renewal. To the extent that it involves infill development and/or development that will result in additional demand on infrastructure, such matters would be addressed at the DA stage and appropriate conditions applied (generally user pays provisions).

What are the views of state and Commonwealth public authorities consulted in accordance with the Gateway determination?

It is understood that Council will be liaising with RMS prior to making its own determination, and further consultation may be deemed necessary at the formal Gateway determination.

Part 4 - Mapping

The only mapping involved in this Planning Proposal is the addition of text describing the site on the WLEP 2011 *Additional Permitted Uses* Map. This is a matter for Council and DPE and cartographic procedures.

Part 5 - Community consultation

This is a matter for Council determination. However, BP has already initiated its own round of consultation for the project. This has been in association with its contact with nearby residents in regard to the current a voluntary management agreement with the EPA over the current site remediation works.

Part 6 – Project timeline

This is also a matter for Council consideration. However, there is an interest on the part of the applicant for the matter to be progressed promptly to facilitate the final remediation planning for the site.

Conclusion

This planning proposal submission has been prepared in support of amendment to Schedule 1 of Warringah LEP 2011. The amendment would allow the development of a service station convenience store on the subject land.

The site is seen to be well suited for a sensitive redevelopment which accommodates the upgrading of the existing older style service station/workshop to improve convenience and amenity for the public, and thus meet contemporary expectations for convenience shopping. Increasing this multi-purpose activity can reduce total VKT⁸ which brings wider individual and societal benefits.

The scale of the retail activity from the future development has been assessed in terms of its potential impact on existing retail outlets. Because a significant proportion of sales would be generated from beyond the trade area estimated impacts on Forestville shopping centre are adjudged to be negligible (< 1%). See accompanying specialist study by Macroplan (2015).

The Planning Proposal stage traffic study has also found the site satisfactory for the proposed development. See accompanying specialist study by GTA (2015).

The site is seen to be capable of accommodating the proposed future use while also meeting contemporary residential amenity standards. A set of development principles are suggested which articulate the matters for attention at the development application stage, suggesting performance requirements.

To regularise the statutory position in regard to the approved service station use on the site also has potential to benefit local amenity. That is loss of existing use rights provides some additional certainty to local residents as to future development scenarios for the existing service station site.

Overall the proposal is assessed as an appropriate form of redevelopment which can provide a net community benefit.

⁸ VKT = vehicle kilometres travelled.



Submission Summary – Pre Gateway Exhibition

Planning Proposal – BP Forestville

The public exhibition of Planning Proposal – BP Forestville received 4 submissions. The table below outline the issues contained in the submissions. Submissions generally raised multiple 'issues'. One submission could not be classified as being in support or opposition of the Planning Proposal.

Opposition – 3 submissions

Issues Raised	Times raised	Council Response
The service station is not in keeping with the residential character and zoning of the area.	2	The service station use was approved in April 1962 and faces Warringah Road, a major transport corridor. Uses outside of 'residential' can be found in multiple locations close to the service station. As such, it is not considered out of character for the area.
The service station has damaged the surrounding environment	1	Council is aware of environmental damage on the site and surrounding properties. However, redevelopment of the site will allow for a more extensive remediation. It will also allow for more modern infrastructure to be installed on the site.
The service station has breached previous conditions on landscape buffers and service vehicles	1	Any future development application for the site will consider conditions for hours of operations, service vehicles and landscape buffers. Council will enforce conditions to the best of its ability.
The service station attracts antisocial behaviour on vacant lot	1	Expansion of the service station onto the vacant lot may increase passive surveillance and reduce instances of antisocial behaviour.
Drawings do not show how impacts on neighbours will be minimised (e.g. light and sound)	1	Any drawings provided at this stage are considered to be concepts and not finalised. Impact minimising measures will be considered at a future development application phase.
The larger 'neighbourhood shop' is not required, as a supermarket is open late at the Forestville Shops	1	The applicant has shown that the larger shop will have a nominal effect on trade at the Forestville Shops. In addition, by providing an opportunity for a multi-purpose stop (i.e. purchase of fuel and goods at the shop) may help reduce kilometres driven.



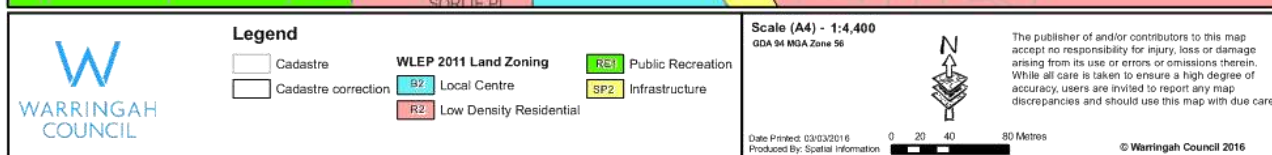
Only non-petroleum infrastructure should be permitted on 636 Warringah Road (western site)	1	Section 117 Direction '6.3 Site Specific Provisions' limits the provision of development standards or requirements.
Hours of operations should be formally limited to current operation of 6am to midnight	1	These matters will be addressed during a future development application stage. As such, detail of this level would be inconsistent with the Section 117 Direction.

General Comment – 1 submission

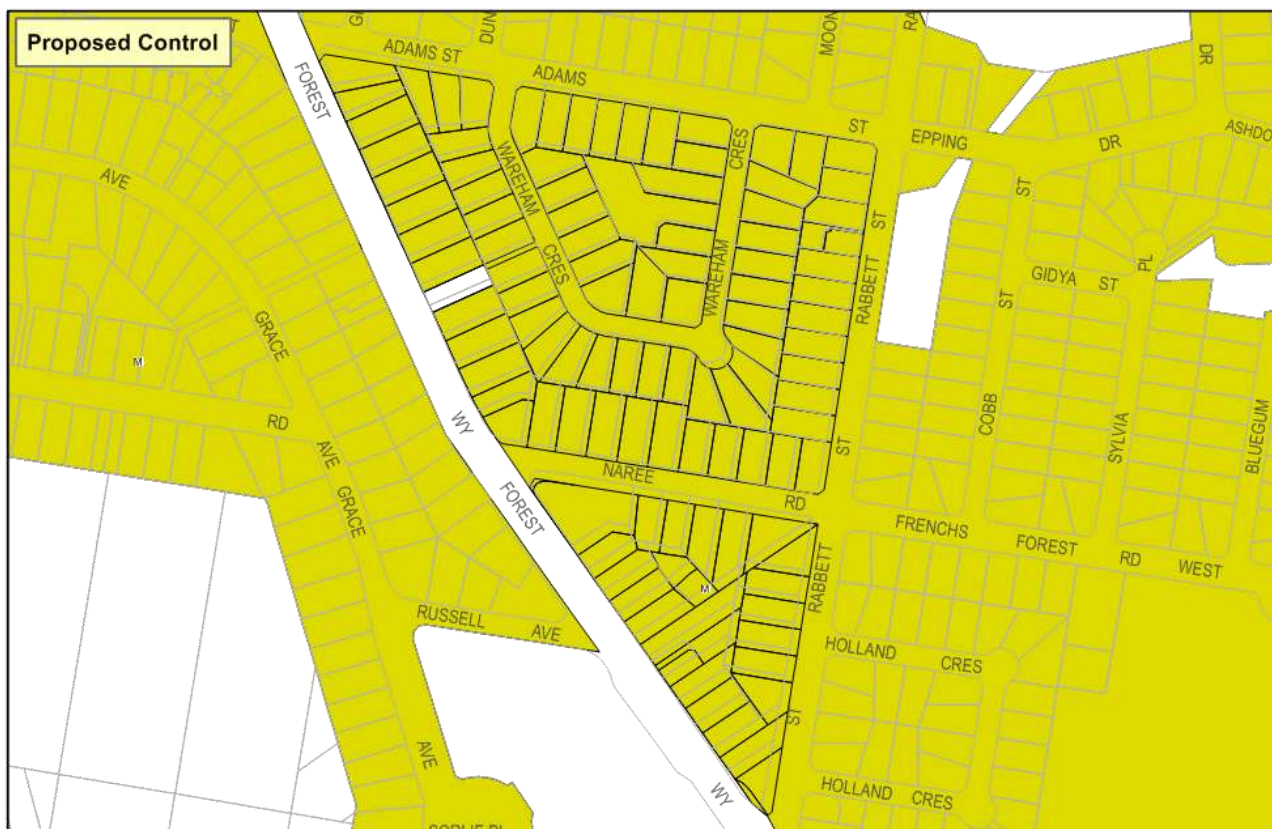
Issues Raised	Times raised	Council Response
Service Station should be required to allow parking for cyclists and at least one electric car charging station.	1	Section 117 Direction '6.3 Site Specific Provisions' limits the provision of development standards or requirements.
Service Station should be required to include at least one electric car charging station.	1	These matters will be addressed during a future development application stage. As such, detail of this level would be inconsistent with the Section 117 Direction.

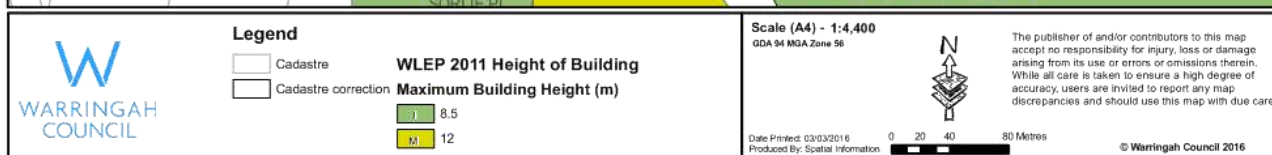


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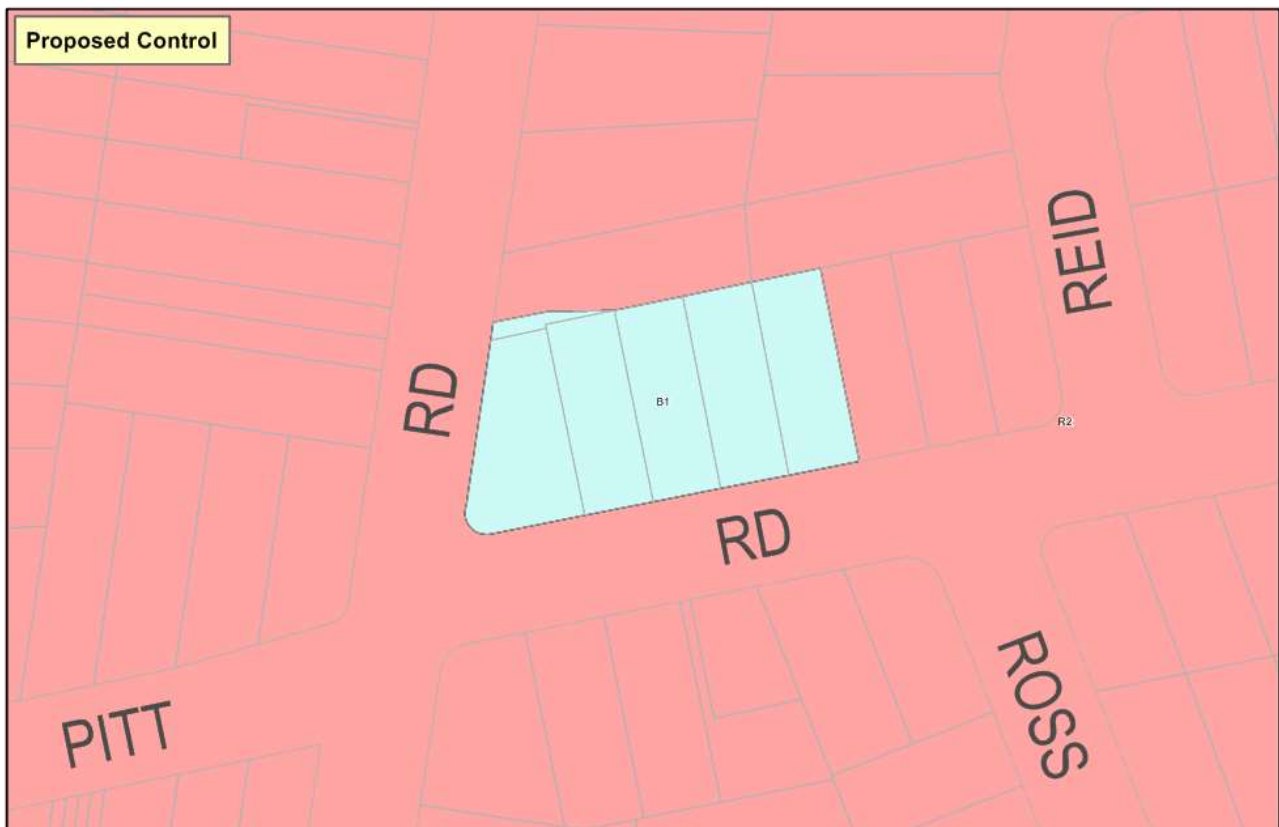




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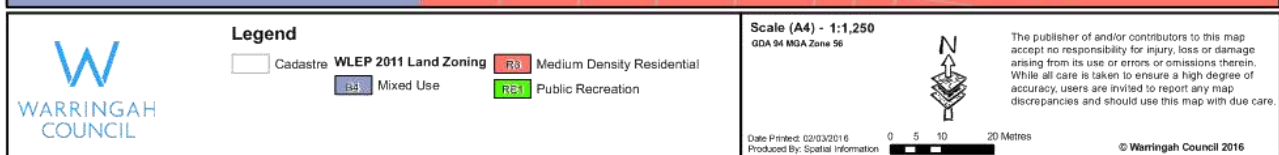
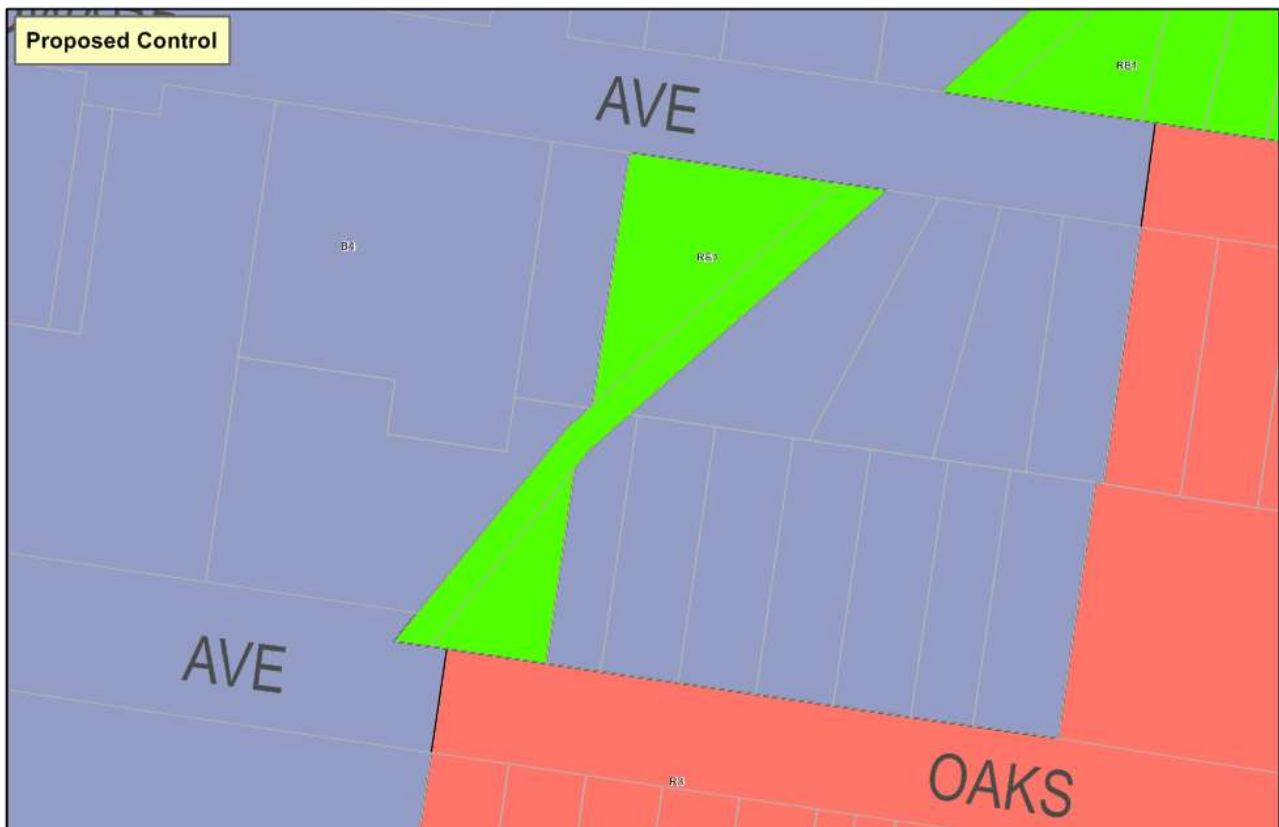
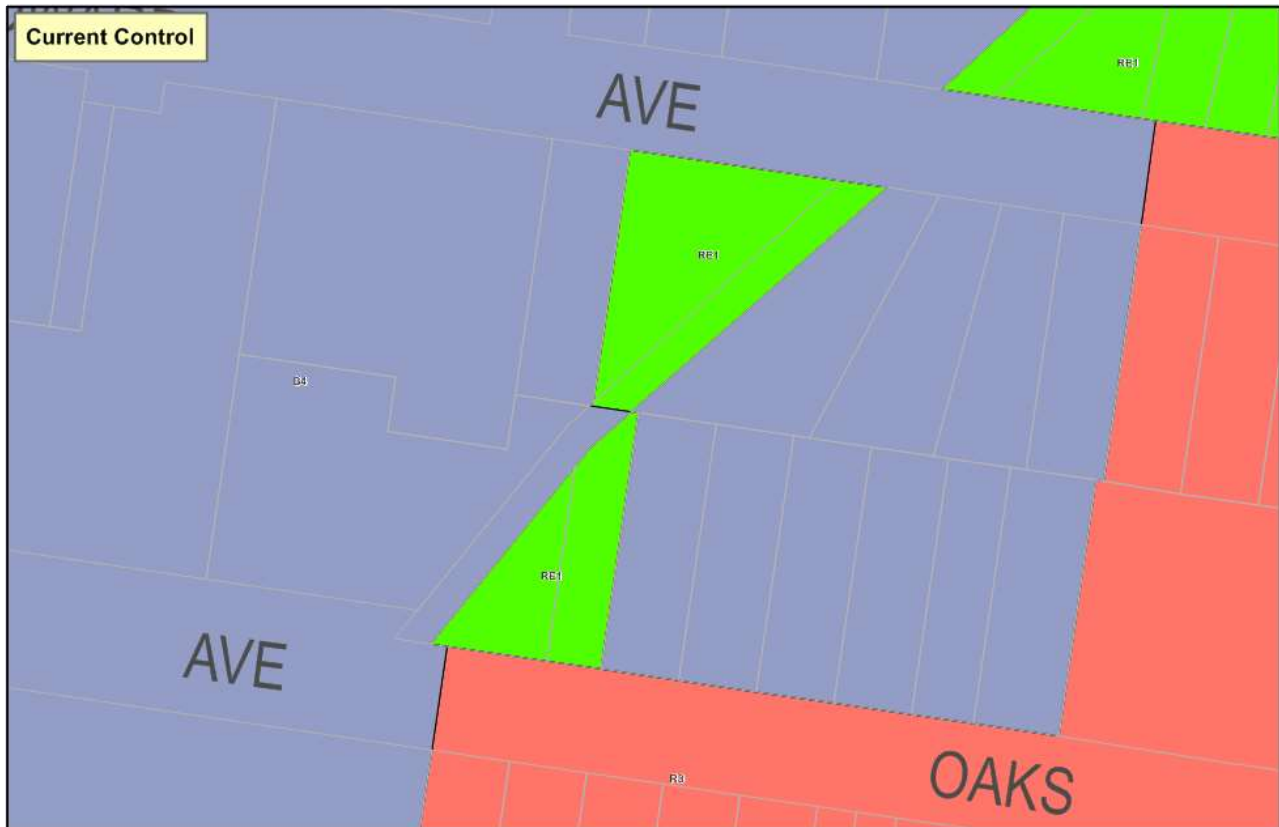
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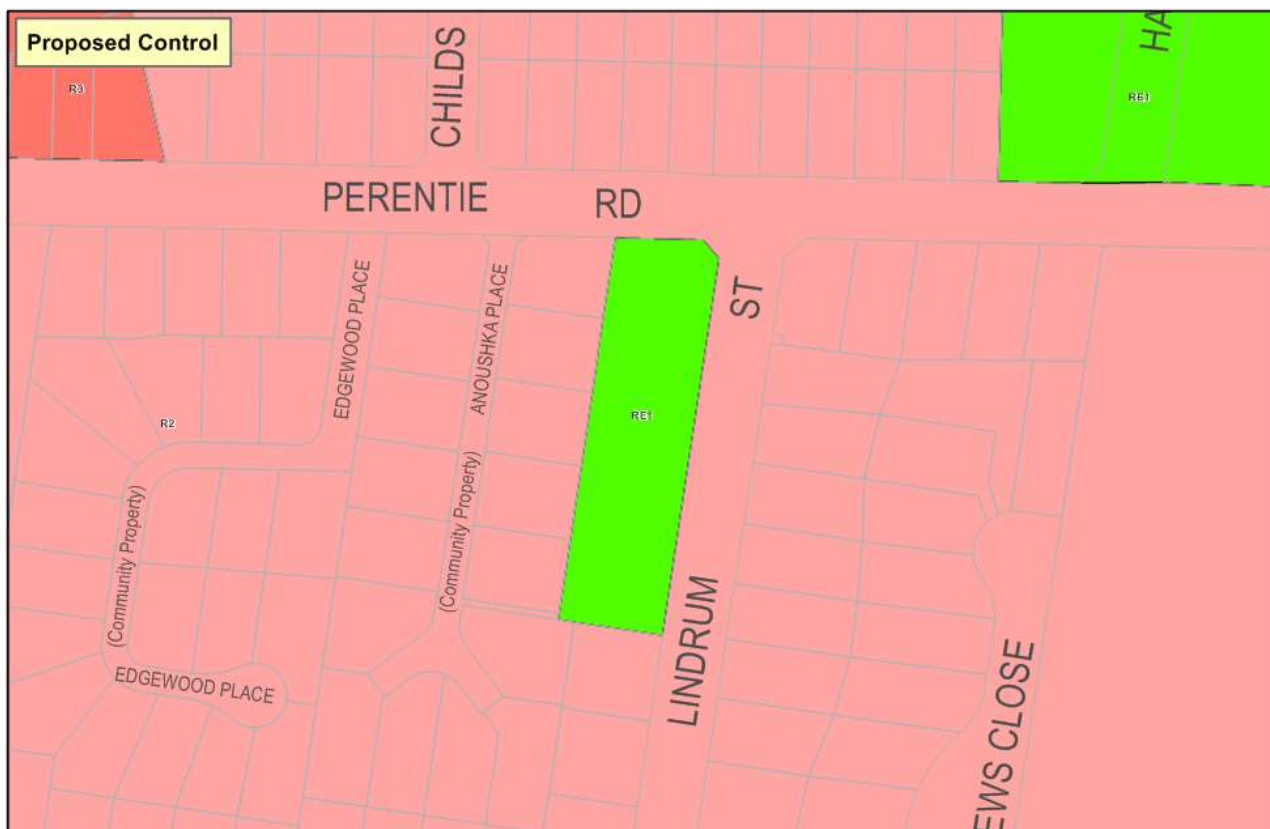
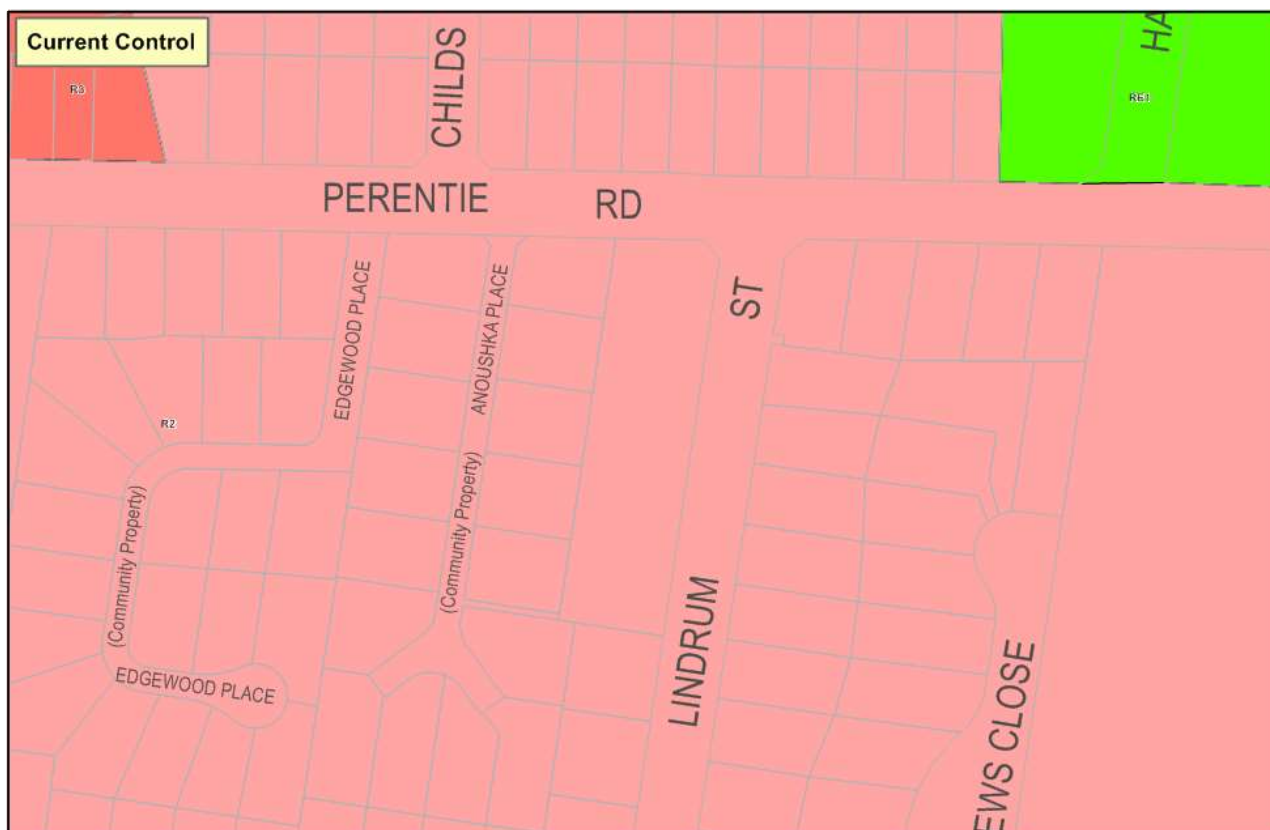


<p>WARRINGAH COUNCIL</p>	<p>Legend</p> <p> Cadastre</p> <p> WLEP 2011 Lot Size</p> <p> 450m²</p>	<p>Scale (A4) - 1:1,250</p> <p>GDA 94 MGA Zone 56</p> <p>Date Printed: 02/03/2016 Produced By: Spatial Information</p> <p>0 5 10 20 Metres</p>	<p>The publisher of and/or contributors to this map accept no responsibility for injury, loss or damage arising from its use or errors or omissions therein. While all care is taken to ensure a high degree of accuracy, users are invited to report any map discrepancies and should use this map with due care.</p> <p>© Warringah Council 2016</p>
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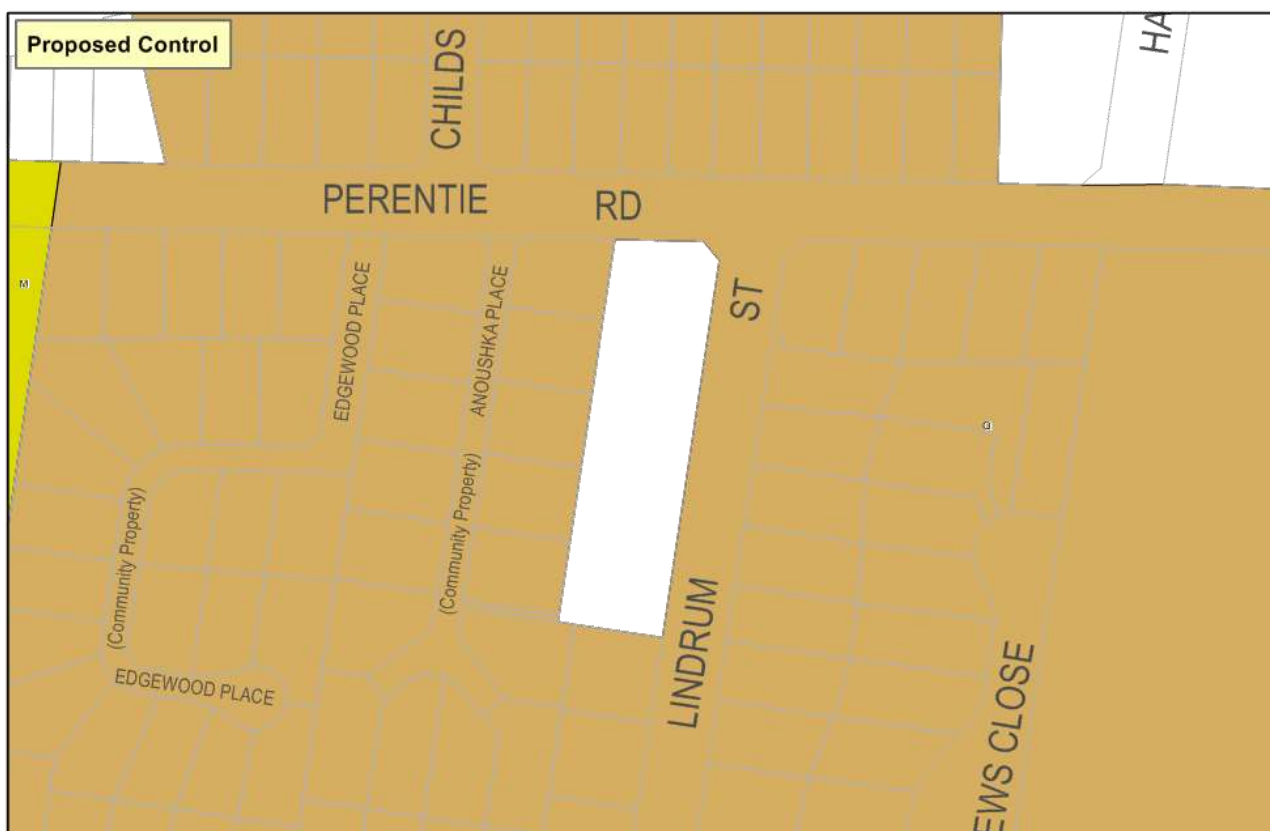
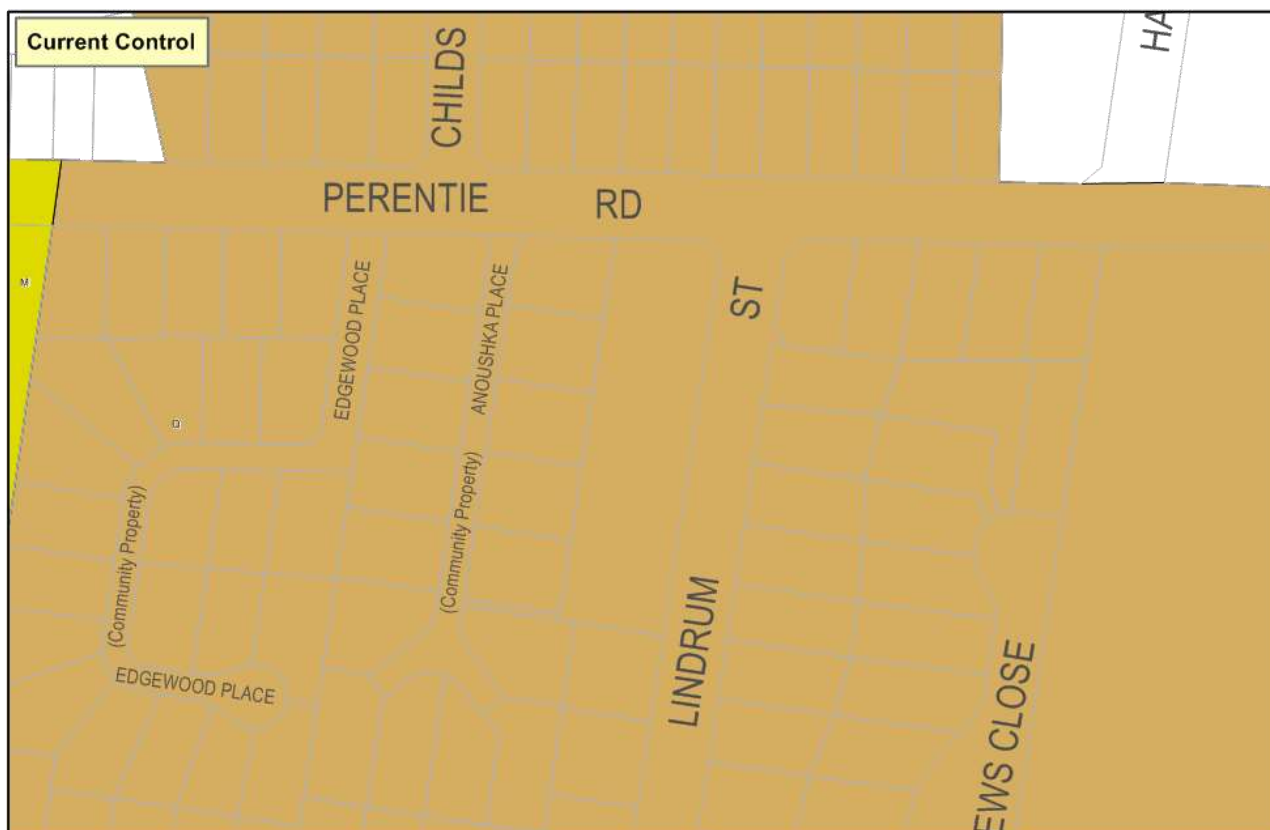
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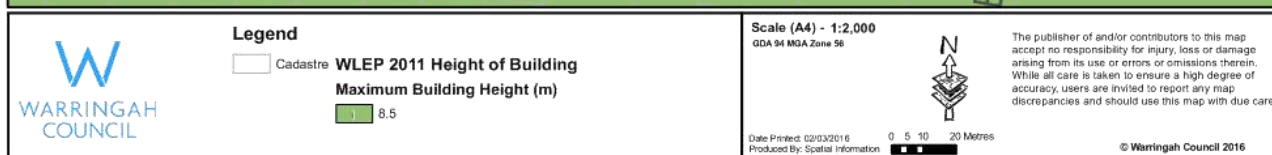
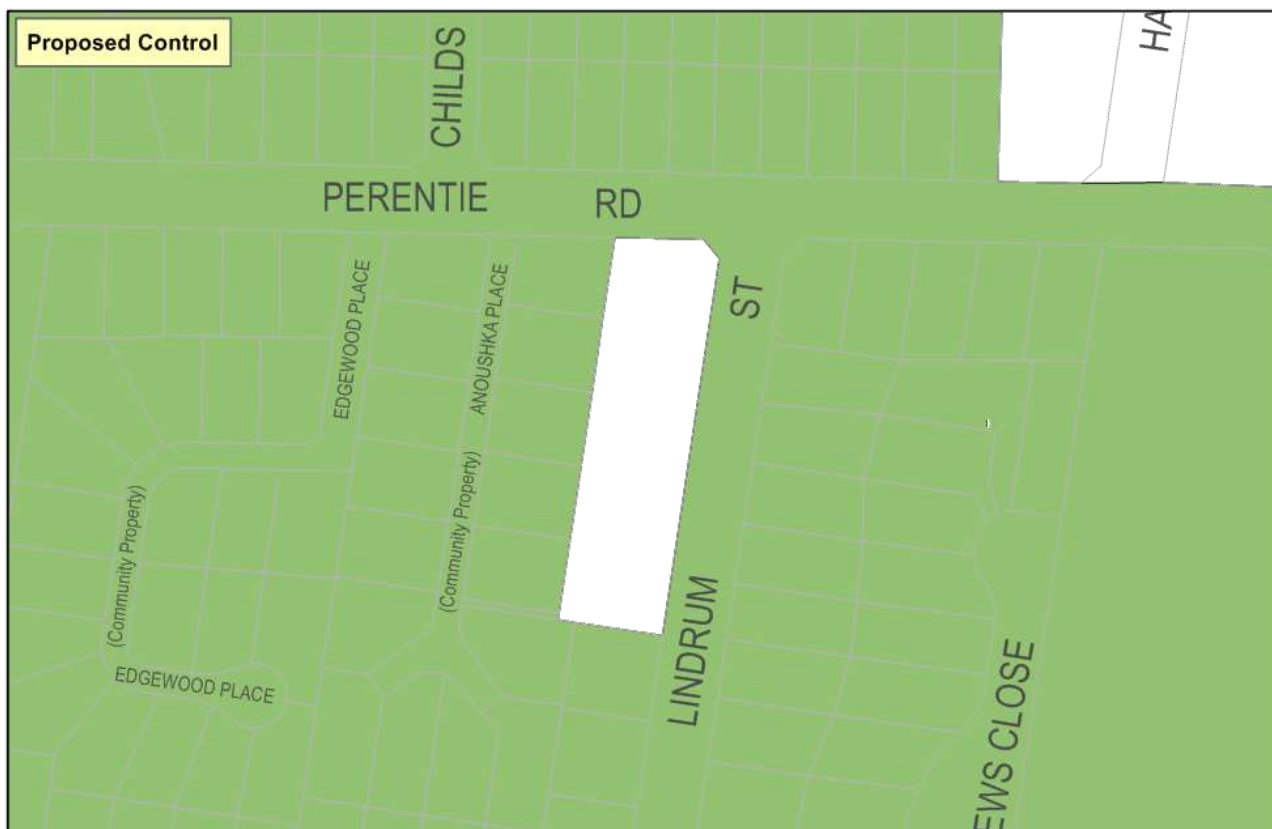
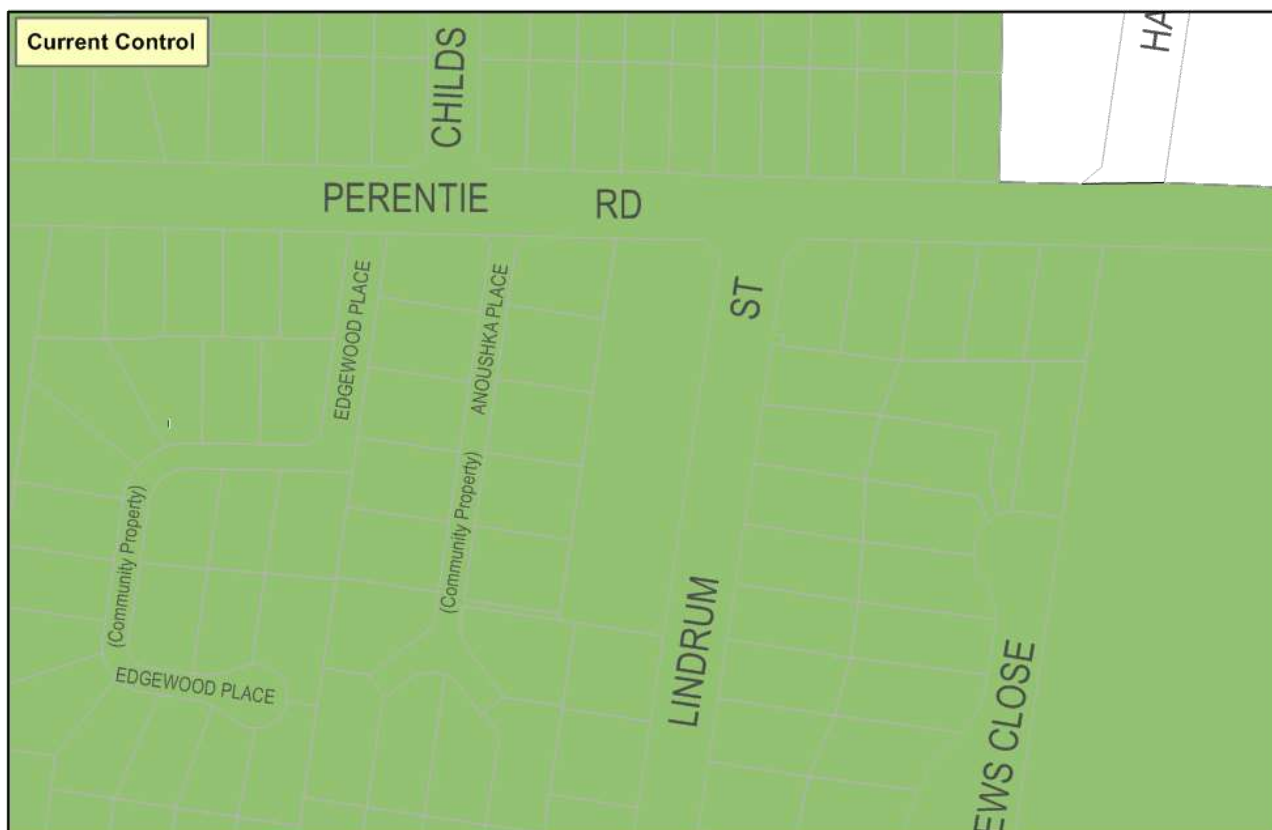
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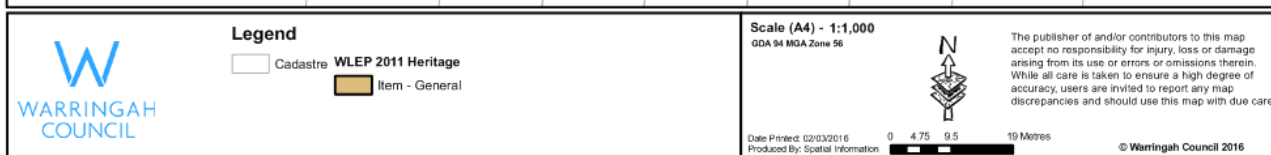
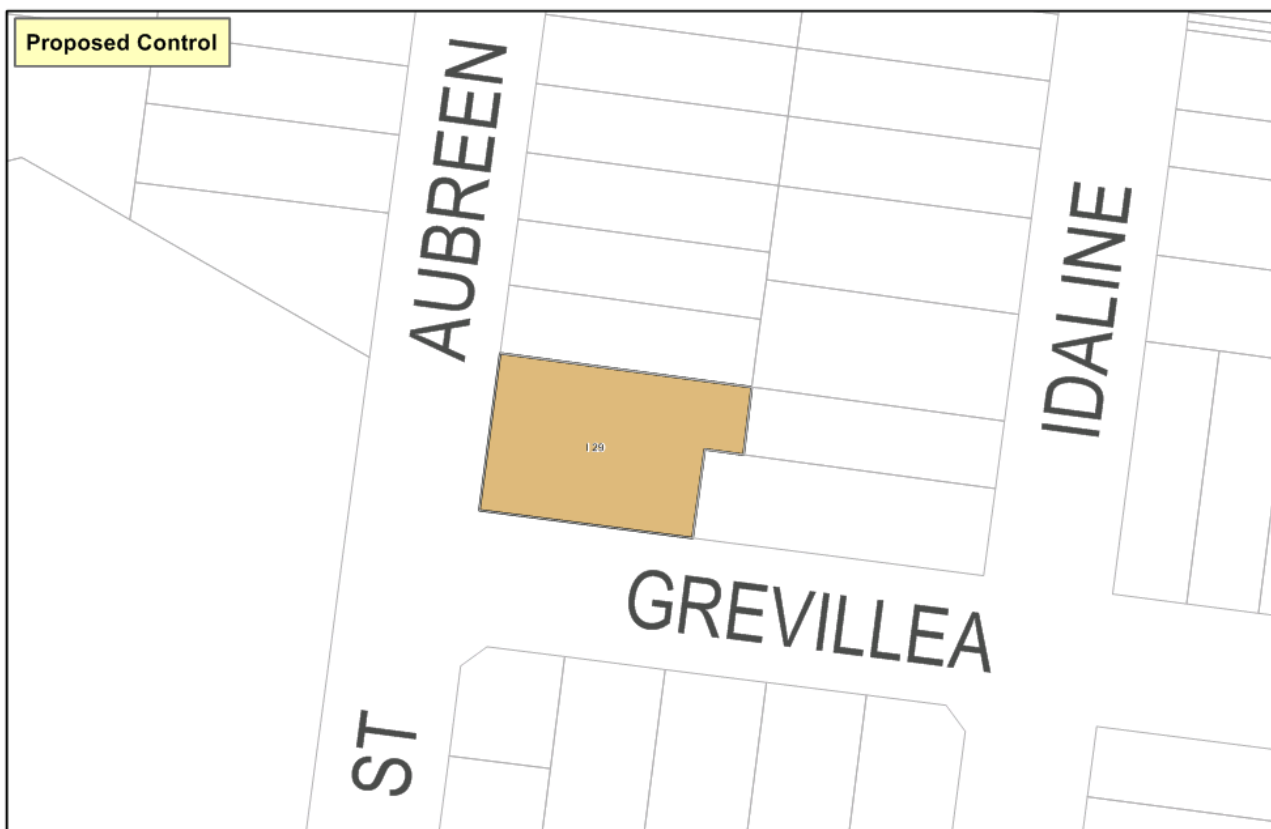
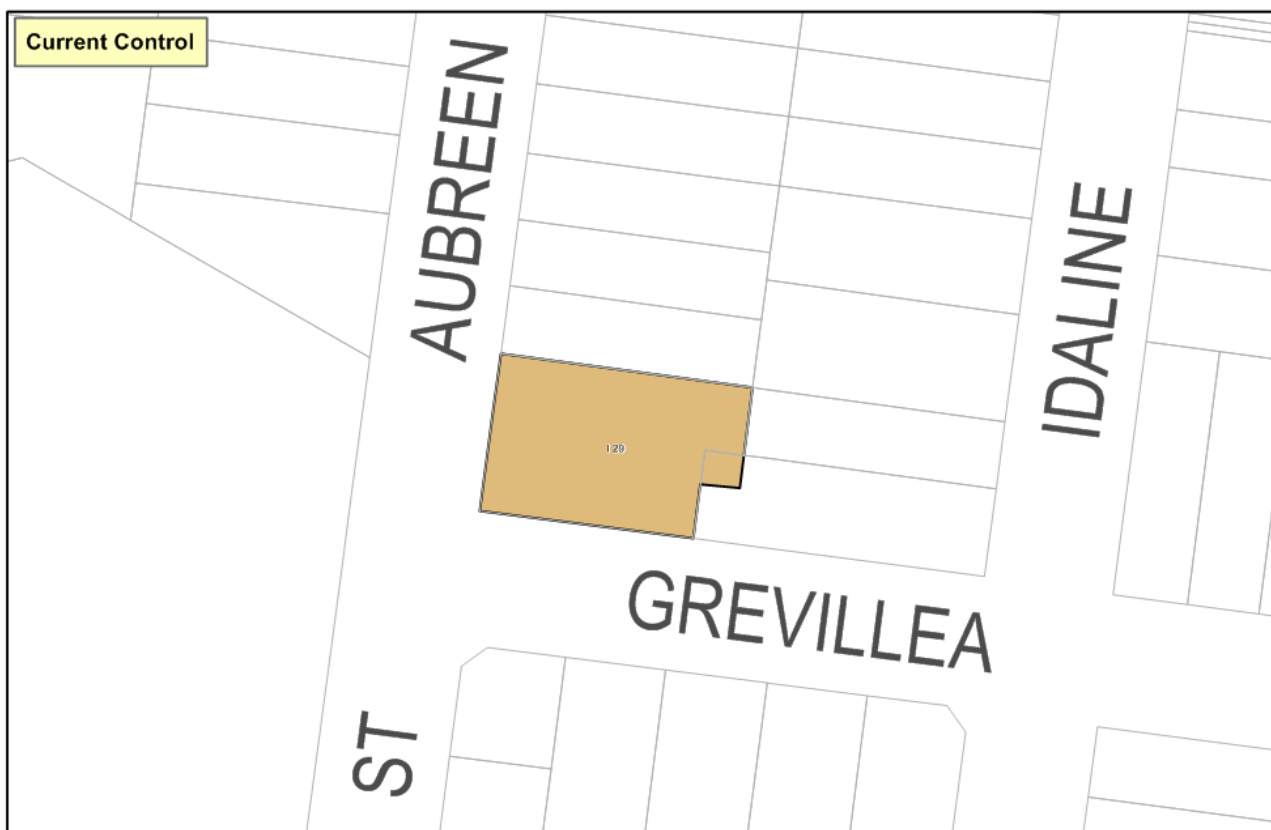


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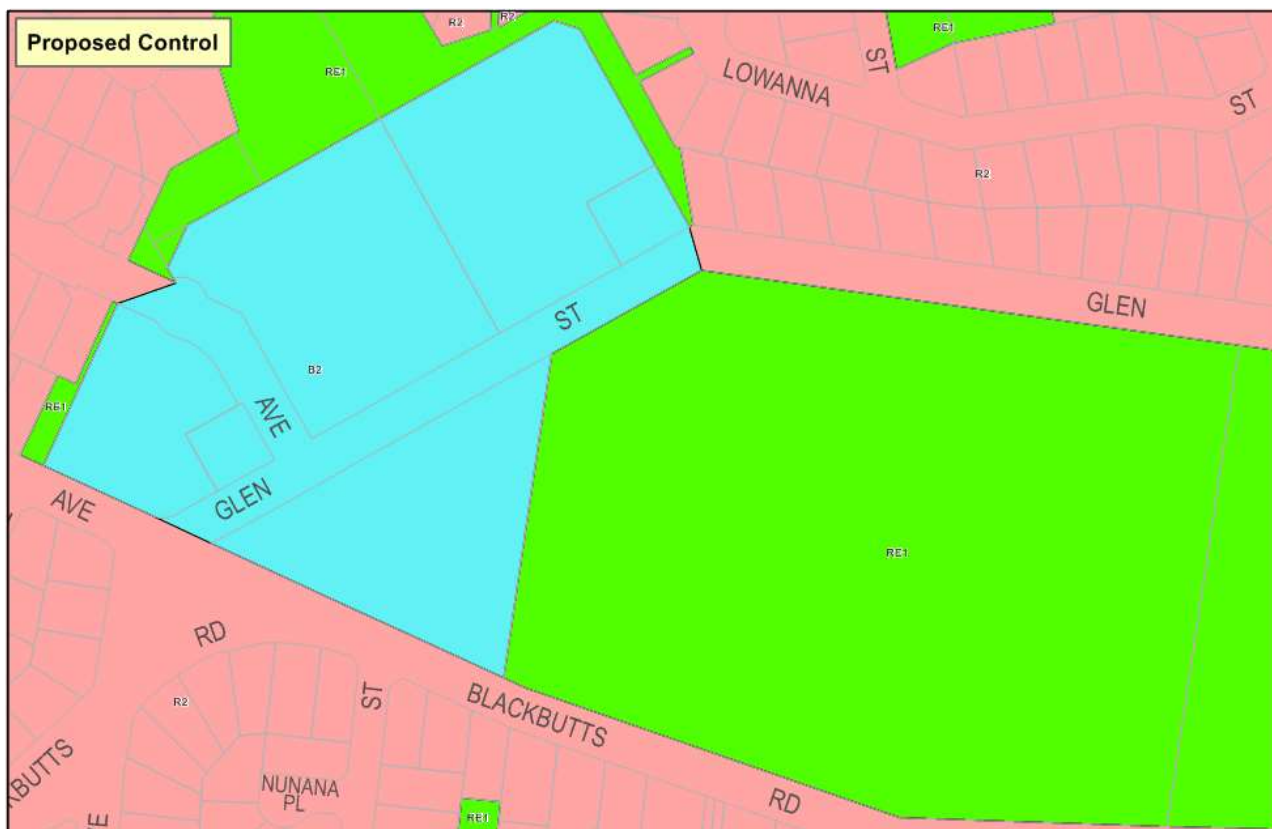
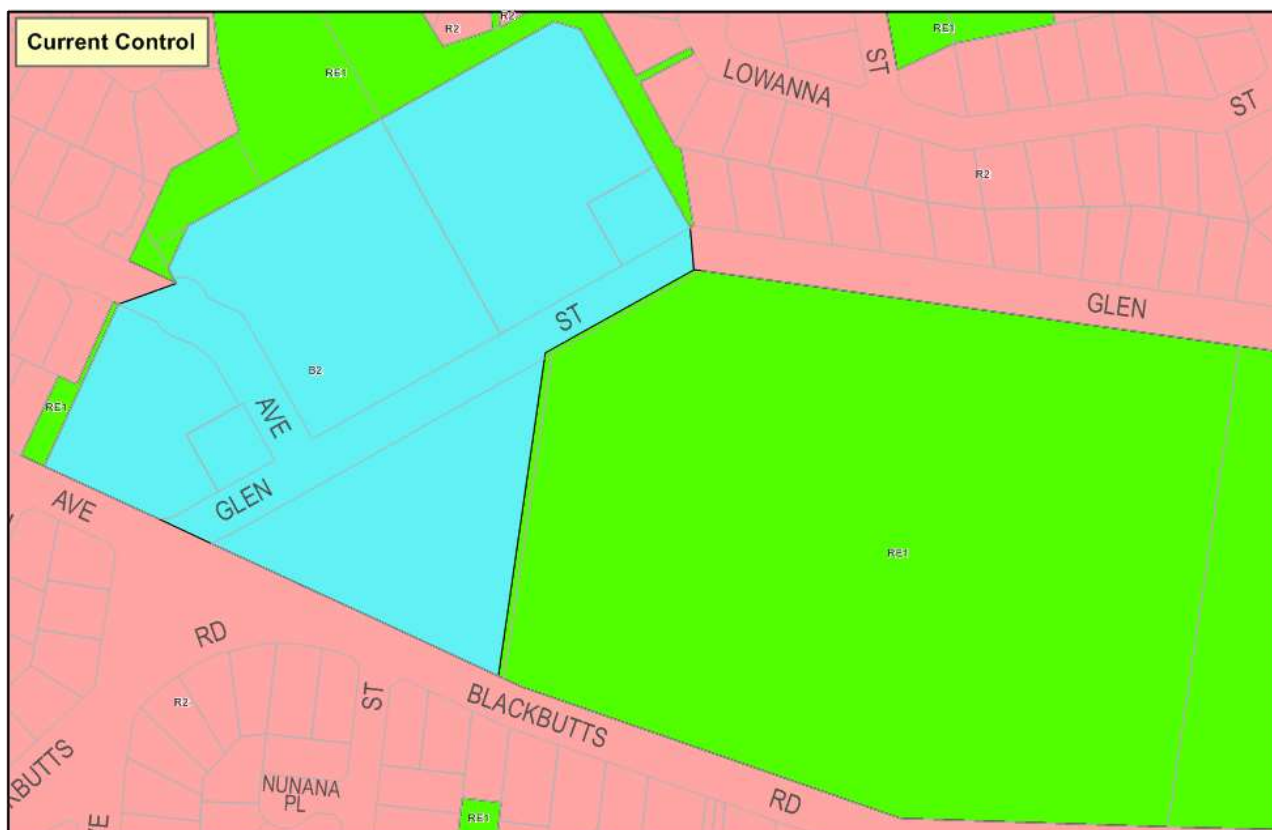


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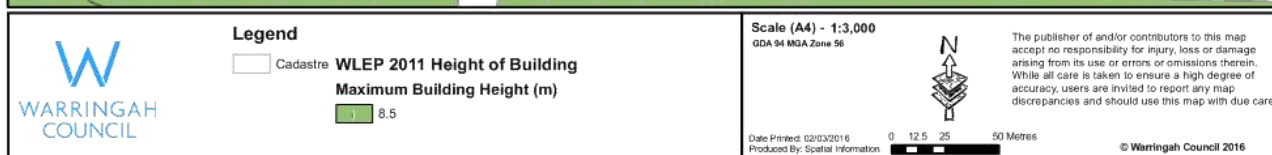
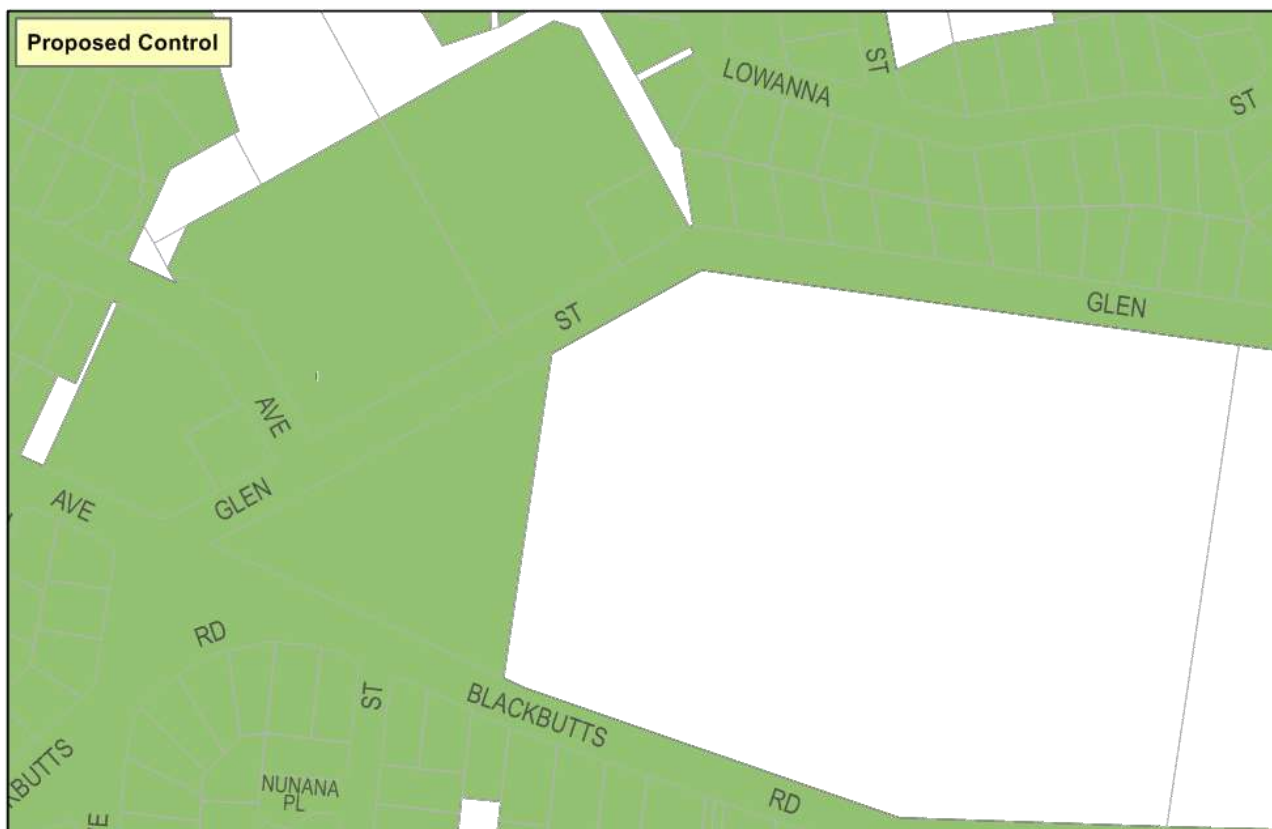
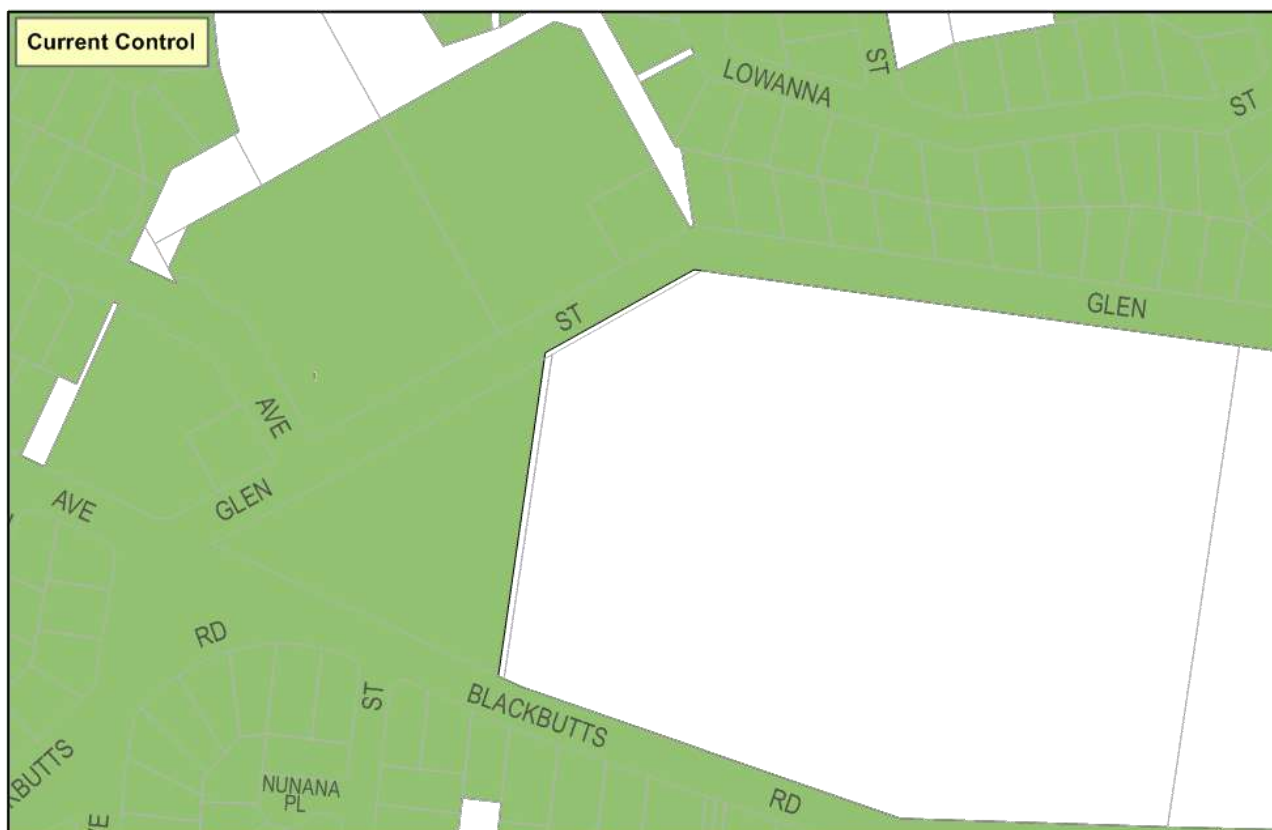


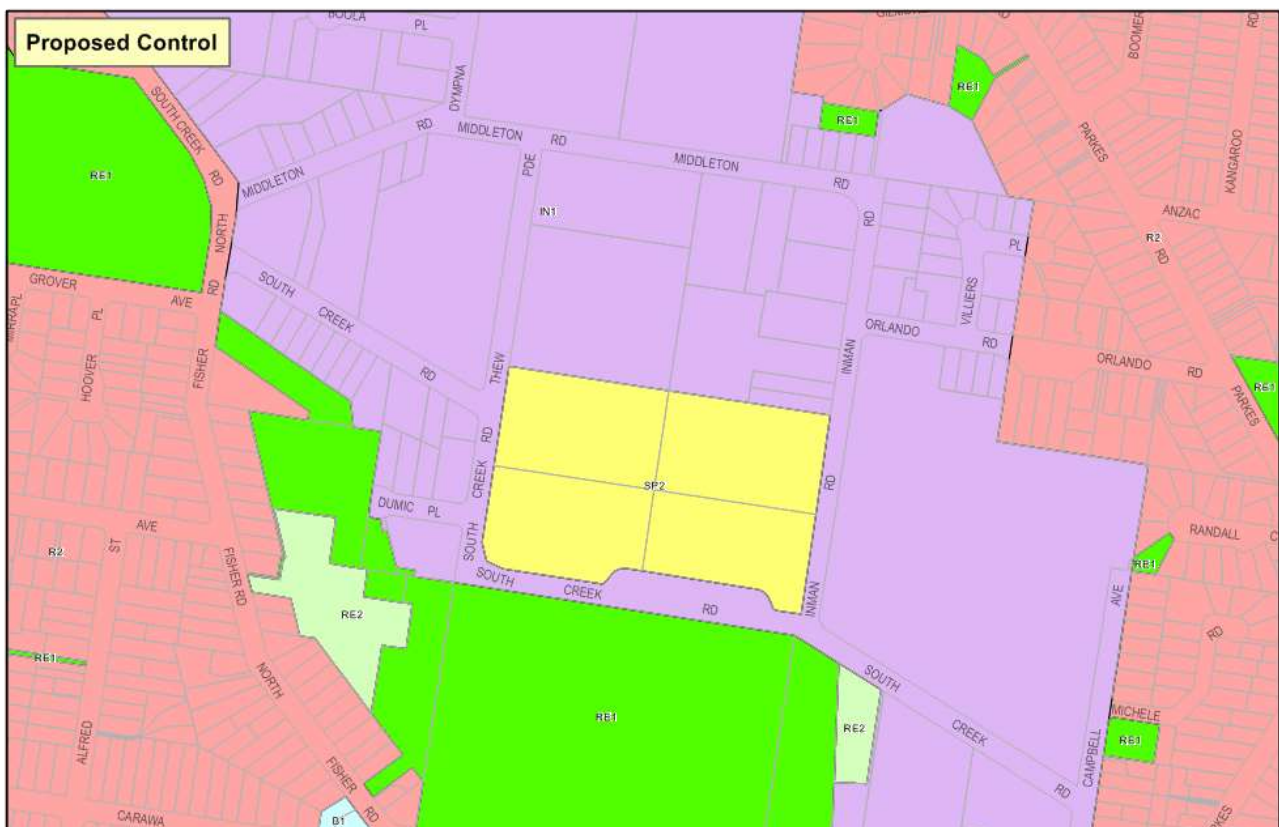
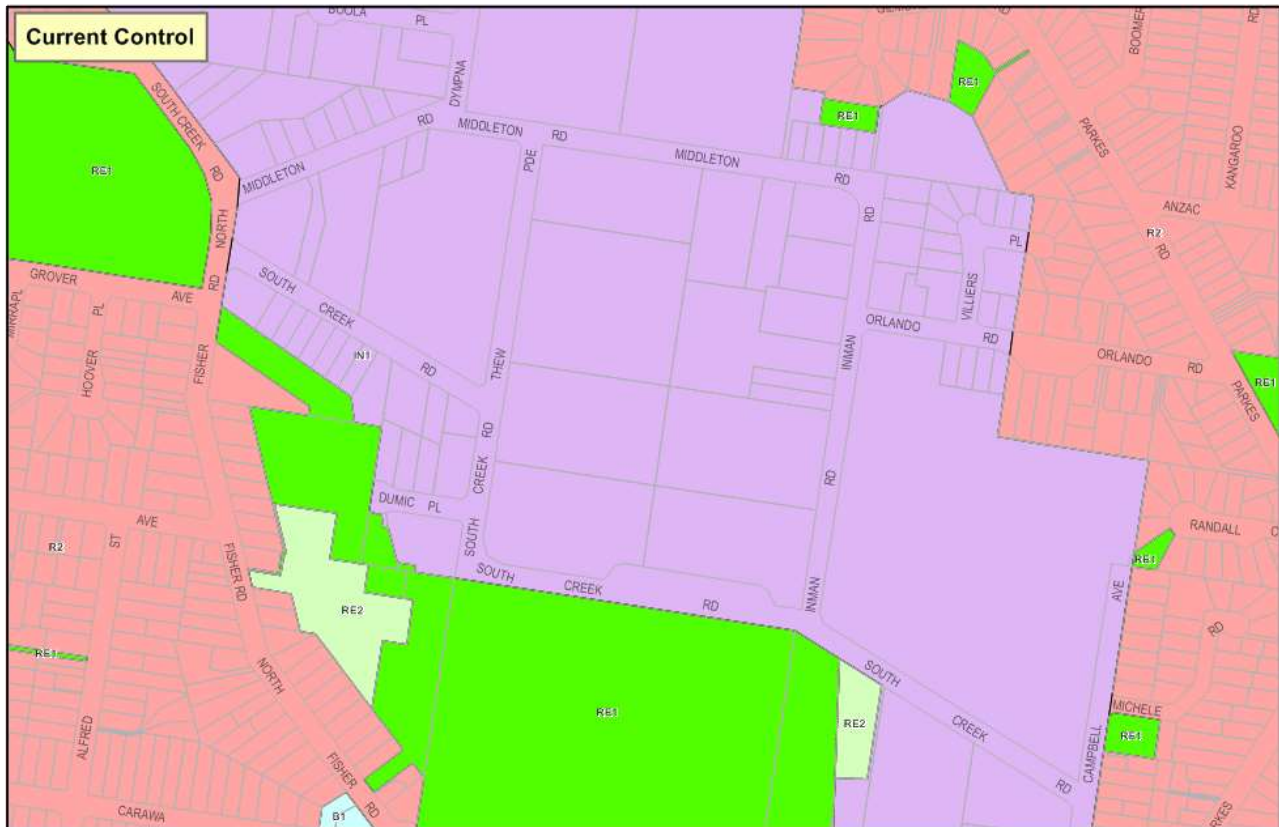


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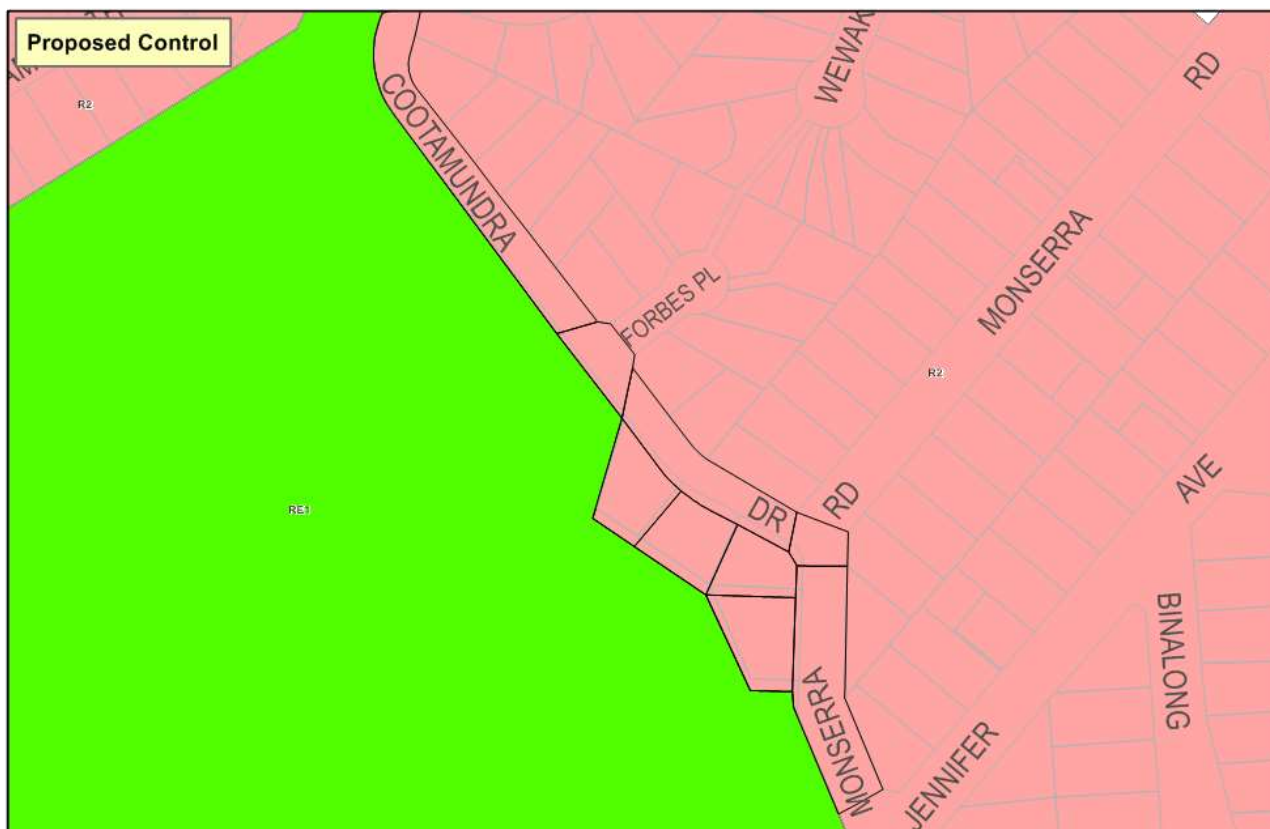
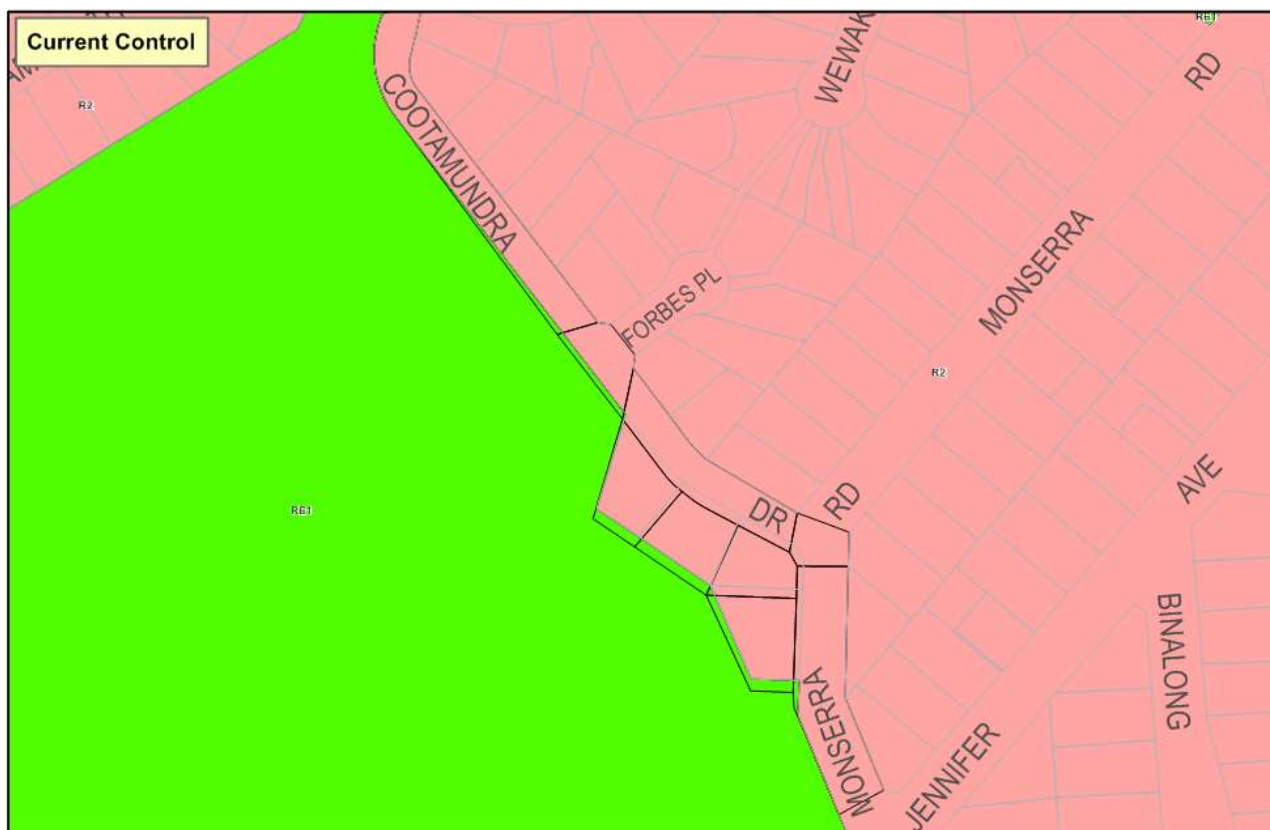


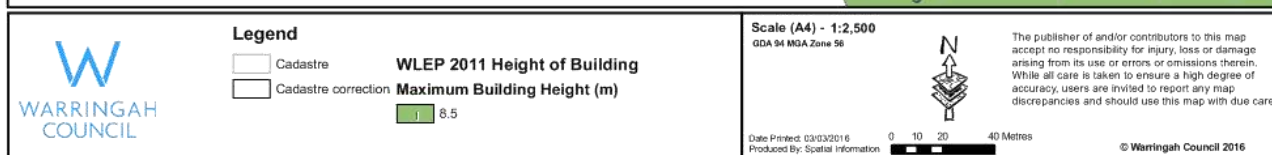
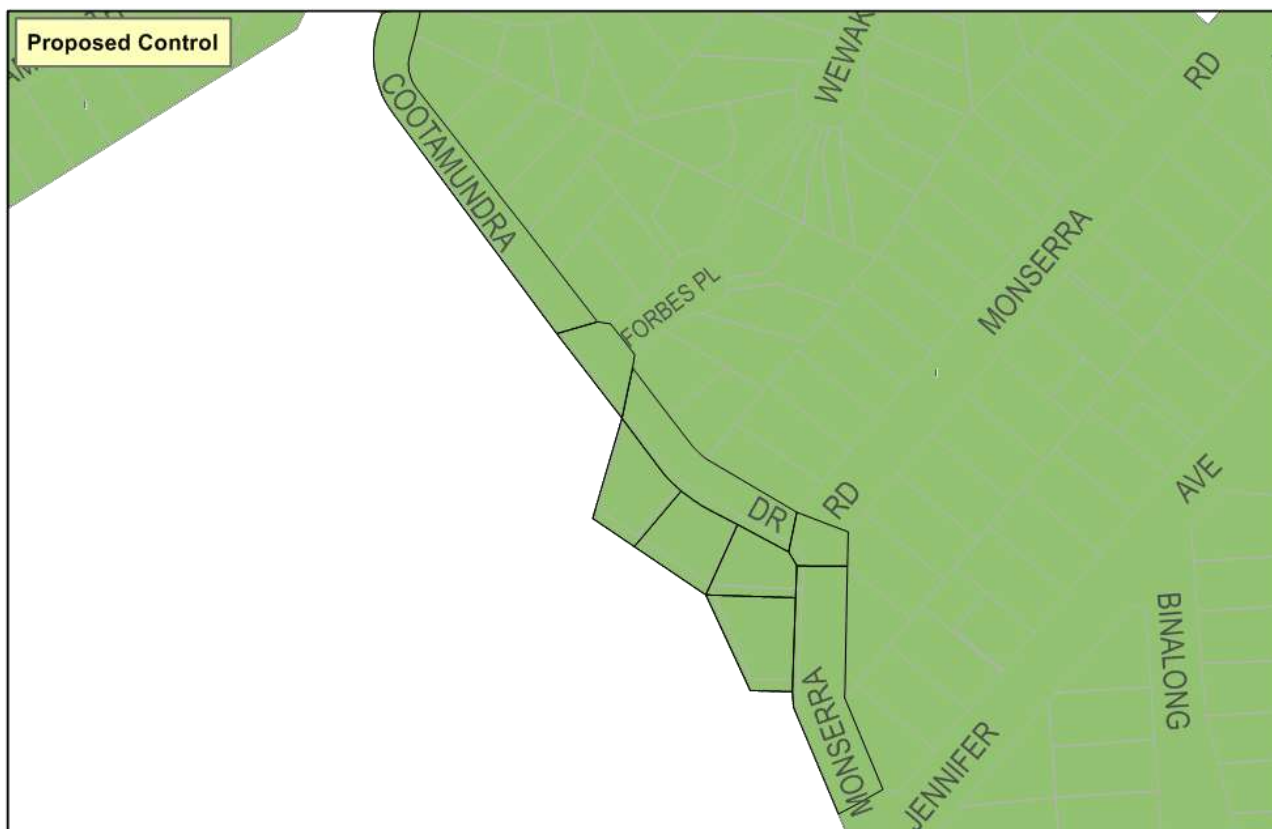
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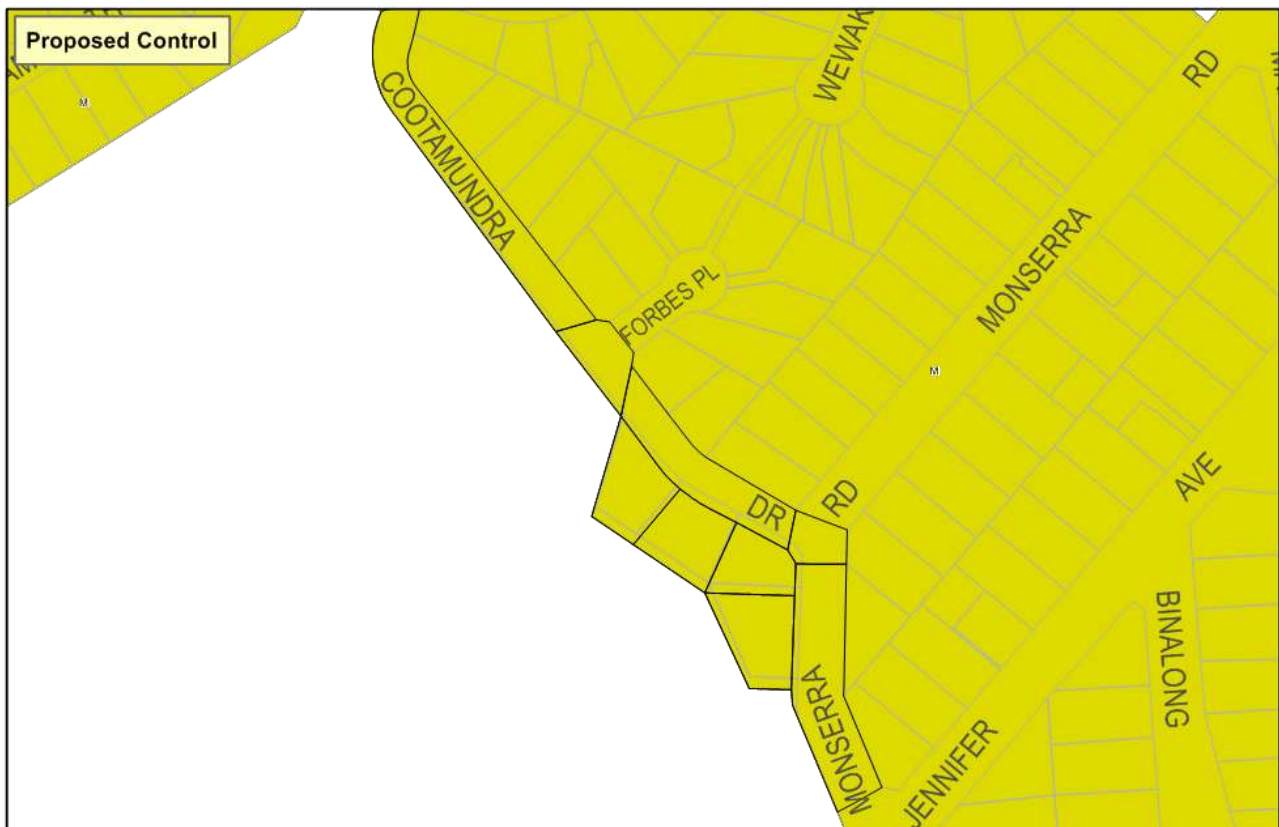
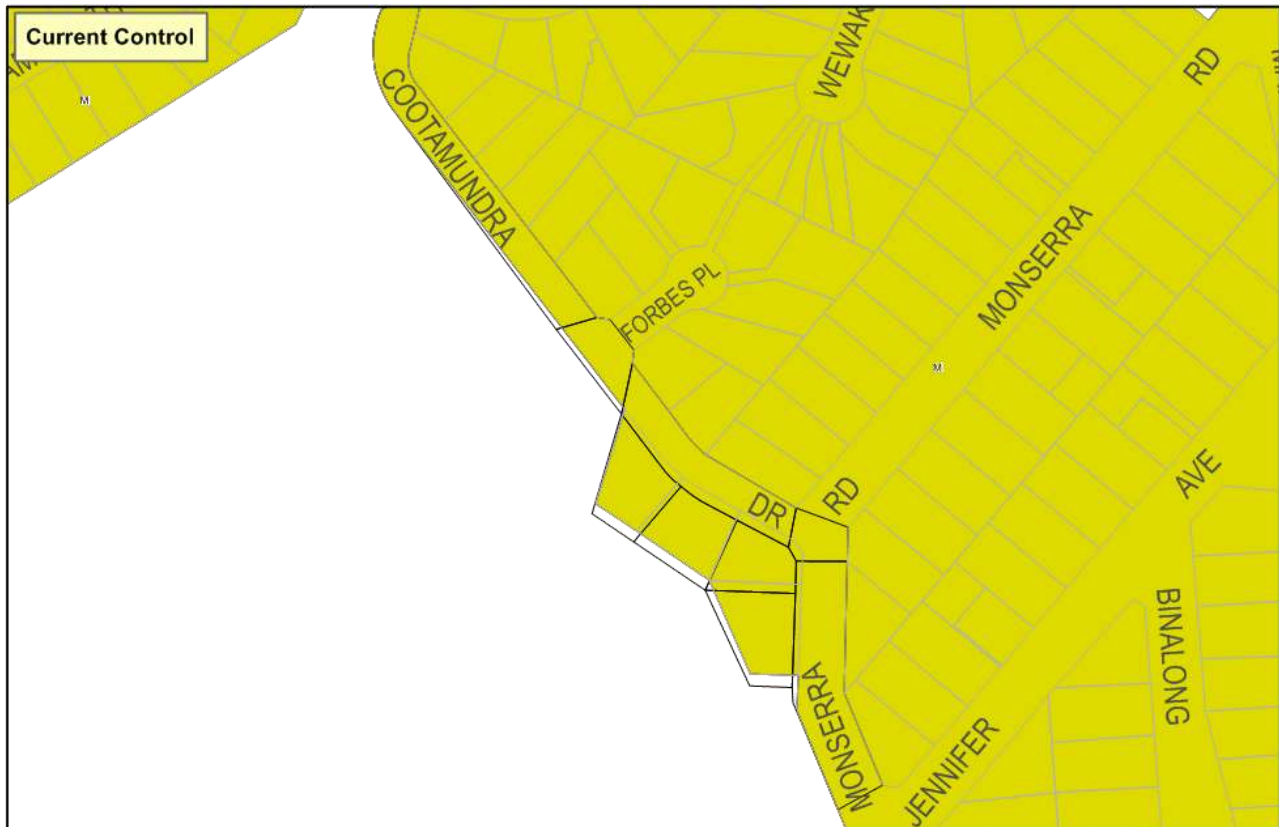




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Dated

Planning agreement

Parties

Warringah Council (Council)
(ABN 31 565 068 406)

Peninsular 1 Pty Limited (Developer)
(ACN 127 068 231)

Norton Rose Fulbright Australia
Grosvenor Place, 225 George Street
Sydney NSW 2000
Telephone: +61 (0)2 9330 8665
nortonrosefulbright.com
Our ref: 2815948
Contact: Felicity Rourke

APAC-#28032032-v6

Planning Agreement

DEED made on 2015

PARTIES

Warringah Council, ABN 31 565 068 406 of 725 Pittwater Road, Dee Why, New South Wales (**Council**)

And

Peninsular 1 Pty Limited ACN 127 068 231, of Suite 1, 60-62 Albany Street Coffs Harbour, New South Wales (**Developer**)

BACKGROUND

- A. The Developer is the owner of the Land, and proposes to carry out the Development on the Land.
- B. The Developer has requested the Instrument Change.
- C. In connection with the request for the Instrument Change, the Developer has offered to enter into this Agreement.
- D. Once the Instrument Change has occurred, the Developer intends to make a Development Application for Development Consent to carry out the Development, and acknowledges that the Development Application will be assessed and determined in accordance with the Act.

OPERATIVE PROVISIONS

1 Planning agreement under the Act

The Parties agree that this Agreement is a planning agreement governed by Subdivision 2 of Division 6 of Part 4 of the Act.

2 Application of this Agreement

The Parties agree that this Agreement applies to the Land.

3 Operation of this Agreement

The Parties agree that this Agreement will commence once it has been executed by both parties and the Instrument Change is made.

4 Definitions and interpretation

- 4.1 In this Agreement the following definitions apply:

Act means the *Environmental Planning and Assessment Act 1979* (NSW).

Agreement means this document, including any schedule or annexure to it, signed by the parties.

Attached Dwellings has the meaning given in the LEP.

DCP means a development control plan under the Act.

Development means the development of the Land for the purpose of 14 Attached Dwellings with basement car parking in accordance with the Site Development Plans.

Development Application has the same meaning as in the Act.

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Development Consent has the same meaning as in the Act.

EPI means an environmental planning instrument under the Act.

Instrument Change means amendment of Schedule 1 of the LEP to include an additional permitted use of up to 14 Attached Dwellings for the Land, and to permit subdivision of the site for lots smaller than the minimum lot size required by the LEP.

LEP means Warringah Local Environmental Plan 2011.

Land means Lot 1 and 2 in DP 7912, and Lots 33, 34, 35 in DP 7912, known as 184 Wyndora Avenue, Freshwater.

LPI means Land and Property Information NSW.

Party means a party to this Deed, including their successors and assigns.

Regulation means the *Environmental Planning and Assessment Regulation 2000*.

Site Development Plans means the following plans which are annexed at Annexure A to this Agreement:

- (1) *Site Development Plan, Building Layout*, SDP-01, dated 19 August 2015, revision P4;
- (2) *Site Development Plan, Basement Level*, SDP-02, dated 19 August 2015, revision P4; and
- (3) *Site Development Plan, Ground Level - Landscaping*, SDP-03, dated 19 August 2015, revision P5.

Subdivision Certificate has the meaning given to that term in the Act.

4.2 In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

- A. Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
- B. A reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- C. If the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day.
- D. A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- E. A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- F. A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- G. A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- H. An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- I. Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- J. A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.

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- K. References to the word 'include' or 'including' are to be construed without limitation.
- L. A reference to this Agreement includes the agreement recorded in this Agreement.
- M. A reference to a party to this Agreement includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.
- N. Any schedules and attachments form part of this Agreement.

5 Restrictions on development

5.1 The Parties agree that future development of the Land for the purpose of Attached Dwellings is to be:

- (1) Generally in accordance with the provisions set out in Schedule 1; and
- (2) Substantially in accordance with the Site Development Plans.

5.2 The Parties acknowledge that, without limiting clause 5.1:

- (1) the provisions set out in Schedule 1 may be incorporated, or proposed for incorporation, in an EPI or a DCP or another instrument, or a proposed EPI or DCP or other instrument, where the Act allows this to be done; and
- (2) nothing in this Deed limits:
 - (a) the provisions relating to the development of the Land which may be incorporated, or proposed for incorporation, in an EPI or a DCP or another instrument, or a proposed EPI or DCP or other instrument, under the Act;
 - (b) if a Development Consent in relation to the Land is granted, that Development Consent may include a condition which requires compliance with this Deed, and
 - (c) the conditions which may be imposed in any development consent or other authorisation under the Act or any other law which relates to the development of the Land.

5.3 The Parties also acknowledge that, notwithstanding anything in this Deed, the Act (including EPIs and DCPs) and all other relevant matters for consideration will apply to any Development Application relating to the Land, and any Development Consent which may be granted in relation to the Land.

6 Restriction on subdivision

6.1 The Developer must achieve practical completion of the whole of the Development (that is, including basement car park, walls of dwellings and roofs but excluding linings and fixtures) before a Subdivision Certificate is issued in respect of the subdivision of the Land in connection with the Development.

6.2 The parties agree that this clause is a restriction on the issue of a Subdivision Certificate within the meaning of section 109J(1)(c1) of the Act.

6.3 For the avoidance of doubt, this clause 6 does not apply to development on the Land other than development for the purpose of Attached Dwellings.

7 Application of s94 and s94A of the Act to the Development

7.1 This Agreement does not exclude the application of s94, s94A and s94EF of the Act to any Development Consent in respect of the Land.

7.2 Benefits under this Agreement are not to be taken into consideration in determining a development contribution under section 94.

8 Section 149 certificates

- 8.1 The parties acknowledge that Council may, in its absolute discretion, include information about this Agreement in a certificate issued under section 149(5) of the Act.

9 Assignment

- 9.1 The Developer must not assign any or all of its rights or obligations under this Agreement unless:

- (1) Council, acting reasonably, has given its consent in writing to the assignment;
- (2) the Developer, at no cost to Council, has first procured the execution by the person to whom the Developer proposes to make the assignment of all necessary documents in favour of Council (including, for example, a Deed of Novation), on terms satisfactory to Council (acting reasonably), by which that person agrees to be bound by this Agreement as that person were a party to this Agreement; and
- (3) the Developer is not in breach of this Agreement.

- 9.2 The Developer must not sell, transfer, assign, dispose of or mortgage the whole or any part of the Land or the Developer's interests in the Land, or grant any interest or right with respect to the Land (**Dealing**), unless:

- (1) Council, acting reasonably, has given its consent in writing to the Dealing;
- (2) the Developer, at no cost to Council, has first procured the execution by the person with whom the Developer is Dealing of all necessary documents in favour of Council (including, for example, a Deed of Novation), on terms satisfactory to Council (acting reasonably), by which that person agrees to be bound by this Agreement as that person were a party to this Agreement;
- (3) if the proposed Dealing involves a mortgage, charge or other encumbrance in relation to the Developer's right, title and interest in the Land, the documents providing for that Dealing also provide that the Dealing, and any rights or interests which may arise from it, are subject to Council's rights and the Developer's obligations under this Agreement; and
- (4) the Developer is not in breach of this Agreement.

10 Registration of this Agreement

- 10.1 The Developer agrees to lodge this Agreement for registration by LPI under the *Real Property Act 1900* on the title to the Land.
- 10.2 The Developer must obtain the written consent of all persons who have a registered interest in the Land, or any other interest in the Land which may affect the operation of this Agreement or the parties' ability to register this Agreement, to the registration of this Agreement on the title to the Land.
- 10.3 The parties must, at the Developer's cost, take all practicable steps to enable this Agreement to be registered by LPI on the title to the Land, including executing or procuring the execution of any documents, and producing to LPI certificates of title and other documents and information which LPI may request.
- 10.4 The parties acknowledge and agree that registration of this Agreement will not be removed from the title to the Land, and the Developer will not request removal of this Agreement from registration on the title to the Land, without Council's prior written consent. Council will not give consent prior to practical completion of the development and until a subdivision certificate has been issued.
- 10.5 If Council consents to the removal of registration of this Agreement from the title to the Land, then the parties must, at the Developer's cost, take all practicable steps to enable the

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registration of this Agreement to be removed from the title to the Land, including executing or procuring the execution of any documents, and producing to LPI certificates of title and other documents and information which LPI may request.

- 10.6 The removal of registration of this Agreement from the title to the Land does not affect the operation of this Agreement in accordance with its terms.

11 Dispute Resolution

11.1 Notice of Dispute

If a party claims that a dispute has arisen under this Agreement (Claimant), it must give written notice to the other party (Respondent) stating the matters in dispute and designating as its representative a person to negotiate the dispute (Claim Notice). No party may start court proceedings (except for proceedings seeking interlocutory relief) in respect of a dispute unless it has first complied with this clause 11.

11.2 Response to Notice

Within 10 business days of receiving the Claim Notice, the Respondent must notify the Claimant of its representative to negotiate the dispute.

11.3 Negotiation

The nominated representatives for each party must:

- (1) meet to discuss the matter in good faith within 5 business days after service by the Respondent of notice of its representative;
- (2) use reasonable endeavours to settle or resolve the dispute within 15 business days after they have met.

11.4 Further Notice if Not Settled

If the dispute is not resolved within 15 business days after the nominated representatives have met, either party may give to the other a written notice calling for determination of the dispute (Dispute Notice) by mediation under clause 11.5 or by expert determination under clause 11.6.

11.5 Mediation

If a party gives a Dispute Notice calling for the dispute to be mediated:

- (1) the parties must agree to have the terms of reference of the mediation within 5 business days of the receipt of the Dispute Notice. The terms shall include a requirement that the dispute be determined in accordance with the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) which are current at the date of the Dispute Notice;
- (2) the Mediator will be agreed between the parties, or failing agreement within 5 business days of receipt of the Dispute Notice, either party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;
- (3) the Mediator appointed pursuant to this clause 11.5 must:
 - (a) have reasonable qualifications and practical experience in the area of the dispute; and
 - (b) have no interest or duty which conflicts or may conflict with his function as mediator, he being required to fully disclose any such interest or duty before his appointment;
- (4) the Mediator shall be required to undertake to keep confidential all matters coming to his knowledge by reason of his appointment and performance of his duties;

- (5) the parties must within 5 business days of receipt of the Dispute Notice notify each other of their representatives who will be involved in the mediation;
- (6) the parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement;
- (7) in relation to costs and expenses:
 - (a) each party will bear their own professional and expert costs incurred in connection with the mediation; and
 - (b) the costs of the Mediator will be shared equally by the parties unless the Mediator determines a party has engaged in vexatious or unconscionable behaviour in which case the Mediator may require the full costs of the mediation to be borne by that party.

11.6 Expert Determination

If the dispute is not resolved under clause 11.3 or 11.5, the dispute may, by agreement between the parties, both acting reasonably having regard to the nature of the dispute, be resolved by expert determination, in which event:

- (1) the dispute must be determined by an independent expert in the relevant field:
 - (a) agreed upon and appointed jointly by Council and the Developer; or
 - (b) in the event that no agreement is reached or appointment made within 30 business days, appointed on application of a party by the then current President of the Law Society of New South Wales;
- (2) the expert must be appointed in writing and the terms of appointment must not be inconsistent with this clause;
- (3) the determination of the dispute by such expert will be made as an expert and not as an arbitrator and will be in writing and contain the reasons for the determination;
- (4) the expert will determine the rules for the conduct of the process but must conduct the process in accordance with the rules of natural justice;
- (5) each party will bear its own costs in connection with the process and the determination by the expert together with an equal proportion of the expert's fees and costs; and
- (6) any determination made by an expert pursuant to this clause is final and binding upon the parties except where the determination is in respect of, or relates to, termination or purported termination of this Deed by any party, in which event the expert is deemed to be giving a non-binding appraisal and any party may commence litigation in relation to the dispute if it has not been resolved within 20 business days of the expert giving his or her decision.

11.7 Litigation

If the dispute is not finally resolved in accordance with this clause 11, either party is at liberty to litigate the dispute.

11.8 Continue to perform obligations

Each party must continue to perform its obligations under this Agreement, notwithstanding the existence of a dispute.

12 Enforcement

- 12.1 Nothing in this Agreement prevents Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Agreement (including

the breach of this Agreement by the Developer) or any matter to which this Agreement relates.

- 12.2 The Developer acknowledges and agrees that Council has a caveatable interest in the Land from the date of the Instrument Change and shall be entitled to lodge and maintain (subject to clause 12.5) a caveat on the title to the Land notifying Council's interest created by this Agreement.
- 12.3 The Developer will upon execution of this Agreement deliver to Council a LPI form 08X caveat duly completed with the consent to caveat signed by the Developer notifying Council's interest created by this Agreement together with a cheque in favour of Land & Property Information, NSW for the registration fee on the caveat.
- 12.4 Council will provide such written consents and registrable documents to the Developer to enable the Land to be mortgaged provided that the mortgagee acknowledges Council's interest in the Land under this Agreement and agrees to the registration of this Agreement in accordance with its terms. Whilst the caveat remains registered on title to the Land, Council agrees to promptly provide the Developer with any consent required in relation to the registration of any dealings in connection with the Land which are not inconsistent with Council's rights and the Developer's obligations under this Agreement, including registration of any plan of subdivision, section 88B instrument and any other easements, rights and/or covenants.
- 12.5 Upon registration of this Agreement on the title to the Land in accordance with clause 10, the Developer is entitled to a withdrawal of the caveat, and the Developer may lodge a withdrawal of caveat to remove the caveat noted on the title to the Land. Within 14 days of receiving a LPI form 08WX withdrawal of caveat, Council must duly sign and return the form to the Developer. If Council fails to comply with its obligation under this clause, Council irrevocably appoints the Developer as its attorney solely for the purposes of executing the withdrawal of caveat. Prior to executing the withdrawal of caveat under this power of attorney, the Developer must notify the Council of its intention to do so. Each of Council and the Developer acknowledge and agree that a copy of this Agreement may be presented to the Register General as evidence of the grant of this limited power of attorney.

13 Notices

- 13.1 Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:
- (a) Delivered or posted to that Party at its address set out below.
 - (b) Faxed to that Party at its fax number set out below.

Council

Attention: General Manager
Address: 725 Pittwater Road, Dee Why, New South Wales, 2099
Fax Number: 02 9971 4522

Developer

Attention: Peninsular 1 PTY Limited
Address: Suite 1, 60 Albany Street, Coffs Harbour, NSW, 2450
Fax Number: 02 9080 2200

- 13.2 If a Party gives the other Party 3 business days' written notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by

that other Party if it is delivered, posted or faxed to the latest address or fax number(as the case may be).

13.3 Any notice, consent, information, application or request is to be treated as given or made at the following time:

- (a) If it is delivered, when it is left at the relevant address.
- (b) If it is sent by post, 2 business days after it is posted.
- (c) If it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.

13.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

14 Approvals and consent

Except as otherwise set out in this Agreement, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Agreement in that Party's absolute discretion and subject to any conditions determined by the Party. A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

15 Costs

The Developer must pay Council's reasonable costs of and incidental to the preparation and execution of this Agreement and any related documents, the registration of the Agreement on the title to the Land, and any acts relating to the removal of this Agreement from registration on the title to the Land, within 10 business days after Council provides the Developer with a tax invoice for those costs. To avoid doubt, Council may provide one or more tax invoices under this clause 15.

16 Entire Agreement

This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with. No Party can rely on an earlier document, or anything said or done (or not said or not done) by another Party, or by a director, officer, agent or employee of that Party, before this Agreement was executed, except as required by law.

17 Further acts

Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to effect, perfect or complete this Agreement and all transactions incidental to it.

18 Governing law and jurisdiction

This Agreement is governed by the law of New South Wales. The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis.

19 Joint and individual liability and benefits

Except as otherwise set out in this Agreement, any agreement, covenant, representation or warranty under this Agreement by 2 or more persons binds them jointly and each of them individually, and any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

20 No fetter

Nothing in this Agreement shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

21 Representations and warranties

21.1 The Parties represent and warrant that they have power to enter into this Agreement and comply with their obligations under the Agreement and that entry into this Agreement will not result in the breach of any law.

21.2 The Developer represents and warrants that:

- (1) it is the registered proprietor of the Land;
- (2) there are no other interests in the Land apart from those identified on the land titles register entries for the land under the *Real Property Act 1900*; and
- (3) unless otherwise stated, it has not entered into this deed in the capacity of trustee of any trust.

22 Severability

If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

23 Modification

No modification of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.

24 Waiver

The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

25 Explanatory Note

The Explanatory Note which is prepared under the Act in relation to this Agreement must not be used to assist in construing this Agreement.

26 Execution of counterparts

- 26.1
- (1) This document may be executed in any number of counterparts but is not effective until each party has executed and delivered at least one counterpart.
 - (2) All counterparts together constitute one document.
 - (3) A party may execute this document by signing any counterpart.

27 Execution by attorney

- 27.1 If an attorney executes this document, the attorney declares that the attorney has no notice of revocation, termination or suspension of the power of attorney under which the attorney executes this document.

SCHEDULE 1 – REFERENCE SCHEDULE

Dwelling numbers

- 1.1 The maximum number of dwellings permitted on the Land is 14.

Private Open Space

- 1.2 The minimum area of private open space provided to each dwelling will be 30m² including planter boxes.

Parking

- 1.3 Two on-site car parking spaces will be provided for each dwelling within the basement car park. No on-site visitor parking is required to be provided. The removal of all existing driveway entries to the Land, leaving only a single driveway access from the Wyndora Avenue frontage, will increase the supply of on-street parking.

Building envelopes, basements and detailed design

- 1.4 The height and extent of any protrusion of the basement car parking structure along the boundary of the Land above the existing ground level is to be minimised as much as possible.
- 1.5 The basement car parking structure will generally remain beneath the existing ground levels, with the exception being along the eastern side boundary (adjoining 182 Wyndora Avenue), where the basement walls may breach the existing ground level up to a maximum of 1m in the region indicated on Site Development Plan No. SDP-02, east of dwellings 1.09, 1.10 and 1.11 between grid lines 9 – 12.
- 1.6 Due to the existing topography, the eastern basement wall may protrude, if necessary, above the existing ground level by more than 1m along the eastern boundary to the east of dwellings 1.12, 1.13 and 1.14 (between Grid Lines 12-16 shown on Site Development Plan No. SDP-02).
- 1.7 Every effort is to be made to ensure the extent of protrusions along the eastern boundary are minimised as this needs to take into account the combined impact from the planter boxes on the boundary.
- 1.8 A detailed design of the Development is to be undertaken at the Development Application stage in consultation with Council to determine various options on wall treatment, structure design, landscape criteria, including the impacts of combined basement wall protrusions in combination with planter boxes, within the limits set by this Deed and the Site Development Plans, the LEP, and any EPIs and DCPs applicable to the Development.
- 1.9 Without limiting paragraph 1.8, in relation to materials, modulation and presentation to the street and surrounding property (particularly 23 Coles Rd), detailed design will be undertaken at Development Application stage in accordance with paragraph 1.8.
- 1.10 The Development will be designed and constructed to achieve high standards of architectural design, materials and detailing appropriate to the building type and location. Elements including balconies, decks or any other elements used to achieve depth and visual interest will remain within the setbacks and limits set by this Deed and the Site Development Plans, the LEP, and any EPIs and DCPs applicable to the Development.

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Planter boxes

- 1.11 Planter boxes will be designed and appropriately finished to be viewed from both sides, including from the Land's eastern boundary interface with 182 Wyndora Avenue.
- 1.12 Planter boxes other than those shown on the Site Development Plans will be provided as part of the Development to provide a sufficient level of deep soil landscaping/planting above the basement carpark in appropriate places, to help provide a landscaped setting and mitigate the built form. Detailed design in this regard is to be undertaken at Development Application stage, in accordance with paragraph 1.8.

Street Trees

- 1.13 Semi advanced street trees will be provided in the road reserve area. The existing trees have been surveyed and may be replaced or complemented with a reasonable number to Council's satisfaction. The objective is to enhance the streetscape and soften the appearance of the development along McDonald Avenue where 4.5m front setbacks are proposed. Details to be provided to the satisfaction of Council at Development Application stage.

Garbage room

- 1.14 A bin storage room for a maximum of 14 bins will be provided within the 6.5m setback, adjacent to the driveway, as shown on the Site Development Plans.

Executed as a deed and delivered on the date shown on the first page.

Executed by Warringah Council
(ABN 31 565 068 406) by its Attorney
pursuant to Power of Attorney Book
4580 No 889

Signature

Print Name

Office

Signature

Print Name

Office

Executed by **Peninsular 1 Pty Limited**
127 068 231 in accordance with
section 127 of the *Corporations Act*
2001:

Director/company secretary

Director

Name of director/company secretary
(BLOCK LETTERS)

Name of director
(BLOCK LETTERS)

[NRFA note: if Developer executes by attorney, a different execution block will need to be inserted]

Annexure A: Site Development Plans

[*NRFA note*: attach:

- (1) *Site Development Plan, Building Layout*, SDP-01, dated 19 August 2015, revision P4;
- (2) *Site Development Plan, Basement Level*, SDP-02, dated 19 August 2015, revision P4; and
- (3) *Site Development Plan, Ground Level - Landscaping*, SDP-03, dated 19 August 2015, revision P5.]

Explanatory Note

Introduction

The purpose of this Explanatory Note is to provide a summary to support the notification of the proposed planning agreement (the "**Planning Agreement**") prepared pursuant to Part 4 Division 6 Subdivision 2 of the *Environmental Planning and Assessment Act 1979* (the "**Act**").

This explanatory note has been prepared jointly by the parties as required by clause 25E of the *Environmental Planning and Assessment Regulation 2000* (the "**Regulation**").

Words appearing with initial capital letters in this note have the meanings given to them in this note or (if not defined in this note) in the Planning Agreement.

The Developer has offered to enter into the Planning Agreement in connection with the Planning Proposal PEX 2014/0005 to amend Warringah Local Environmental Plan 2011 (the "**LEP**") to allow "attached dwellings" as an additional permitted use on land known as 184 Wyndora Avenue, Freshwater, and allow the subdivision of that land into a maximum of 14 Torrens title allotments.

Parties to the Planning Agreement

The parties to the Planning Agreement are Peninsular 1 Pty Ltd (the "**Developer**") and Warringah Council (the "**Council**").

Description of the Subject Land

The Planning Agreement applies to the following land (the "**Land**"):

- LOT 1, LOT 2, DP 7912
- LOT 33, LOT 34, LOT 35, DP 7912

Description of Proposed Change to Environmental Planning Instrument

The Developer is seeking approval to amend the LEP to allow "attached dwellings" as an additional permitted use on the Land and the subdivision of the Land into a maximum of 14 Torrens title allotments.

Objectives of the Planning Agreement

The objective of the Planning Agreement is to provide some standards for the future development of the Land as "attached dwellings" with a view to ensuring the development is undertaken in a manner which is compatible with, and does not unreasonably impact upon, the amenity of adjoining residential properties.

Nature of the Planning Agreement

The Planning Agreement is a planning agreement under s93F of the Act. It is an agreement between the Council and the Developer, who is also the owner of the Land. The Planning Agreement provides for standards for the future development of the Land and processes for the implementation of the Planning Agreement.

Effect of the Planning Agreement

Key standards for which the Planning Agreement provides include:

1. A maximum of 14 dwellings on the Land

Jubilee Planning Agreement

2. Minimum private open space of 30 square metres per dwelling
3. Minimum car parking of 2 car spaces per dwelling
4. Provision for all car parking within a basement car park with access from Wyndora Avenue
5. Controls on the height or protrusion of the basement car parking structure above ground level at different boundaries
6. Requirements about the grouping of dwellings on the Land
7. Requirements about the location of dwellings on the Land
8. Requirements about the architectural quality of the future development on the Land
9. Requirements about the provision of trees and landscaping on the Land and adjacent road reserve
10. Requirements about the provision and location of garbage facilities in the future development of the Land
11. Requirements about the timing of subdivision of the Land

How the Planning Agreement promotes the public interest

The Planning Agreement promotes the public interest by providing for standards in connection with a proposal for:

- increasing the range of housing options within Warringah
- increasing the supply of housing to meet the needs of a growing population

which are intended:

- to ensure the increase in housing density is compatible with, and does not impact upon, the amenity of adjoining residential properties
- to ensure a good planning outcome

How the Planning Agreement promotes the objects of the Act

The Planning Agreement promotes the following objects of the Act:

- 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
- the promotion and co-ordination of the orderly and economic use and development of land

The Planning Agreement promotes the objects of the Act set out above by requiring the Developer to:

- develop the Land at medium density to provide additional housing for Warringah's growing population

Jubilee Planning Agreement

- develop the Land in accordance with clear standards to mitigate impacts on the surrounding area.

How the Planning Agreement promotes the Council's Charter under section 8 of the Local Government Act

The Planning Agreement promotes the following aspects of Council's Charter under section 8 of the *Local Government Act 1993*:

- to have regard to the long term and cumulative effects of its decisions;
- to properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development; and
- to ensure that, in the exercise of its regulatory functions, it acts consistently and without bias.

The Planning Agreement promotes the aspects of Council's Charter identified above by ensuring the orderly development of the Land having regard to strategic land-use planning principles and following a transparent community consultation/ public exhibition process.

How the Planning Agreement achieves the Planning Purpose served by the Agreement

In accordance with section 93F(2) of the Act, the planning purpose served by the agreement is to provide for an increase in the supply of housing in Warringah through the provision of medium density residential development in a form which is compatible with the surrounding low density residential environment.

The Planning Agreement provides a reasonable means for achieving this purpose by providing clear and reasonable standards for the future development of the Land.

How the Planning Agreement conforms with the Council's Capital Works Program

The Planning Agreement does not form part of and is not relevant to the Council's Capital Works Program.

Whether the Planning Agreement specifies certain requirements must be met before the issue of a Construction Certificate, Occupation Certificate or Subdivision Certificate

Yes. The Planning Agreement specifies that the Developer must achieve practical completion of the whole of the Development, including the basement car park, walls of dwellings and roofs (but excluding linings and fixtures), before a Subdivision Certificate is issued in respect of the subdivision of the land for the purpose of Attached Dwellings.

Interpretation of Planning Agreement

The Explanatory Note is not to be used to assist in construing the Planning Agreement



Revisits:		Notes: 1. All dimensions to be verified on site	
Rev	Date	Description	
P1	22/07/15	PRELIMINARY	
P2	12/08/15	AS PER COUNCIL COMMENTS 15 AUG 15	
P3	17/08/15	FINAL AMENDMENTS FOR COUNCIL	
P4	19/08/15	FINAL REQUESTS BY COUNCIL	

ARCHITECT

BETAR HOLDINGS
est. 1978

Project:
 Proposed Spot Rezoning
 184 Wyndora Avenue
 Freshwater
 For:
 Sri Andrew's Healthcare

Drawing Title:
 Site Development Plan
 Building Layout

Scale:
 As noted

Date:
 July 2015


Drawing No.:
 SDP-01

Project No.:
 346

Revision:
 P4

[illegible]



Revisions:			Notes: 1. All dimensions to be verified on site		<div>ARCHITECT</div> <div> BETAR HOLDINGS est 1978</div> <div>Project: Proposed Spot Rezoning 184 Wyndora Avenue Freshwater For: Sri Andrew's Healthcare</div>	<div>Drawing Title: Site Development Plan Ground Level - Landscaping</div> <table><tr><td>Scale:</td><td>Date:</td><td>Drawing No.:</td></tr><tr><td>As noted</td><td>July 2015</td><td>SDP-03</td></tr><tr><td>Drawn:</td><td>Project No.:</td><td>Revisions:</td></tr><tr><td>SJB</td><td>346</td><td>P5</td></tr></table>	Scale:	Date:	Drawing No.:	As noted	July 2015	SDP-03	Drawn:	Project No.:	Revisions:	SJB	346	P5
Scale:	Date:	Drawing No.:																
As noted	July 2015	SDP-03																
Drawn:	Project No.:	Revisions:																
SJB	346	P5																
Rev	Date	Description																
P1	22/07/15	PRELIMINARY																
P2	27/07/15	PETER ROBINSON REQUEST																
P3	12/08/15	AS PER COUNCIL COMMENTS 18 AUG 15																
P4	12/08/15	FINAL AMENDMENTS FOR COUNCIL																
P5	19/09/15	FINAL REQUESTS BY COUNCIL																



PLANNING PROPOSAL

184 Wyndora Avenue, Freshwater
(Lots 1,2,33,34 and 35 DP7912)

Proposed Amendment of Warringah Local Environmental Plan 2011
to allow up to 14 Torrens titled, attached dwellings with basement
carpark

Prepared by
Warringah Council
August 2015

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184 Wyndora Ave, Freshwater – Planning Proposal

Proposed amendment to Warringah Local
Environmental Plan 2011

To enable the construction of up to 14 attached
dwellings with basement car parking, and
Torrens title subdivision

Council Reference PEX 2014/0005

Introduction

On 27 June 2014 a Planning Proposal application for the property known as 184 Wyndora Avenue, Freshwater was lodged with Council on behalf of the landowner, St Andrews Healthcare.

The proposal requested an amendment to Warringah Local Environmental Plan 2011 (WLEP 2011) to enable the construction of 14 attached dwellings, each with two off street car parking spaces located within a basement garage with shared driveway access. The proposal intends to subdivide these dwellings using Torrens title, so there will be no common property. Development concept plans were submitted with the application to illustrate the intended development outcome for the site.

The proposal relates to 5 contiguous allotments being Lots 1, 2, 33, 34 and 35 of DP 7912, herein referred to as 'the site'.

Presently the site accommodates an in part 1, 2 & 3 storey private hospital, which is currently used as a residential care facility housing approximately 18 people with a disability.

Under WLEP 2011, the property and surrounding land is currently zoned R2 – Low Density Residential with a minimum lot size of 450m². The proposed development is therefore currently prohibited.

To facilitate development of the site for Torrens titled attached dwellings, the planning proposal application requested the following amendments to WLEP 2011:

- An amendment to Schedule 1 of WLEP 2011 to allow "attached dwellings" as an additional permitted use on the subject land combined with an associated amendment to the 'Additional Permitted Uses Map' to identify the consolidated site.
- An amendment to Clause 6.8 Subdivision of Certain Land of the WLEP 2011 to allow up to 14 Torrens title lots on the site.

This Planning Proposal is accompanied by the following attachments:

- Preliminary Planning Proposal – 184 Wyndora Avenue, Freshwater - Report by JBA Urban Planning Consultants June 2014
- Warringah Development Assessment Panel Report and Resolution
- Council Report and Resolution

184 Wyndora Ave, Freshwater – Planning Proposal

Site Analysis

Site description and location

The site is known as 184 Wyndora Avenue, Freshwater. The site comprises 5 regular shaped, contiguous allotments and is legally described as Lots 1, 2, 33, 34 and 35 of DP 7912 (herein referred to as 'the site')

The site has an area of approximately 2,759.2m².



The existing 5 allotments comprising the site and its current development footprint (Warringah GIS maps)

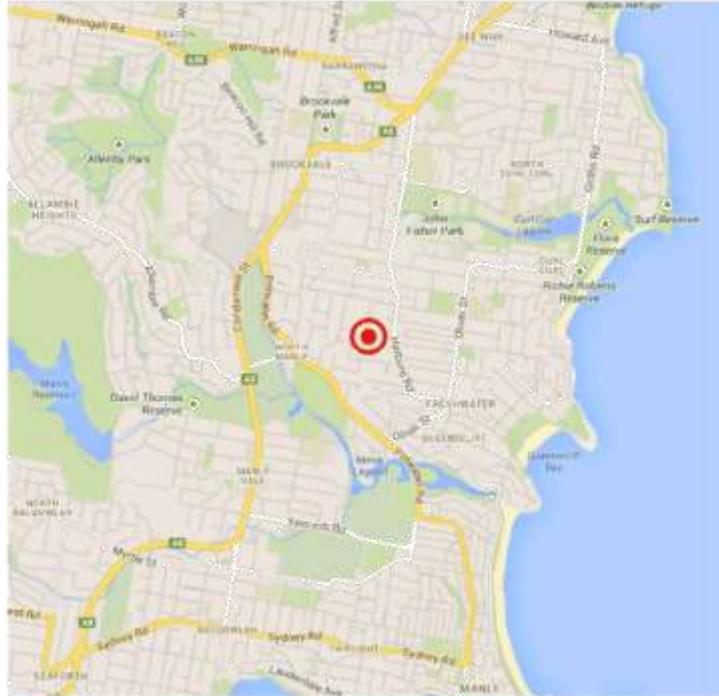
Location and Context

Key features of the site's location and context are:

- The site is located in the suburb of Freshwater, which is approximately 15km north east of the Sydney CBD, 3.5km from Manly CBD, 1.5km from Warringah Mall and 350m from a small neighbourhood centre.
- The suburb of Freshwater is predominantly characterised by low density detached residential dwellings, but it is also interspersed with a number of residential flat buildings. The suburb is also characterised to an extent by smaller dwellings on smaller lots compared to Warringah as a whole. The smaller minimum lot size permitted by WLEP 2011 in Freshwater (generally 450m² as opposed to 600m² throughout most of the R2 zoned land in Warringah) is reflective of the slightly higher density development in the suburb. In this way the suburb is more mixed in its residential housing forms and relatively higher in density than some other suburbs within the R2 Low Density zone like, for example, Allambie Heights and Davidson.

184 Wyndora Ave, Freshwater – Planning Proposal

- The distance of the site to the closest bus stops on Harbord Road is approximately 235m – 350m. The land slopes from the site down towards the bus stops on Harbord Road, with an approximate 20m drop in contours.



Location of the site (courtesy Google maps)

Site Characteristics and Features

Frontages - The site has a total street frontage of approximately 150 metres comprising: a 90.53m frontage to McDonald Street (to the west) a 36.57m frontage to Coles Road (to the south) and a 24.38m frontage to Wyndora Avenue (to the north).

Slope - The site slopes from its north-western corner down towards the eastern and southern boundaries at the Coles Road frontage.

Views - The site has ocean views to the east and district views generally to the east and south.

Landscape - There is currently limited space for landscaping on site due to the large footprint (building and car parking areas) of the existing hospital development. Low level shrubs and vegetation exist along the edges of the site.

Existing development on the site

Key features of the existing development on the site are:

- The existing building on the site was originally constructed to accommodate the Peninsula Private Hospital and was typically used for general surgery and rehabilitation. The hospital is no longer in operation and the building is currently used as accommodation for approximately 18 disabled residents.
- The building is split level, and presents to surrounding streets as a single storey up to a three storey building.

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- The current building has a gross floor area of approximately 1,646sqm excluding lower ground floor and sub-floor storage areas.
- The site currently has six access driveways and hard stand car parking areas within the north-west and south-eastern corners of the site.

Surrounding development

Key features of the surrounding development character are:

- Along its eastern boundary, the site adjoins two low density residential properties (both containing two storey dwelling houses) being 182 Wyndora Avenue and 23 Coles Road, Freshwater.
- Development directly to the north, south and west of the site is generally comprised of 1 to 2 storey dwelling houses on lot sizes ranging from approximately 540sqm up to 625sqm.
- Warringah's planning controls recognise that Freshwater is characterised by narrower residential allotments. Warringah DCP 2011 establishes a 5 metre building envelope for the suburb whereas the majority of land within Warringah's R2 zone has a 4m building envelope.
- There is a mix of housing types within the locality, notwithstanding the prevailing R2 Low Density Residential zone. Housing types include dual occupancy, semi-detached, duplex and residential flat buildings.

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Aerial photograph of the site, its current development footprint, and the pattern of surrounding development

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Streetscape – western frontage of site to McDonald Street



3 storey built form at south eastern corner of the existing building



Existing car parking area at south eastern corner of the site

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Streetscape – northern frontage of site to Wyndora Avenue



Streetscape character looking south east – from the corner of Wyndora Avenue and McDonald Street



Streetscape images –character looking south east on Military Road

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North-east corner of site at its interface with No.182 Wyndora Ave



Ocean and district view from the site to the east

The Proposal

The proposed redevelopment of the site at 184 Wyndora Avenue Freshwater involves the demolition of the existing site structures and the construction of a new 2 level residential development containing 14 attached dwellings with an additional subterranean level of basement car park beneath, with one driveway access off Wyndora Avenue.

The planning proposal application included an indicative scheme for redevelopment of the site. This has been refined since it was first submitted in June 2014.

Key features of the proposed redevelopment include:

- 14 attached dwellings, each dwelling with its own:
 - direct pedestrian access to the street
 - direct pedestrian access to a private garage within the basement level
 - landscape gardens to the front and rear of each dwelling
- Each dwelling being 2 stories above the basement car parking level. Each dwelling will have direct private access to its own basement garage with accommodation for two cars (28 car spaces in total)
- A single vehicle access from Wyndora Avenue
- No common property. The basement level is intended to operate using multiple rights of way

The concept plans do not form part of the proposed LEP amendment. However they do act to illustrate the intended development outcome for the site and therefore assist in consideration of the proposal. They are intended to form the basis of a Voluntary Planning Agreement between the applicant and Council, should the planning proposal proceed.

Statutory Context

The following section provides a planning assessment with regard to the local statutory planning context of the proposal.

Land Use Permissibility – WLEP 2011

Under WLEP 2011 the site and surrounding area is zoned R2 Low Density Residential. Attached dwellings are not permitted in the zone. In order for the site to be redeveloped, the application proposes the following amendments to the WLEP 2011:

- Including the site in Schedule 1 of WLEP 2011 and on the associated Additional Permitted Uses map);
- The Schedule 1 amendment to allow *Attached Dwellings* on the site as an additional permitted use, with consent
- An amendment to Clause 6.8 Subdivision of Certain Land of the WLEP 2011 to allow up to 14 Torrens title lots on the site.

Proposed Redevelopment Outcome and Development Controls

The proposal is for attached dwellings, but theoretically either attached dwellings or multi dwelling housing (both defined in the Standard Instrument) could be used to define the proposed housing development.

The definitions of each are provided below, noting that a distinguishing difference is in the manner they are able to be subdivided.

The definition of Attached Dwellings permits Torrens Title Subdivision; it states:

Attached dwelling means a building containing 3 or more dwellings, where:

- (a) each dwelling is attached to another dwelling by a common wall, and
- (b) each of the dwellings is on its own lot of land, and
- (c) none of the dwellings is located above any part of another dwelling.

The definition of Multi Dwelling Housing permits Strata Subdivision; it states:

Multi dwelling housing means 3 or more dwellings (whether attached or detached) on one lot of land, each with access at ground level, but does not include a residential flat building.

Strata Subdivision of a multi dwelling housing development is contingent upon its construction, whereas Torrens title subdivision of land where attached dwellings are permissible could take place prior to construction.

In the case of attached dwellings, it is imperative that the proposed development be substantially completed, in accordance with the proposed site development plan, prior to it being subdivided into separate land titles. If Torrens title subdivision were to occur prior to construction, lots could then be sold and individually developed, in a less orderly manner and with reduced ability to co-ordinate the delivery of a consolidated basement car park. It could also result in dwellings which include no parking under State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

The applicant has asked for attached dwellings to be permissible. The proposed concept plan could be developed as multi dwelling housing, however it would not be able to be subdivided by Torrens title. If housing on the site is to be defined as *Attached Dwellings*, it is Council's view that the success of the development is contingent upon it being substantially constructed as a single development first, in the manner that has been illustrated in the Site Development Plans, before being subdivided.

Council and the proponent have agreed to develop a Voluntary Planning Agreement in relation to resolving this issue.

Zone Objectives

Given it is proposed to maintain the current zoning of the land and use Schedule 1 to permit the proposed use, it is relevant to consider whether the proposal is consistent with the current objectives for the R2 Low Density Residential Zone within WLEP 2011.

The objectives are:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

In response to these objectives, the proposal will provide for the housing needs of the community, and subject to further detailed environmental assessment at development application stage:

- Will provide housing within a landscaped setting.
- Will be compatible with the *low density residential environment*, including the character of residential development within the local context of the site. In this regard, the Voluntary Planning Agreement and Site Development Plans will ensure that the development is broken up into a number of visually separate elements, in keeping with the low density character of the area.
- The land is capable of accommodating the form of proposed development. This aspect will be the subject of further and more detailed consideration during the development assessment phase when specific environmental effects will be assessed.

Overall the development concept is assessed as being compatible with the location and satisfies the objectives of the zone.

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The Planning Proposal – Overview

This Planning Proposal contains the following seven parts, in accordance the documents titled *A guide to preparing planning proposals* (October 2012) and *A guide to preparing local environmental plans* (April 2013) by (former) NSW Department of Planning & Infrastructure and in accordance with *Section 55 (2) of the Environmental Planning and Act 1979*:

- Part 1 - Objectives or Intended Outcomes
- Part 2 - Explanation of Provisions
- Part 3 - Justification
- Part 4 - Maps
- Part 5 - Community Consultation
- Part 6 - Project Timeline

Part 1: Objectives or Intended Outcomes

The following is a statement of the objectives of the proposed WLEP 2011 amendment:

- To facilitate the redevelopment of the 5 allotments for residential use;
- To provide housing to meet the needs of the growing population and increase the range of housing types within Warringah.
- To permit a compatible form of small scale, medium density housing on the land (housing other than Residential Flat Building development);
- To ensure that any medium density development of the site includes a basement car parking level to service the whole development, accessed via a shared driveway;
- To achieve a residential redevelopment on the land that is harmonious with the style and character of development on adjoining and nearby land;
- To achieve a residential redevelopment on the land that provides an appropriate level of amenity in relation to its impacts on adjoining residential land.

The proposed WLEP 2011 amendment is supported by a concept plan. The concept plan will form the basis of a Voluntary Planning Agreement between the applicant and Council, and illustrates the expressed development intent for the land in terms of the:

- style, nature and scale of proposed housing;
- pattern and orientation of the proposed allotments and dwellings;
- access arrangements and the provision for basement car parking on the land;
- nature and extent of proposed landscaped areas.

The following are the intended outcomes of the proposed WLEP 2011 amendment:

- To allow attached dwellings on this contiguous (5 allotment) land holding in order to facilitate the development of the land in the manner proposed by the development concept plan.
- To provide provisions within WLEP2011 that make this form of housing permissible.
- To limit the maximum number of dwellings to 14 and to also allow the Torrens title subdivision of these dwellings, despite the provisions of *Clause 4.1 Minimum subdivision lot size* and the accompanying 'Lot Size Map'.

Part 2: Explanation of Provisions

The proposed outcomes will be achieved by an amendment to WLEP 2011.

The proposed amendments include an amendment to Schedule 1 (Additional Permitted Uses) of WLEP 2011, combined with an amendment to the 'Additional Permitted Uses Map', and an amendment to Clause 6.8 (Subdivision of Certain Land).

The Schedule 1 amendment will correctly identify the subject site and allow *Attached Dwellings* as an additional use permissible with development consent on the subject site, as shown on the 'Additional Permitted Uses Map'.

The amendment to Clause 6.8 (Subdivision of Certain Land) will allow the Torrens title subdivision of the site into lot sizes smaller than permitted under the current provisions of Clause 4.1 *Minimum subdivision lot size* and the accompanying 'Lot Size Map', but only in conjunction with a single development of 14 attached dwellings on the site.

This amendment is required because attached dwellings by definition must be on their own lot of land.

Part 3: Justification

Section A - Need for the Planning Proposal.

1 Is the Planning Proposal a result of any strategic study or report?

The Planning Proposal is not the result of any strategic study or report. It was initiated by an application to Council on behalf of the landowner.

The Planning Proposal application, prepared by JBA Urban Planning Consultants, dated June 2014, along with Council's assessment to date, form the justification for this Planning Proposal.

2 Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

The proposal is assessed as an appropriate form of redevelopment for the site. It will deliver housing in an appropriate location. It will also deliver a form of housing for which there is community demand. The following points are noted in support:

- The application proposes the renewal of land that contains a redundant private hospital building. The applicants have advised that the hospital building has reached the end of its 'useful life' and that a number of significant building upgrades would be required for its continued use. The applicants are of the opinion that the site is not suitable for continued hospital use, given the level of investment needed and given the residential context of the site. It is their opinion that other appropriately zoned land is available to accommodate hospital / health care uses.
- The site is assessed as somewhat unique within the low density R2 residential zone (within a Warringah context) given that it consists of five contiguous, regular shaped allotments with three street frontages with a total length of approximately 150 m. The site is not impacted by any significant environmental constraints like flooding, bush fire, heritage, steep topography, sensitive ecology, flooding etc.
- Whilst the land is sloping in its topography, it is not excessively steep so as to limit its capability for accommodating future dwellings. The concept plans demonstrate that the slope of the land is able to be effectively utilised in the establishment of a basement car park to support the future dwellings. An advantage of the basement car park is that it minimises the extent of visible hard surface and vehicle circulation space which may otherwise impact on the landscape character of the site.
- Overall the physical characteristics of the land, combined with it being a large consolidated holding, enables it to succeed in resolving some of the challenges relating to urban renewal within what is regarded as predominantly a low density residential setting, albeit with a mix of different residential housing forms within the locality.
- Overall, given the characteristics of the site it is assessed that it is capable of accommodating the nature and density of development proposed, subject to further detailed assessment of the specific dwelling designs at development application stage.

Further to the above it is noted that there is currently demand for more housing and increased housing diversity within the Warringah LGA. The approximate breakdown of existing dwelling stock in the LGA is:

- Detached dwellings (63.3%)
- Villa/townhouse/dual occupancy (13.9%)
- Unit/apartment (22.8%)

This planning proposal will contribute towards improving the diversity of housing provision in Warringah and contribute to meeting the Warringah LGA dwelling targets.

Council is not in favour of simply rezoning the site as R3 Medium Density Residential, for the following reasons:

- If the site was zoned R3, it is highly likely it would be developed with a large residential flat building, as opposed to the attached dwellings currently under consideration.
- The proposed attached dwellings are considered to be more in keeping with the generally low density residential character of the neighbourhood. The dwellings will be broken up into five separate (above ground) elements, similar in scale to five detached dwellings. This will be achieved through the implementation of a Voluntary Planning Agreement between the applicants and Council.
- The proposed 14 attached dwellings will each be smaller than a typical detached dwelling, and larger than a secondary dwelling, but will result in a housing density only slightly higher than what could be achieved under the current R2 zoning, assuming one detached dwelling and one secondary dwelling per lot.
- The attached dwelling style is generally compatible with the subdivision pattern of much of Freshwater, where narrow lots accommodating narrow houses are common.
- Development of the site with a residential flat building would be likely to result in a significantly higher density development, not in keeping with the current zone objectives, or the surrounding low density development.

3 Is there a net community benefit?

This planning proposal will deliver a net community benefit. The key community benefits are assessed to include:

- there is currently demand for more housing, which the proposal responds to.
- there is currently demand for increased housing diversity, which the proposal responds to.
- there is currently demand for this form of housing and the proposal responds to these community needs by providing housing that is:
 - smaller and more accessibly located than many detached dwellings within low density areas;
 - larger than an apartment;
 - that has its own outdoor private open space and its own secure and directly accessible car parking.
- Development of the site in the manner proposed will progress the orderly redevelopment of the land in a manner that is compatible with the zoning objectives and prevailing residential character.
- The proposal will make a positive contribution to the streetscape amenity and residential function of this location. The proposed housing form is more compatible with the desired residential character than the current hospital structure that has a monolithic style building form, limited landscape areas, and close proximity to adjoining dwellings (to the east). It is also more compatible than a residential flat building on the site would be, if the site was to be simply rezoned as R3 Medium Density Residential land.
- The site is located near various activity centres and within close proximity to the bus network. The land is 350 m from a neighbourhood centre and approximately 250 m from bus stops on Harbord Road. The location is also convenient to regional scale shops, services and employment opportunities most notably in nearby Brookvale, Dee Why and Manly.
- The development of the site in the manner proposed is an opportunity to achieve additional housing in a manner that is consistent with State Government planning policies.

Section B - Relationship to Strategic Planning Framework.

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

The Planning Proposal is consistent with the objectives and actions of the relevant metropolitan and sub-regional strategies applicable to the area as detailed below.

'A plan for growing Sydney'

'A plan for growing Sydney' is the State government's current metropolitan planning strategy for Sydney. The strategy contains a number of *Goals* and accompanying *Directions* some of which are relevant to the proposal; those relevant are addressed below.

The proposal is consistent with the strategy and the following aspects are noted in response.

Goal 2 - A city of housing choice with homes that meet our needs and lifestyles.

Direction 2.1 Accelerate housing supply across Sydney

Additional housing is needed to meet the growth and changing housing needs of Sydney's population. The proposal is consistent with this direction in that it will increase housing yield from 5 to 14 subdividable dwellings.

Direction 2.2 Accelerate urban renewal across Sydney – providing homes closer to jobs

Key to this direction is the location of urban renewal in or near centres within close proximity to the public transport network. The proposal is consistent with this direction given that the land is 350 m from a neighbourhood centre and approximately 250 m from bus stops on Harbord Road.

The location of the site is convenient to shops, services and employment opportunities most notably in nearby Brookvale, Dee Why and Manly.

Direction 2.3 Improve housing choice to suit different needs and lifestyles

This direction identifies that the fastest growing households in Sydney are single person households yet despite this trend most of Sydney's housing stock comprises detached housing 57.3%. Appropriate housing is needed for people as they age and seek to downsize their home. Research indicates a current shortage of semi-detached houses across Sydney and a shortage of apartments in the middle and outer areas of Sydney.

In response, the proposal is consistent with this goal and its accompanying directions in that:

- The suburb of Freshwater is located within the middle ring of metropolitan Sydney;
- The proposal will increase the diversity of housing that is smaller scale in its form, appropriate to meet the needs of smaller households for which there is strong and growing demand.

Goal 3 - A great place to live with communities that are strong, healthy and well connected

- The location of the land is within an established residential community, serviced by infrastructure and within reasonable walking distance of public transport, shops and recreational spaces. The proposal is assessed as being consistent with this goal.

Direction 3.1 Revitalise existing suburbs This direction aims to focus new housing within Sydney's established suburbs in order to bring benefits to the community's social and economic well-being.

Goal 4 - A sustainable and resilient city that protects the natural environment and has a balanced approach to the use of land and resources

By re-developing urban land within established urban areas, with slightly higher housing densities, the pressure to provide new housing within new Greenfield locations on the fringe of urban areas is reduced. In this way Sydney's sensitive ecological characteristics are preserved. The proposal is consistent with this goal and principle through its renewal and higher use of an established residentially zoned land holding.

In terms of sub regional considerations Warringah is located within the designated North-East Subregion. Detailed Sub-regional plans are presently in the making by the Department of Planning and Environment, however in the meantime the Metropolitan Strategy identifies some key principles and directions for future planning and growth within the subregion.

Relevant to the proposal it is intended that increases in the supply of housing will be focused on centres with good public transport. Further, the subregion will offer a growing diversity of high amenity living and working environments.

The proposal is consistent with these objectives in that:

- It will increase the diversity of housing. It will provide a style of housing that is in-demand in order to meet the changing needs of the population.
- The location of the site is convenient to shops, services and employment opportunities most notably in nearby Freshwater Village, Brookvale, Dee Why and Manly.
- The location of the site is convenient to public transport (bus) services providing links to nearby centres (noted above), recreation areas, facilities, and community services.

4.1 Draft North East Subregional Strategy (2007)

The *Draft North East Subregional Strategy* was prepared by the Department of Planning and Infrastructure in 2007. It contains targets for housing (10,300 new homes) and employment (12,500 new jobs) in Warringah by 2031, in response to the forecast growth of Sydney contained in the 2005 Metropolitan Strategy.

There is currently a lack of housing diversity in the Warringah LGA compared to Sydney in general. The breakdown of existing dwelling stock in the LGA is: Detached dwellings (63.3%); Villa/townhouse/dual occupancy (13.9%); Unit/apartment (22.8%).

This planning proposal would improve the diversity of housing provided in Warringah and contribute to meeting Warringah's dwelling targets.

5 Is the planning proposal consistent with Council's local strategy or other local strategic plan?

5.1 Warringah Community Strategic Plan 2023

The Warringah Community Strategic Plan 2023 sets out the long term aspirations of the Warringah community that is: a vibrant community; lifestyle and recreation opportunities; a healthy environment; connected transport; working together for the greater good of all; and liveable neighbourhoods. It reflects where the Warringah community want to be in ten years and is the key reference point for decision making during this period.

This planning proposal will serve to satisfy Objective 5.3 of the Community Strategic Plan by offering a variety of housing choice that meets the needs of the Warringah community and complements the local neighbourhood and the Warringah lifestyle.

6 Is the planning proposal consistent with applicable State Environmental Planning Policies (SEPP's)?

This planning proposal is consistent with all relevant State Environmental Planning Policies (SEPPs).

6.1 SEPP No 32 Urban Consolidation (Redevelopment of Urban Land)

The planning proposal is consistent with SEPP 32 in providing the opportunity for the development of additional housing in an area where there is existing public infrastructure, transport, and community facilities, and is close to employment, leisure and other opportunities.

6.2 SEPP No 55 Remediation of Land

The applicant is to prepare a Stage 1 Preliminary Contamination Assessment and, if required, a Stage 2 Detailed Contamination Assessment, post gateway to assess the potential risk to human health and the environment and to determine the sites suitability for residential uses.

7 Is the planning proposal consistent with applicable Ministerial Directions (s117 directions)?

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It is considered that the planning proposal is consistent with the relevant Directions issued under Section 117(2) of the *Environmental Planning and Assessment Act, 1979* by the Minister to Councils, as demonstrated in the assessment table.

Section 117(2) Directions	Requirements	Comment	Consistent
2. Environment and Heritage			
2.3 Heritage Conservation	The objective of this direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.	There is nothing of heritage significance on or in the vicinity of the subject site.	N/A
3. Housing, Infrastructure and Urban Development			
3.1 Residential Zones	<p>The objectives of this direction are:</p> <ul style="list-style-type: none"> (a) to encourage a variety and choice of housing types to provide for existing and future housing needs, (b) to make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services, and (c) to minimise the impact of residential development on the environment and resource lands. <p>A planning proposal must include provisions that encourage the provision of housing that will:</p> <ul style="list-style-type: none"> (a) broaden the choice of building types and locations available in the housing market, and (b) make more efficient use of existing infrastructure and services, and (c) reduce the consumption of land for housing and associated urban development on the urban fringe, and (d) be of good design. <p>A planning proposal must, in relation to land to which this direction applies:</p> <ul style="list-style-type: none"> (a) contain a requirement that residential development is not permitted until land is adequately serviced (or arrangements satisfactory to the council, or other appropriate authority, have been made to service it), and (b) not contain provisions which will reduce the permissible residential density of land. 	<p>The Planning Proposal is consistent with this direction, in that it:</p> <ul style="list-style-type: none"> • Facilitates the provision of in-demand terrace style housing, increasing the variety of housing stock in the locality • Facilitates additional housing in the Warringah LGA that is currently not provided on the site • Provides additional residential development in an existing urban area that will be serviced by existing infrastructure • Will facilitate a high level of residential amenity and provide a high quality design <p>Nothing in the Planning Proposal precludes the requirements of this Direction regarding infrastructure and density from being achieved.</p>	Yes
3.4 Integrating Land Use and Transport	<p>The objective of this direction is to ensure that urban structures, building forms, land use locations, development designs, subdivision and street layouts achieve the following planning objectives:</p> <ul style="list-style-type: none"> (a) improving access to housing, jobs and services by walking, cycling and public transport, and (b) increasing the choice of available transport and reducing dependence on cars, and (c) reducing travel demand including the number of trips generated by development and the distances travelled, especially by car, and (d) supporting the efficient and viable operation of 	<p>The Planning Proposal is consistent with this direction, in that it:</p> <ul style="list-style-type: none"> • will provide new dwellings in proximity to existing public transport links, including bus services along Harbord Road that provide services to the wider 	Yes

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Section 117(2) Directions	Requirements	Comment	Consistent
	<p>public transport services, and</p> <p>(e) providing for the efficient movement of freight.</p> <p>A planning proposal must locate zones for urban purposes and include provisions that give effect to and are consistent with the aims, objectives and principles of:</p> <p>(a) Improving Transport Choice – Guidelines for planning and development (DUAP 2001), and</p> <p>(b) The Right Place for Business and Services – Planning Policy (DUAP 2001).</p>	<p>metropolitan region</p> <ul style="list-style-type: none"> • makes more efficient use of space and infrastructure by increasing densities on an underutilised site • be capable of achieving the car parking requirements set out by the Warringah planning controls 	
5. Regional Planning			
5.1 Implementation of Regional Strategies	<p>The objective of this direction is to give legal effect to the vision, land use strategy, policies, outcomes and actions contained in regional strategies.</p> <p>A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department (or an officer of the Department nominated by the Director-General), that the extent of inconsistency with the regional strategy:</p> <p>(a) is of minor significance, and</p> <p>(b) the planning proposal achieves the overall intent of the regional strategy and does not undermine the achievement of its vision, land use strategy, policies, outcomes or actions.</p>	<p>The planning proposal is generally consistent with the objectives and strategies of the subregional strategy in that it will facilitate the delivery of residential floor space to contribute towards meeting dwelling targets within Warringah LGA.</p>	Yes
6. Local Plan Making			
6.1 Approval and Referral Requirements	<p>The objective of this direction is to ensure that LEP provisions encourage the efficient and appropriate assessment of development.</p> <p>A planning proposal must:</p> <p>(a) minimise the inclusion of provisions that require the concurrence, consultation or referral of development applications to a Minister or public authority, and</p> <p>(b) not contain provisions requiring concurrence, consultation or referral of a Minister or public authority unless the relevant planning authority has obtained the approval of:</p> <p>(i) the appropriate Minister or public authority, and</p> <p>(ii) the Director-General of the Department (or an officer of the Department nominated by the Director-General), prior to undertaking community consultation in satisfaction of section 57 of the Act, and</p> <p>(c) not identify development as designated development unless the relevant planning authority:</p> <p>(i) can satisfy the Director-General of the Department (or an officer of the Department nominated by the Director-General) that the class of development is likely to have a significant impact on the environment, and</p> <p>(ii) has obtained the approval of the Director-General of the Department (or an officer of the Department nominated by the Director-General) prior to undertaking community consultation in</p>	<p>The planning proposal does not introduce any provisions that require any additional concurrence, consultation or referral.</p>	Yes

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Section 117(2) Directions	Requirements	Comment	Consistent
	satisfaction of section 57 of the Act.		
6.3 Site Specific Provisions	<p>The objective of this direction is to discourage unnecessarily restrictive site specific planning controls.</p> <p>A Planning Proposal that will amend another environmental planning instrument in order to allow a particular development proposal to be carried out must either:</p> <ul style="list-style-type: none"> (a) allow that land use to be carried out in the zone the land is situated on, or (b) rezone the site to an existing zone already applying in the environmental planning instrument that allows that land use without imposing any development standards or requirements in addition to those already contained in that zone, or (c) allow that land use on the relevant land without imposing any development standards or requirements in addition to those already contained in the principal environmental planning instrument being amended. <p>A planning proposal must not contain or refer to drawings that show details of the development proposal.</p> <p>A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department (or an officer of the Department nominated by the Director-General) that the provisions of the planning proposal that are inconsistent are of minor significance.</p> 	<p>The planning proposal is consistent with this direction. It proposes to make the form of housing permissible within the zone via Schedule 1.</p> <p>The land is unable to be rezoned to R3 Medium Density because that would allow residential flat buildings on the site which is assessed as incompatible with the location.</p> <p>The development standards already within the LEP will be applicable to the land with the exception of clause 4.1 <i>Minimum subdivision lot size</i> which is proposed to be addressed by amendment of Clause 6.8 Subdivision of Certain Land.</p> <p>Whilst the planning proposal is supported by a concept plan it does not form part of the proposed LEP amendment. It is intended that the plan will form the basis of a Voluntary Planning Agreement between the applicant and Council.</p> <p>Neither the WLEP2011 nor the WDCP2011 contain specific controls for attached dwellings.</p>	Yes
7. Metropolitan Planning			
7.1 Implementation of the Metropolitan Plan for Sydney 2036	<p>The objective of this direction is to give legal effect to the vision, transport and land use strategy, policies, outcomes and actions contained in the Metropolitan Plan for Sydney 2036.</p> <p>A planning proposal may be inconsistent with the terms of this direction only if the Relevant Planning Authority can satisfy the Director-General of the Department (or an officer of the Department nominated by the Director-General), that the extent of inconsistency with the Metropolitan Plan:</p> <ul style="list-style-type: none"> (a) is of minor significance, and 	<p>The planning proposal is consistent with the objectives and strategies of the Metropolitan Plan in that it will facilitate the delivery of a diversity of residential dwellings which will contribute to the long term vitality of the community.</p>	Yes

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Section 117(2) Directions	Requirements	Comment	Consistent
	(b) the planning proposal achieves the overall intent of the Plan and does not undermine the achievement of its vision, land use strategy, policies, outcomes or actions.		

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?

Records indicate that the subject land does not contain critical habitat, threatened species populations, ecological communities or their habitats. Therefore, the potential for impact is assessed as low and unlikely.

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 not known to be adversely affected by environmental issues such as riparian land, wetlands, wildlife corridors, flooding, acid sulphate soils, bushfire hazard, European or Aboriginal heritage. The land is located in 'Landslip Area B' (Flanking slopes from 5 to 25 degrees), this issue can be managed at the development assessment stage. It is determined that the planning proposal would have a negligible environmental impact.

10 Has the planning proposal adequately addressed any social and economic effects?

A range of positive social and economic impacts are expected to result from the proposed development. The planning proposal will result in:

- improvement of the diversity of housing choice within Warringah and contribute to meeting Warringah's housing targets;
- social benefits by the provision additional housing, for which there is high demand;
- social benefits by the provision of additional housing within an established urban area that is well located in close proximity to jobs, shops, services, transport, and open space;
- direct and broader economic benefits from the capital investment associated with the development;
- employment during the construction phase of the works; and
- economic benefits, arising from the investment in improvements to the land.

Section D - State and Commonwealth Interests.

11 Is there adequate public infrastructure for the planning proposal?

Yes, the land is located within an established urban area within close proximity to jobs, shops, services, public transport, and open space.

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

The planning proposal will have minimal impact, improving diversity of housing choice and contributing to meeting Warringah's housing targets. The views of State and Commonwealth agencies will be known after

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184 Wyndora Ave, Freshwater – Planning Proposal

the Gateway Determination (noting that the only agency likely to have an interest in the planning proposal is the Department of Planning and Environment.

184 Wyndora Ave, Freshwater – Planning Proposal

Part 4: Maps

The WLEP 2011 map that needs to be amended for this planning proposal is:

- Schedule 1 Additional Permitted Uses Map – to identify the site being Lot's 1, 2, 33, 34 and 35 of DP 7912.

Part 5: Community Consultation

Council placed the planning proposal on non-statutory public exhibition from Monday 14 July 2014 until Monday 28 July 2014. Notification included:

- Advertisements over three Saturdays (12/7/14; 19/7/14 and 26/7/14) in the Manly Daily notifying of the public exhibition.
- Notification letters to surrounding land owners.
- Advertising signs on site.
- Information provided on Council website and at Council Civic Centre of the planning proposal as submitted to Council.

Eight (8) submissions were received in response to the public exhibition period. Issues raised in submissions related to:

- The proposed increase in dwelling density.
- The character of surrounding development.
- The appropriateness of spot rezoning and the precedent it may set.
- View impacts.
- Support for the form of housing proposed as opposed to a residential flat building or other non-residential uses.

In summary, issues raised in these submissions have been addressed in the report to the Warringah Development Assessment Panel meeting on 10 December 2014 and also in the report to Council at its meeting held on 10 February 2015. Copies of these reports are attached.

There have been no matters raised of such significance that should prevent the proposal proceeding to Gateway Determination.

There will be further opportunity after the Gateway Determination to refine the proposed development controls to guide the sites redevelopment. Further, there'll be opportunity for the community to review the proposal and have further input during the statutory public exhibition of the planning proposal.

Part 6: Project Timeline

The anticipated timeline of this LEP amendment is set out in the table below, noting that Council has no control over State agency timeframes. The following table provides an indicative timeframe for the Planning Proposal:

Planning Proposal Tasks		Anticipated Timeframes
1.	Referral to NSW Department of Planning and Environment for Gateway Determination (1 week)	September 2015
2.	Gateway Determination (4 weeks)	Dec 2015
3.	Timeframe for: <ul style="list-style-type: none"> Potential government agency consultation Any required amendments to the Planning Proposal prior to exhibition Public exhibition preparation (4 weeks)	Dec 2015
4.	Statutory Public Exhibition (assumed 28 days)	Jan 2016
5.	Assess Submissions (1 week)	Feb 2016
6.	Report to Council	Feb 2016
7.	Finalise LEP amendment – Parliamentary council for legal review	Mar/Apr 2016
8.	Complete	May 2016

184 Wyndora Ave, Freshwater – Planning Proposal

Request for Written Authorisation to Exercise Delegation

Council requests authorisation to exercise delegation in amending the WLEP 2011 in relation to the proposal as per Council Resolution dated 9 December 2014:

That Council formally requests written authorisation from the Department of Planning and Environment to exercise delegation (and to sub-delegate this written authorisation to the General Manager of Warringah Council) to prepare and make the amending local environmental plan for the Planning Proposal at 184 Wyndora Avenue, Freshwater (Lot 1 and 2 of DP 7912 & Lot 33, 34, 35 of DP 7912), following the Gateway Determination and a resolution of Council to proceed to amend the WLEP 2011.

Conclusion

This planning proposal has been prepared in support of amending Schedule 1 and Clause 6.8 of the Warringah LEP 2011 to allow up to 14 *Attached Dwellings* and Torrens title subdivision of those dwellings, on the land at 184 Wyndora Ave, Freshwater.

The site offers an appropriate opportunity for orderly redevelopment for a purpose for which there is high demand in an appropriate established residential location. It is assessed that there is a case for change in support of the proposed LEP amendment, noting:

- The nature and scale of the proposed housing form is compatible with the character of adjoining land and the locality.
- It will deliver increased housing in an appropriate location in close proximity to jobs, shops, services, transport, and open space.
- It will respond to the community's need for more housing and more housing diversity; more specifically a form of medium density housing that is smaller than a typical detached home but larger than an apartment dwelling.
- The land is capable of accommodating the proposed housing and is not environmentally constrained.
- The land is well located in close proximity to shops, public transport, services, employment areas, and open space.
- It will deliver a form of housing for which there is strong community demand.
- The physical characteristics of the land and it being a relatively large consolidated land holding enables it to succeed in resolving some of the challenges relating to urban renewal within a predominantly low density residential setting.
- Given the physical and environmental characteristics of the site it is assessed that it is capable of accommodating the nature and density of development proposed, subject to further detailed assessment of the specific dwelling designs at development application stage.
- Overall the proposal is assessed as an appropriate form of redevelopment for the site.

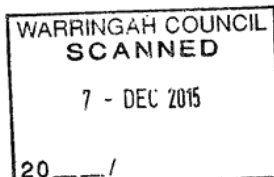
An amendment to the Warringah LEP 2011 via a Schedule 1 listing and Clause 6.8 amendment is assessed as appropriate in this instance, and is preferable to rezoning the site as R3 Medium Density Residential, which would allow for Residential Flat Buildings.

Council supports the progression of the planning proposal for Gateway Determination.

Planning &
Environment

Mr Rik Hart
General Manager
Warringah Council
Civic Drive, 725 Pittwater Road
DEE WHY NSW 2099

PP_2015_WARRI_005_0 (15/14161)



Dear Mr Hart

Planning Proposal to amend Warringah Local Environmental Plan 2011

I am writing in response to your Council's request for a Gateway determination under section 56 of the *Environmental Planning and Assessment Act 1979* (the Act) in respect of the planning proposal for 184 Wyndora Avenue, Freshwater.

As delegate of the Minister for Planning, I have now determined the planning proposal should proceed subject to the conditions in the attached Gateway determination.

I note that the planning proposal contains provisions that will allow a maximum number of dwellings and torrens title subdivision. Clause 6.8 of Warringah LEP 2011 currently includes similar stipulations on certain land, and it is considered that the proposed provisions should also be included in Clause 6.8. The planning proposal is to be amended to reflect this prior to public exhibition.

The proposed restriction as to the timing of subdivision is not supported as it is not considered appropriate to control the timing of the subdivision through Warringah LEP 2011. This should be addressed through the development application process. This change has been discussed with Council officers and should be removed from the planning proposal prior to exhibition.

I have considered the inconsistency with section 117 Direction 6.3 *Site Specific Provisions* based on the above changes. As delegate of the Minister for Planning I am satisfied the inconsistency is minor in nature and no further approval is required.

Council is encouraged to consider investigating the permissibility of attached dwellings in the R2 Low Density Residential zone in the Warringah LGA, if Council wishes to encourage this type of development in the future.

Plan making powers were delegated to councils by the Minister in October 2012. It is noted that Council has requested to be issued with delegation for this planning proposal. I have considered the nature of Council's planning proposal and have decided to issue an authorisation for Council to exercise delegation to make this plan.


The amending local environmental plan is to be finalised within 12 months of the week following the date of the Gateway determination. Council should aim to commence the exhibition of the planning proposal as soon as possible. Council's request to draft and finalise the local environmental plan should be made directly to Parliamentary Counsel's Office 6 weeks prior to the projected publication date. A copy of the request should be

forwarded to the Department of Planning and Environment's regional team for administrative purposes.

The State Government is committed to reducing the time taken to complete local environmental plans by tailoring the steps in the process to the complexity of the proposal, and by providing clear and publicly available justification for each plan at an early stage. In order to meet these commitments, the Minister may take action under section 54(2)(d) of the Act if the time frames outlined in this determination are not met.

If you have any queries, please contact Ms Belinda Morrow of the Department's regional office on (02) 9228 6589.

Yours sincerely,


Lee Mulvey
Director, Metropolitan (CBD)
Planning Services
3/12/15

Delegate of the Minister for Planning

**Planning &
Environment****Gateway Determination**

Planning proposal (Department Ref: PP_2015_WARRI_005_00): to amend Warringah Local Environmental Plan 2011 to allow up to 14 Torrens title lots and attached dwellings with basement carpark at 184 Wyndora Avenue, Freshwater.

I, the Director, Metropolitan (CBD) at the Department of Planning and Environment as delegate of the Minister for Planning, have determined under section 56(2) of the *Environmental Planning and Assessment Act 1979* (the Act) that an amendment to the Warringah Local Environmental Plan 2011 to allow up to 14 Torrens title lots and attached dwellings with basement carpark at 184 Wyndora Avenue, Freshwater should proceed subject to the following conditions:

1. Prior to undertaking public exhibition, the planning proposal is to be updated to:
 - amend Clause 6.8 Subdivision of certain land to allow a maximum number of dwellings and torrens title subdivision rather than using Schedule 1 for this purpose; and
 - remove the restriction on the timing of subdivision after practical completion of the dwellings.
2. Prior to public exhibition, the planning proposal is to be updated to clearly identify the site on Warringah LEP 2011 Additional Permitted Uses Map – APU_10.

Note: Maps should be prepared to the standards identified in Standard Technical Requirements for LEP Maps (Department of Planning & Infrastructure 2013).

3. Community consultation is required under sections 56(2)(c) and 57 of the EP&A Act as follows:
 - a) the planning proposal is classified as routine as described in A Guide to Preparing LEPs (Department of Planning and Environment 2013) and must be made publicly available for a minimum of 28 days; and
 - b) the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of A Guide to Preparing LEPs (Department of Planning and Environment 2013).
4. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the EP&A Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).

5. The timeframe for completing the LEP is to be 12 months from the week following the date of the Gateway determination.

Dated 3rd day of December 2015.


Lee Mulvey
Director, Metropolitan (CBD)
Planning Services

Delegate of the Minister for Planning

Planning &
Environment**WRITTEN AUTHORISATION TO EXERCISE DELEGATION**

Warringah Council is authorised to exercise the functions of the Minister for Planning under section 59 of the *Environmental Planning and Assessment Act 1979* that are delegated to it by instrument of delegation dated 14 October 2012, in relation to the following planning proposal:

Number	Name
PP_2015_WARRI_005_00	Planning proposal to amend Warringah Local Environmental Plan 2011 to allow up to 14 Torrens titles, attached dwellings with basement carpark at 184 Wyndora Avenue, Freshwater.

In exercising the Minister's functions under section 59, the Council must comply with the Department of Planning and Environment's "*A guide to preparing local environmental plans*" and "*A guide to preparing planning proposals*".

Dated 3 December 2015



Lee Mulvey
Director, Metropolitan (CBD)
Planning Services

Delegate of the Minister for Planning

WARRINGAH PP_2015_WARRI_005_0 (15/14161)

Attachment 5 – Delegated plan making reporting template
Reporting template for delegated Local Environmental Plan amendments

Notes:

- Planning proposal number will be provided by the Department of Planning and Environment following receipt of the planning proposal
- The Department of Planning and Environment will fill in the details of Tables 1 and 3
- The Relevant Planning Authority is to fill in details for Table 2
- If the planning proposal is exhibited more than once, the Relevant Planning Authority should add additional rows to **Table 2** to include this information
- The Relevant Planning Authority must notify the relevant contact officer in the regional office in writing of the dates as they occur to ensure the publicly accessible Plan Making Tracking System is kept up to date
- A copy of this completed report must be provided to the Department of Planning and Environment with the Relevant Planning Authority's request to have the Local Environmental Plan (the Plan) notified

Table 1 – To be completed by Department of Planning and Environment

Stage	Date/Details
Planning Proposal Number	PP_2015_WARRI_005_00
Date Sent to Department under s56	11 November 2015
Date considered at LEP Review Panel	
Gateway determination date	3 December 2015

Table 2 – To be completed by the RPA

Stage	Date/Details	Notified Reg Off
Dates draft Plan exhibited		
Date of public hearing (if held)		
Date sent to PCO seeking Opinion		
Date Opinion received		
Date Council Resolved to Adopt Plan		
Date Plan made by GM (or other) under delegation		
Date sent to the Department requesting notification		

Table 3 – To be completed by Department of Planning and Environment

Stage	Date/Details
Notification Date and details	

Additional relevant information:

