

ATTACHMENT BOOKLET

ORDINARY COUNCIL MEETING

TUESDAY 23 AUGUST 2016

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Form: 07L
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Matthews Folbigg Pty Limited

LEASE
New South Wales
Real Property Act 1900

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

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

STAMP DUTY

Office of State Revenue use only

(A) TORRENS TITLE

Property leased: if appropriate, specify the part or premises

2/251053
4/251053
1/1033971

(B) LODGED BY

Document Collection Box	Name, Address or DX, Telephone and Customer Account Number if any Acc. No. 123198L Matthews Folbigg Pty Limited DX 8233 PARRAMATTA Tel: 9635 7966 Reference (optional): DTS:152072	CODE L
307V		

(C) LESSOR

NORTHERN BEACHES COUNCIL (ABN 57 284 295 198)

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

(D)

Encumbrances (if applicable):

(E) LESSEE

THE MONA VALE GOLF CLUB LTD (ACN 000 024 224)

(F)

TENANCY:

(G) 1. TERM Five (5) Years

2. COMMENCING DATE

3. TERMINATING DATE

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

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

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

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

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

9. The **RENT** is set out in clause 7 of Annexure "A"

Form: 07L

DATE / /

(H) Certified correct for the purposes of the Real Property Act 1900
Signed by NORTHERN BEACHES COUNCIL by its Attorney

who states that he has no notice of revocation of Power of
Attorney Book 4707 No 77 pursuant to which this documents has
been executed in the presence of:

Signature of Witness:
Name of Witness:
Address of Witness:

Signature of Attorney:
Name of Attorney:
Position of Attorney:

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

Certified correct for the purposes of the Real Property Act 1900
and executed on behalf of the company named below by the
authorised person(s) whose signature(s) appear(s) below
pursuant to the authority specified.
Company: THE MONA VALE GOLF CLUB LTD (ACN 000 024
224)
Authority: Section 127(1) of the Corporations Act 2001

Signature of authorised person:

Signature of authorised person:

Name of authorised person:
Office held:

Name of authorised person:
Office held:

(I) STATUTORY DECLARATION #

I,

solemnly and sincerely declare that -

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

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

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

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

☐ Other qualified witness [specify]

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

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

Signature of witness: Signature of applicant:

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

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

ANNEXURE "A"

This is Annexure "A" referred to in the Lease between Northern Beaches Council (ABN 57 284 295 198) as Lessor and The Mona Vale Golf Club Ltd (ACN 000 024 224) as Lessee.

1. DEFINITIONS

In this Lease unless the contrary intention appears:

Business Day means any day which is not a Saturday, Sunday or Public Holiday in New South Wales;

Commencing Date means the date specified in Column 2 of Item 1 of Schedule 1;

Crown Land Lease means the lease entered into between the Beeby Park (R45244) Reserve Trust as lessor (the affairs of which are managed by the Lessor) and the Lessee over part of the Mona Vale Golf Club, being the land comprised in Certificate of Title Folio Identifier 7092/1051073 with the same commencing date, terminating date and term of this Lease.

Environmental Law means any Law or State protection policy incorporated by reference to or being part of any Law relating to protection of the Environment;

Terminating Date means the date on which the Term expires, as specified in Column 2 of Item 3 of Schedule 1;

Hazardous Substance means a substance that because of its quantity, concentration, acute or chronic toxic effects, carcinogenicity, teratogenicity, mutagenicity, corrosiveness, flammability, or physical, chemical or infectious characteristics, may pose a hazard to property, human health or the environment when improperly treated, stored, disposed of or otherwise managed;

Improvements mean any structure or work of a permanent nature attached to the land;

Lease means this Lease Agreement including the Schedules, and all Annexures hereto;

Local Council means the council established under the Local Government Act 1993 for the Local Government Area in which the Premises are situated;

Party means a party to this Lease;

Premises means the land and/or buildings described in Part 1 of Schedule 2;

Rent means the rent reserved under Clause 7 of this Lease;

Sub-Lessee means a person who holds a sub-lease of any part of the Premises from the Lessee in accordance with a provision of this Lease;

Tenant Fixtures means any plant equipment fittings or improvements in the nature of fixtures brought onto the Premises by, on behalf of, or at the request of the Lessee;

Term means the period specified in Column 2 of Item 2 of Schedule 1;

Termination means a termination of this lease as a consequence of the expiration of the Term (or any extension thereof) or a termination under Clause 23.

2. CONSTRUCTION

2.1 Construction in accordance with this Clause

This Lease shall be construed in accordance with this clause unless the context requires otherwise.

2.1.1 Plurals

Words importing the singular include the plural and vice versa.

2.1.2 Genders

Words importing any gender include the other genders.

2.1.3 Persons

A reference to a person includes:

- (a) an individual, a firm, unincorporated association, corporation and a government or statutory body or authority; and
- (b) the legal personal representatives, successors and assigns of that person.

2.1.4 Headings

Headings (including any headings described as parts and sub-headings within clauses) wherever appearing shall be ignored in construing this Lease.

2.1.5 Clauses and Sub-clauses

- (a) A reference to a clause includes all sub-clauses, paragraphs, subparagraphs and other components which form part of the clause referred to.
- (b) A reference to a sub-clause includes any sub-paragraphs and other components of the sub-clause referred to.

2.1.6 Time

A reference to time is a reference to local time in Sydney.

2.1.7 Money

A reference to \$ or "dollars" is a reference to the lawful currency of Australia.

2.1.8 Defined Terms

If a word or phrase is defined cognate words and phrases have corresponding definitions. A defined term, unless inconsistent with the context of its use, is denoted by the appearance of that word using a capital letter at the beginning of that word.

2.1.9 Writing

A reference to writing includes any mode of representing or reproducing words in tangible and permanently visible form.

2.1.10 Contra Preferentum

No rules of construction shall apply to the disadvantage of any party responsible for preparation of this Lease or any part of it.

2.1.11 Statutes

A reference to a statute, legislation, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them made by any legislative authority.

2.1.12 Lease

A reference to this Lease shall include any extension or variation of this Lease.

2.1.13 Priority

If an inconsistency occurs between the provisions of this Lease and the provisions of a lease granted in accordance with this Lease, the provisions of this Lease shall prevail.

2.2 Warranties and Undertakings

(a) The Lessee warrants that it:

- (i) has relied only on its own inquiries about this Lease; and
- (ii) has not relied on any representation or warranty by the Lessor or any person acting or seeming to act on the Lessor's behalf.

(b) The Lessee must comply on time with undertakings given by or on behalf of the Lessee.

2.3 Further assurances

Each Party must do everything necessary to give full effect to this Lease.

2.4 Relationship of Lessor and Lessee

Nothing contained or implied in this Lease will be deemed or construed to create the relationship of partnership or of principal and agent or of joint venture between the Lessor and the Lessee. Specifically, the Parties understand and agree that neither the method of computation of Rent, nor any other provision, nor any acts of the Lessee and the Lessor or either of them will be deemed to create any relationship between them other than the relationship of Lessor and Lessee upon the terms and conditions only as provided in this Lease.

2.5 Time to be of the essence

Where in any provision of this Lease a party is given or allowed a specified time within which to undertake or do any act or thing or any power is conferred or any event occurs after the lapsing of a specified time, time shall be the essence of the contract in that regard.

3. SEVERABILITY

Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall as to such jurisdiction be ineffective to the extent of such prohibition or inability to enforce without invalidating the remaining provisions of such provisions in any other jurisdiction.

4. ESSENTIAL TERMS OF LEASE

The Lessor and the Lessee agree that the clauses specified in Column 2 of Item 15 of

Schedule 1 are essential conditions of this Lease.

TERM AND PERMITTED USE

5. TERM OF LEASE

The Lessor grants to the Lessee a lease of the Premises for the Term specified in Column 2 of Item 2 of Schedule 1. The Term shall commence on the Commencing Date specified in Column 2 of Item 1 of Schedule 1.

6. PERMITTED USE

- 6.1 The Lessee will not use the Premises or allow the Premises to be used for any purpose other than the Permitted Use specified in Column 2 of Item 4 of Schedule 1.
- 6.2 Unless expressly permitted under a provision of this Lease the Lessee will not reside on the Premises, permit any other person to reside on the Premises, or use the Premises to be used for the purposes of a residence in any regard.
- 6.3 The Lessee and its employees, agents or invitees must not obstruct any path, driveway or entry giving egress from, access to or passage across the Premises used or intended to be used by members of the public except with the prior written approval of the Lessor.
- 6.4 The Lessee shall not permit the sale of liquor on the Premises, nor permit any person to take onto the Premises any liquor, without the prior consent of the Lessor.

LESSEE'S RENT AND OUTGOINGS

7. PAYMENT OF RENT

7.1 Definitions

For the purposes of this clause:

Base Annual Rent means:

- (a) the Initial Rent where the Rent has not been adjusted or redetermined in accordance with sub-clauses 7.3 or 7.4; or
- (b) in any other case - the Rent as last redetermined or adjusted in accordance with the provisions of sub-clauses 7.3 or 7.4;

Due Date means the date for payment of Rent under this Lease as is specified in Column 2 of Item 7 of Schedule 1 and thereafter each anniversary of that date;

Initial Rent means the Rent payable under this Lease in respect of the Premises as is specified in Column 2 of Item 5 of Schedule 1 expressed as an annual amount;

Market Rent means the Rent that would reasonably be expected to be paid for the Premises if it were offered for the same or a substantially similar use to which the Premises may be put under this lease and on similar terms and conditions;

Market Rent Review Date means the date specified in Column 2 of Item 8 of Schedule 1;

Rent means the Base Annual Rent payable upon each Due Date less any Rent Rebate granted to the Lessee by the Lessor;

Rent Adjustment means an adjustment of Rent made under sub-clause 7.3.

Rent Rebate means such amount as specified in Column 2 of Item 6 of Schedule 1 granted to the Lessee by the Lessor under Clause 9.5 and expressed either as an absolute dollar value or a percent of the Base Annual Rent.

7.2 Lessee to Pay Rent

The Lessee covenants with the Lessor that the Lessee will on the Commencing Date and thereafter during the whole of the Term on the Due Date pay the Rent to the Lessor in accordance with the provisions of this clause without demand free of exchange and without deduction whatsoever.

7.3 Calculation of Rent Adjustment

- (a) On each Anniversary of the Due Date the Rent will be adjusted in accordance with the following formula:

$$R = B \times \frac{C}{D}$$

where

R represents the Base Annual Rent following adjustment under this Clause;

B represents the Base Annual Rent before adjustment under this Clause;

C represents the Consumer Price Index number for the last quarter for which such a number was published before the due date; and

D represents the Consumer Price Index number for the last quarter of the last adjustment of rent for which such a number was published.

- (b) In this clause "Consumer Price Index number" in relation to a quarter means the number for that quarter appearing in the Consumer Price Index (All Groups Index) for Sydney published by the Australian Statistician.

- (c) If the reference base for the Consumer Price Index is changed regard shall be had only to Index numbers published in terms of the new reference base or to Index numbers converted to the new reference base in accordance with an arithmetical conversion factor specified by the Australian Statistician.

- (d) Any Rent adjusted under this sub-clause must be adjusted to the nearest whole dollar.

- (e) An adjustment of Rent made under this clause shall take effect on its Due Date notwithstanding that any Rent notice to the Lessee is not issued until after that date.

7.4 Market Rent Review

- (a) In addition to the Rent adjustment provided for in clause 7.3 the Rent may, subject to the following provisions of this clause, be redetermined to an

amount that is the market Rent on that date with effect on and from each Market Rent Review Date by the Lessor.

- (b) A redetermination of Rent for the purposes of sub-clause 7.4(a) will be taken to have been made on the Market Rent Review Date if it is made at any time within the period of six months before and up to six months after that Market Rent Review Date.
- (c) Where the Lessor does not redetermine the Rent as provided for in clause 7.4(a) it may subsequently redetermine the Rent at any time before the next Market Rent Review Date. No succeeding Market Rent Review Date will be postponed by reason of the operation of this clause.
- (d) An adjustment of Rent made under sub-clause 7.4(c) will take effect and be due and payable on the next due date following the date of issue of the notice of adjustment (or where the said due date and the date of issue of the notice of redetermination are the same, then that date) even if the Lessee wishes to dispute the redetermination.

7.5 Rent Rebate for Charitable or Non Profit Organisations

At the absolute discretion of the Lessor, the Lessor may determine that the Lessee is entitled to a Rent Rebate as specified in Column 2 of Item 6 of Schedule 1 on the basis that the Lessee is a recognised charitable or non-profit organisation.

8. CONTINUING OBLIGATION

The obligation of the Lessee to pay the Rent is a continuing one during the Term of this Lease and any extension of it and shall not abate in whole or in part or be affected by any cause whatsoever.

9. NO REDUCTION IN RENT

Subject to this Lease the Lessee will not without the written consent of the Lessor by any act, matter or deed or by failure or omission impair, reduce or diminish directly or indirectly the Rent required to be paid under this Lease. However, if at any time during the Lease:

- (a) some natural disaster or other serious event occurs which is beyond the reasonable control of the Lessee; or
- (b) as a result of the damage, the Lessee is not able to use the Premises in a reasonable manner,

the Lessee's obligations to pay Rent will abate to the extent proportional to the effect on the Lessee's ability to occupy and use the Premises until the Premises are restored to a condition in which the Lessee is able to conduct the Lessee's activities and/or occupy the Premises in a reasonable manner.

10. LESSEE TO PAY RATES

- 10.1 The Lessee will when the same become due for payment pay all (or in the first and last year of the Term the appropriate proportionate part) rates, taxes (including Land Tax), assessments, duties, charges and fees whether municipal, local government, parliamentary or otherwise which are at any time during the currency of this Lease

separately assessed and lawfully charged upon, imposed or levied in respect of the Lessee's use or occupation of the Premises to the extent referable to the Lessee's use or occupation of the Premises.

- 10.2 The Lessee will if required by the Lessor produce to the Lessor evidence for such payments within 10 business days after the respective due dates for payment and in case such rates, taxes, duties and fees so covenanted to be paid by the Lessee are not paid when they become due the Lessor may if it thinks fit pay the same and any such sum so paid may be recovered by the Lessor from the Lessee.

11. LESSEE TO PAY OTHER CHARGES

The Lessee will pay all other fees, charges and impositions not referred to in clause 12 for which it may properly be liable and which are at any time during the Term payable in respect of the Premises or on account of the use and occupation of the Premises by the Lessee.

12. LESSEE TO PAY FOR SERVICES

The Lessee will as and when the same become due for payment pay to the Lessor or to any other person or body authorised to supply the same all proper charges for gas, electricity, water or other services supplied to the Lessee or consumed in or on the Premises, by the Lessee.

13. LESSEE TO PAY COST OF WORK

Whenever the Lessee is required under this Lease to do or effect any act, matter, work or thing then the doing of such act matter or thing will unless this Lease otherwise provides be at the sole risk, cost and expense of the Lessee.

14. COSTS PAYABLE

14.1 Costs Payable to Lessor

Except where a law limits costs being incurred by a Lessee being recovered from the Lessor, the Lessee will pay in full the Lessor's fees of all consultants and all duties fees, charges and expenses incurred reasonably, properly and in good faith by the Lessor in consequence of or in connection with or incidental to:

- (a) stamping and registration of this Lease;
- (b) any variation of this Lease made otherwise than at the request of the Lessor;
- (c) any application for the consent of the Lessor under this Lease;
- (d) any and every failure to comply, breach or default by the Lessee under this Lease;
- (e) the exercise or attempted exercise of any right power privilege authority or remedy of the Lessor under or by virtue of this Lease;
- (f) the examination of plans, drawings and specifications of any improvement erected or constructed or to be erected or constructed on the Premises by the Lessee and the inspection of it, in this case the costs to be mutually agreed;

- (g) any entry, inspection, examination, consultation or the like which discloses a breach by the Lessee of any provision of this Lease;
- (h) the Lessee requiring the Lessor to do any act, matter or thing under this Lease, unless otherwise provided for in this Lease, the Lessee will reimburse the Lessor for all reasonable costs and expenses incurred in complying with that requirement.

14.2 Costs payable by Lessor

The Lessor will pay its own direct and external consultants costs in relation to any rental redetermination matter without reimbursement from the Lessee.

14.3 Legal costs

Each party will pay its own legal costs and disbursements in connection with the preparation of this Lease.

15. INTEREST ON OVERDUE MONEYS

The Lessee will pay interest to the Lessor on any moneys due and payable under the Lease or on any judgment in favour of the Lessor in an action arising from the Lease until all outstanding moneys including interest are paid in full. The rate of interest applicable is the rate set by the Lessor's Bank for the time being as its benchmark rates for overdrafts of one hundred thousand dollars (\$100,000.00) or more. Interest will accrue and be calculated daily.

16. MANNER OF PAYMENT OF RENT AND OTHER MONEYS

The Rent and other moneys payable in accordance with this Lease must be paid to the address or bank account specified in Column 2 of Item 9 of Schedule 1 or to such other person or at such other address as the Lessor may from time to time direct by notice in writing served on the Lessee.

17. GOODS AND SERVICES TAX

- (a) For the purposes of this Lease, "GST", "taxable supply", "consideration" and "tax invoice" have the meanings given to those terms in A New Tax System (Goods and Services Tax) Act 1999.
- (b) All payments to be made or other consideration to be provided under this Lease are GST exclusive unless otherwise expressly stated. If any payment or consideration to be made or provided by the Lessee to the Lessor is for a taxable supply under the Lease on which the Lessor must pay GST and the Lessor gives the Lessee a tax invoice, the Lessee must pay to the Lessor an amount equal to the GST payable (the "GST Amount") by the Lessor for that taxable supply upon receipt of that tax invoice.
- (c) The Parties agree that they are respectively liable to meet their own obligations under the GST Law. The GST Amount must not include any amount incurred in respect of penalty or interest or any other amounts payable by the Lessor as a result of default by the Lessor in complying with the GST Law.

18. SUBLEASING, ASSIGNMENT AND PARTING WITH POSSESSION

- 18.1 **The Lessee may not sublet, assign this Lease or part with possession of the Premises or any part of them without the consent of the Lessor. The Lessor will not unreasonably withhold its consent.**
- 18.2 If the Lessee is a corporation, it will be treated as assigning this Lease, for the purposes of sub-clause 18.1, if the person or persons who beneficially own or control a majority of its voting shares at the commencement of this Lease cease to do so, except as a result of transmission on the death of a shareholder. This clause will not apply if the Lessee is a corporation, the voting shares of which are listed on a Stock Exchange in Australia.
- 18.3 The Lessee is to pay the Lessor's reasonable legal and other costs relating to considering and giving consent, including any costs which the landlord incurs in making inquiries as to the respectability, solvency, responsibility, stature, experience and capability of any proposed subtenant or assignee or the person to whom possession is to be transferred.
- 18.4 The Lessee may not mortgage or charge this Lease or any estate or interest in the leased Premises.

19. TERMINATION OF LEASE

- 19.1 Subject to Clause 20, this Lease terminates on the date specified in Column 2 of Item 3 of Schedule 1.

20. TERMINATION OF LEASE ON DEFAULT

- 20.1 The Lessor may end the Lease in the manner set out below in the following circumstances:
- (a) if the Rent or any part of it or any other moneys owing to the Lessor under the Lease is or are in arrears for one month, whether formally demanded or not;
 - (b) if the Lessee breaches an essential condition of this Lease or any rule or regulation made under this Lease;
 - (c) if defects notified under a provision of this Lease are not remedied within the time specified in the notice;
 - (d) if the Lessee is a corporation and an order is made or a resolution is passed for its winding up except for reconstruction or amalgamation;
 - (e) if the Lessee is a company and ceases or threatens to cease to carry on business or goes into liquidation, whether voluntary or otherwise, or is wound up or if a liquidator or receiver (in both cases whether provisional or otherwise) is appointed;
 - (f) if the Lessee is a company and is placed under official management under the corporations law or enters a composition or scheme of arrangement;
 - (g) if the interest of the Lessee under this Lease is taken in execution;
 - (h) if the Lessee or any person claiming through the Lessee conducts any business from the leased Premises after the Lessee has committed an act of bankruptcy;

- (i) if the Crown Land Lease terminates or otherwise comes to an end.
- 20.2 In the circumstances set out in sub clause 20.1, the Lessor may end the Lease by:
 - (a) notifying the Lessee that it is ending the Lease; or
 - (b) re-entering the Premises, with force if necessary, and ejecting the Lessee and all other persons from the Premises and repossessing them; or
 - (c) doing both.
- 20.3 If the Lessor ends this Lease under this clause, the Lessee will not be released from liability for any prior breach of this Lease and other remedies available to the Lessor to recover arrears of Rent or for breach of this Lease will not be prejudiced.
- 20.4 If the Lessor ends this Lease under this clause, it may remove the Lessee's property and store it at the Lessee's expense without being liable to the Lessee for trespass, detainment, conversion or negligence. After storing it for at least one month, the Lessor may sell or dispose of the property by auction or private sale. It may apply any proceeds of the auction or sale towards any arrears of Rent or other moneys or towards any loss or damage or towards the payment of storage and other expenses.
- 20.5 If the Lessor ends this Lease under this clause, it may, besides any other rights and remedies that it might have, recover from the Lessee damages for the loss of the benefit of the rest of this Lease.
- 20.6 The Lessee indemnifies and holds indemnified the Lessor in respect of the removal and storage of the Tenant Fixtures and the Lessee's property and also in respect of all claims, demands, losses, damages, proceedings, costs, charges and expenses which the Lessor may suffer or incur at the suit of any person claiming an interest in the Tenant Fixtures in respect of the Lessor's rights under this clause.

21. ACCEPTANCE OF RENT NOT WAIVER

Demand for, or acceptance of Rent or any other moneys due under this Lease by the Lessor after forfeiture does not operate as a waiver of forfeiture.

22. HOLDING OVER BY LESSEE

- (a) On and from the Terminating Date of this Lease, the Lessee shall be entitled with the consent of the Lessor to remain in possession of the Premises on the following terms and conditions:
 - (i) the Lessee shall become a monthly tenant of the Lessor at a monthly rental equivalent to one twelfth of the annual Rent payable at the time of expiration of this Lease;
 - (ii) the Lessee shall comply with and be bound by the terms and conditions of this Lease insofar as the terms and conditions are applicable, provided that the Lessor may from time to time by notice in writing served on the Lessee direct that any particular condition not apply or be amended in the manner set out in the notice.
- (b) The Lessor and the Lessee expressly agree that where any provision of this Lease confers any right, duty, power or obligation on a Party upon the expiration of this Lease and the Lessee is authorised to remain in possession

of the Premises pursuant to a consent granted under this clause the emergence of the right, duty, power or obligation shall be postponed until such time as the Lessee ceases to be entitled to possession pursuant to this clause.

- (c) The tenancy created by operation of this clause may be determined by the Lessor serving on the Lessee a notice to quit. The notice shall take effect at the expiration of the period of one month from the date of service of the notice or such further period as may be specified in the notice.
- (d) The tenancy created by operation of this clause may be determined by the Lessee serving on the Lessor a notice stating that as from a date specified in the notice the tenancy is surrendered.

23. LESSEE TO YIELD UP

23.1 The Lessee will forthwith upon the expiry or determination of this Lease or any extension of it peaceably vacate the Premises at the Lessee's expense.

23.2 The Lessee must:

- (a) unless otherwise provided for in this Lease, remove the Tenant Fixtures and must remove any signs, names, advertisements, notices or hoardings erected, painted, displayed, affixed or exhibited upon, to or within the Premises by or on behalf of the Lessee (other than a notice displayed by the Lessor); and
- (b) unless otherwise provided for in this Lease, rehabilitate the Premises, (to the extent to which it has been altered or affected by the Lessee's occupation and use of the Premises) as nearly as practicable to the original condition before the installation of the Tenant Fixtures to the reasonable satisfaction of the Lessor; and
- (c) ensure that when it vacates the Premises, the Premises comply with any Environmental Law to the extent that it did so at the time of granting of this Lease; and
- (d) leave the Premises in a clean and tidy condition.

23.3 Should the Lessee cause any damage to the Premises in vacating the Premises as required under this clause, the Lessee must rectify any such damage, failing which the Lessor may rectify such damage at the expense of and as agent for the Lessee and recover from the Lessee the cost to the Lessor of doing so as a liquidated debt payable on demand.

23.4 Sub-clause 23.2 does not apply unless the Lessor permits the Lessee to carry out any works on the Premises reasonably required in order to comply with the clause.

OBLIGATIONS AND RESTRICTIONS RELATING TO PREMISES

24. ADDITIONS AND ALTERATIONS

The Lessee shall not make any additions or alterations to the Premises without first obtaining the written consent of the Lessor and the local Council (in its role as the statutory planning authority). Any additions or alterations consented to by the Lessor shall be carried out at the Lessee's expense and in a workmanlike manner.

25. MAINTENANCE OF PREMISES AND ENCLOSED AREAS

The Lessee will keep the Premises clean and tidy and in good order and condition.

26. LESSEE TO ERECT BARRICADES ETC.

Where the Premises or any part of the Premises become to the knowledge of the Lessee (or which ought reasonably to be in the knowledge of the Lessee) unsafe, hazardous or dangerous the Lessee will forthwith erect such warning signs, fences and barricades as may be necessary until the Premises are rendered safe.

27. LESSEE NOT TO REMOVE MATERIALS

- (a) The Lessee will not mine, remove, extract, dig up or excavate any sand, stone, gravel, clay, loam, shell or similar substance from, on or in the Premises or permit any other person to undertake such action without the prior consent in writing of the Lessor and subject to such conditions as the Lessor may determine.
- (b) Sub clause 27(a) does not apply to any removal, digging up or excavation as may be necessary to construct or undertake any improvement authorised by or under this Lease provided that any such removal, digging up or excavation is undertaken in accordance with the requirements of that authorisation.
- (c) A failure by the Lessee to comply with any condition imposed pursuant to sub clause 27(a) constitutes a failure by the Lessee to comply with a provision or covenant of this Lease.

28. ADVERTISING

- (a) The Lessee must not permit to be displayed or placed on the Premises or any part of them any sign, advertisement or other notice without first obtaining the Lessor's written consent other than safety signs, in respect of which the Lessor's consent will not be required; and
- (b) The Lessor may at any time by notice in writing require the Lessee to discontinue to use any piece or mode of advertising to which the Lessor has granted consent under sub-clause 28(a) which in the opinion of the Lessor has ceased to be suitable or has become unsightly or objectionable and the Lessee on receipt of the notice must comply accordingly.

29. NOTIFICATION OF ACCIDENT

The Lessee will give to the Lessor prompt notice in writing of any serious accident to any person or accident to the Premises or serious defect at or to the Premises unless that defect or accident is capable of being and is promptly remedied by the Lessee.

30. RODENTS AND VERMIN

The Lessee will take all reasonable precautions to keep the Premises free of rodents, vermin, insects and pests and will in the event of failing to do so if required by the Lessor but at the cost of the Lessee employ from time to time a duly certified pest exterminator approved by the Lessor whose approval will not be unreasonably withheld. In performing its obligations pursuant to this clause the Lessee and any

person acting on the Lessee's behalf will not use any substance or undertake any activity prohibited by any law.

31. LESSEE NOT TO BURN OFF

If applicable, the Lessee will not carry out any burning off on the Premises except with the prior consent of the Lessor in writing, which consent shall not be unreasonably withheld, and after compliance with the requirements of the Rural Fires Act 1997. Any consent granted in accordance with this condition shall be subject to such reasonable conditions as the Lessor may impose.

32. LESSEE NOT TO COMMIT NUISANCE ETC

The Lessee will not:

- (a) carry on or permit to be carried on at the Premises any noxious, nuisance or offensive trade or business; or
- (b) do or permit to be carried on at the Premises any act, matter or thing which results in nuisance damage or disturbance to the Lessor or owners or occupiers of adjoining or neighbouring lands or buildings; or
- (c) use the Premises for any illegal activity.

33. HAZARDOUS SUBSTANCES, ETC.

- 33.1 The Lessee must not bring on to the Premises or keep any Hazardous Substance on the Premises without the prior consent of the Lessor, which consent shall not be unreasonably withheld.
- 33.2 The Lessee must, in the event of any infectious illness occurring in or on the Premises, immediately notify the Lessor and any relevant authority.

34. RELICS

- (a) Unless authorised to do so by a permit under section 87 or a consent under section 90 of the National Parks and Wildlife Act 1974 and subject to observance and compliance with any conditions imposed on the grant of such permit or consent the Lessee will not knowingly disturb, destroy, deface or damage any aboriginal relic or place or other item of archaeological significance within the Premises and will take reasonable precautions in drilling excavating or carrying out other operations or works on the Premises against any such disturbance, destruction, defacement or damage.
- (b) If the Lessee becomes aware of any aboriginal relic or place or other item of archaeological significance within the Premises the Lessee will within 24 hours notify the Lessor and the Director-General of the Department of Environment and Conservation of the existence of such relic, place or item.
- (c) The Lessee will not continue any operations or works on the Premises likely to interfere with or disturb any relic, place or item referred to in sub clause 37(b) without the approval of the Director-General of the Department of Environment and Conservation and the Lessee will observe and comply with all reasonable requirements of the said Director-General in relation to carrying out the operations or works.

35. ARTEFACTS

All fossils, artefacts, coins, articles of value, articles of antiquity, structure and other remains or things of geological historical or archaeological interest discovered on or under the surface of the Premises shall be deemed to be the absolute property of the Lessor and the Lessee will as authorised by the Lessor watch or examine any excavations and the Lessee will take all reasonable precautions to prevent such articles or things being removed or damaged and will as soon as practicable after discovery thereof notify the Lessor of such discovery and carry out the Lessor's orders as to the delivery up to or disposal of such articles or things at the Lessor's expense.

IMPROVEMENTS AND PLANT

36. OWNERSHIP AND REMOVAL OF IMPROVEMENTS AND TENANT FIXTURES

- (a) Upon expiry or sooner determination of this Lease all Improvements undertaken by the Lessee become the property of the Lessor.
- (b) During the Term and any extension of it, ownership of Tenant Fixtures vests in the Lessee. Notwithstanding anything contained in this Lease, so long as any Rent or other moneys are due by the Lessee to the Lessor or if the Lessee has committed any breach of this Lease which has not been made good or remedied and whether the Lessee is still in possession or not, the Lessee shall not be entitled to remove any of the Tenant Fixtures, fittings or equipment from the leased property.

37. GENERAL REQUIREMENT TO REPAIR

37.1 Without prejudice to any specific obligations contained in this Lease, the Lessee will, to the reasonable satisfaction of the Lessor, at all times during the Term of this Lease and any holding over period keep the Premises and the Lessor's fixtures and fittings and all improvements and plant and equipment erected or installed on the Premises by the Lessee in good repair and properly maintained in all respects, including but not limited to the Lessee's obligations to:

- (a) repair or, where appropriate, replace lighting, electrical or plumbing fittings in or on the Premises;
- (b) keep such of the plant and equipment, mechanical or otherwise, located within and exclusively servicing the Premises maintained, serviced and in good repair and to enter into and keep current at its own expense such maintenance, service and repair contracts as are reasonably required by the Lessor for that purpose with contractors approved by the Lessor; and
- (c) keep the Premises maintained in accordance with good golf course maintenance standards including those standards set out in the plan of management in respect of the Mona Vale Golf Course dated March 1996 published by the Lessor.

37.2 The Lessee must, upon request by the Lessor, provide the Lessor with copies of the relevant maintenance and service contracts entered into by the Lessee for the purpose of this clause and of all reports, certificates and other statements issued in connection with such contracts.

38. BREAKAGES

The Lessee will immediately at the Lessee's expense make good any breakage defect or damage to the Premises (including but not limited to broken glass) or to any adjoining premises or to any facility or appurtenance of the Lessor occasioned by want of care, misuse or abuse on the part of the Lessee, the Lessee's agents, servants, invitees or licensees.

39. LESSOR'S RIGHT TO ENTER, INSPECT, REPAIR AND CLOSE

39.1 The Lessor and the Lessor's agents may at all reasonable times upon giving to the Lessee reasonable notice (except in the case of emergency when no notice shall be required) and accompanied by the Lessee or an employee or agent of the Lessee enter upon the Premises and view the state of repair of the Premises and may serve upon the Lessee a notice in writing of any defect (the repair of which is the Lessee's obligation under this Lease to undertake) requiring the Lessee within two months to repair the same. If the Lessee fails to carry out the repair obligations herein within the requisite period, the Lessor may elect to carry out such repair and any costs incurred, whether incidental or otherwise, shall be payable on demand by the Lessee to the Lessor.

39.2 The Lessor reserves the right to close off access to the Premises or any part thereof in the case of an emergency or if the Lessor otherwise deems such action reasonably necessary for the safety of any person or property within or upon the Premises.

40. INDEMNITIES AND INSURANCE

Definition

For the purposes of clauses 41, 42, 43, 44, 45, 46, 54 and 55 –

Claim/s means actions, suits, claims, demands, proceedings, losses, damages, compensation, costs, legal costs, charges and expenses.

41. INDEMNITIES

41.1 Indemnity for use of Premises

(a) The Lessee will indemnify and keep indemnified the Lessor from and against all Claims whatsoever to which the Lessor shall or may be or become liable for or in respect of the Lessee's occupation operation and use of the Premises or for or in respect of all Claims of whatsoever nature or kind and howsoever arising (and whether to any property or to any person resulting in the destruction or damage of any property or the death or injury of any person) at or upon the Premises or originating on the Premises, although occurring or sustained outside the Premises, except to the extent that any such Claims:

- (i) arise from or are contributed to by the negligence or wilful act or omission on the part of the Lessor; or
- (ii) arise from the occupation, operation or use of the Premises by any other occupier, or the acts of any person who has access to the Premises with the consent of another occupier, and the Lessor is adequately indemnified by that other occupier in respect of the relevant Claim or demand, and the Lessor will use its reasonable endeavours to

ensure that an indemnity in or to the effect of this form is contained in any agreement with any other occupier of the Premises.

41.2 Indemnity Continues After Expiration of Lease

The obligations of the Lessee under this clause continue after the expiration or other determination of this Lease in respect of any act, deed, matter or thing happening before such expiration or determination for the period limited by the Statute of Limitations.

41.3 Exclusion of Consequential Loss

Despite any other provision of this Lease, both Parties exclude, (and agree that they will have no rights against the other for) liability for consequential or indirect loss arising out of this Lease including (without limitation) in respect of loss of profits or loss of business. This clause does not apply in respect of wilful acts by either Party.

42. RELEASE OF LESSOR FROM LIABILITY

- (a) The Lessee shall occupy, use and keep the Premises at the risk of the Lessee and hereby releases to the full extent permitted by law the Lessor from all Claims resulting from any accident, damage or injury occurring therein (but excluding such Claims to the extent that such Claims arise out of the negligent or wilful acts omissions or default of the Lessor) and the Lessor shall have no responsibility or liability for any loss of or damage to fixtures and/or personal property of the Lessee or any agent or servant of the Lessee or of any member of the public whilst in or upon the Premises (but excluding such Claims to the extent that such Claims arise out of the negligent acts or wilful omissions or default of the Lessor).
- (b) The obligations of the Lessee under this clause shall continue after the expiration or other determination of this Lease in respect of any act, deed, matter or thing happening before such expiration or determination for which the Lessee is responsible. Such obligation is to be governed by the Statute of Limitations.

43. NO LIABILITY FOR FAILURE OF SERVICES

The Lessor will not be under any liability for any loss, injury or damage sustained by the Lessee or any other person at any time as a result of or arising in any way out of the failure of the electricity, telephones, gas, water supply, sewerage, drainage or any other services or facilities provided by the Lessor or enjoyed by the Lessee in conjunction with the Premises or this Lease provided that such failure is not due to the negligent or wilful act or omission of the Lessor its servants or agents.

44. LESSEE NOT TO IMPOSE LIABILITY ON LESSOR

Subject to any other provision of this Lease, the Lessee will not without the written consent of the Lessor by any act, matter or deed or by failure or omission cause or permit to be imposed on the Lessor any liability of the Lessee under or by virtue of this Lease even though the Lessee is entitled to do so under any law present or future or otherwise.

45. INSURANCE - PUBLIC RISK

The Lessee will effect and maintain with a reputable and solvent insurer with respect to the Premises and the activities carried on in the Premises public risk insurance for an amount not less than the amount set out in Column 2 of Item 12 of Schedule 1 (or such other amount as the Lessor may from time to time reasonably require) as the amount payable in respect of liability arising out of any one single accident or event. The Lessor acknowledges that the Lessee may effect the public risk insurance pursuant to an insurance policy which is not specific as to the location of risk.

46. PROVISIONS RE POLICIES

- (a) All insurance policies required to be effected by the Lessee pursuant to this Lease are specified in Schedule 3 - Special Conditions and shall be in place prior to occupying the Premises noting the interest of the Lessor.
- (b) The Lessee will produce to the Lessor, once per calendar year or once per period of insurance (whichever first occurs), a certificate of insurance and/or a certificate of currency in respect of the insurance policies required to be effected by the Lessee pursuant to this Lease.
- (c) The Lessee will not at any time during the Term do any act or omit to do any act which it ought reasonably believe may render void or voidable any policy of insurance. If the Lessee does any act or fails to do any act whereby the rate of premium on such insurance shall be liable to be increased, the Lessee will obtain insurance cover for such increased risk and pay all additional premiums required on account of the additional risk caused by the use to which the Premises are put by the Lessee.
- (d) The Lessee will use all reasonable endeavours to ensure that full, true and particular information is given to the office or company with which the said insurances are effected of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or policies of insurance or the payment of all or any moneys there under.

LESSOR'S WARRANTIES AND COVENANTS

47. HAZARDOUS CHEMICALS

The Lessor warrants that it has not received any notice pursuant to the Environmentally Hazardous Chemical Act, 1985 (NSW).

48. QUIET ENJOYMENT

The Lessor warrants that subject to:

- (a) the Lessor's rights under this Lease;
- (b) the Lessee complying with its obligations under this Lease;

the Lessee may hold and occupy the Premises without undue interference by the Lessor.

LESSOR'S POWERS AND FUNCTIONS

49. APPROVAL BY THE LESSOR

- (a) This clause does not apply to a consent or approval under clause 18.
- (b) In any case where pursuant to this Lease the doing or executing of any act, matter or thing by the Lessee is dependent upon the approval or consent of the Lessor such approval or consent will not be effective unless given in writing and may be given or withheld (unless the context otherwise requires) by the Lessor and may be given subject to such conditions as the Lessor may determine unless otherwise provided in this Lease provided such consent or approval is not unreasonably withheld or such terms and conditions are not unreasonable.
- (c) Any failure by the Lessee to comply with a condition imposed by the Lessor pursuant to sub-clause 49(b) constitutes a failure by the Lessee to comply with a condition of this Lease.

50. OPINION OF THE LESSOR

Any opinion to be formed by the Lessor for the purposes of this Lease may be formed by the Lessor on such grounds and material as the Lessor determines to be sufficient. If the Lessor deems it necessary, such opinion will be formed after consultation with any New South Wales Government Department, the Local Council or other public authority or the Standards Association of Australia or any other body whose objects and functions are relevant. In forming any such opinion the Lessor is deemed to be exercising merely administrative functions.

COMPLIANCE WITH STATUTES AND OTHER INSTRUMENTS

51. LESSEE TO COMPLY WITH ALL COMMONWEALTH AND NSW STATE LAWS

- (a) The Lessee will comply with the requirements of all statutes, regulations or by-laws and requirements of all relevant public and local authorities in so far as they apply in relation to the use and occupation of the Premises to the extent to which the Lessee is bound at law to comply with the same and nothing in this Lease affects this obligation.
- (b) The Lessee will forthwith on being served with a notice by the Lessor comply with any notice or direction served on the Lessor by a competent authority relating to the destruction of noxious animals or plants or pests or the carrying out of repairs alterations or works on or to the Premises.

52. LESSEE TO COMPLY WITH ENVIRONMENTAL LAWS

In relation to its use of the Premises, the Lessee must, during the Term, and in relation to the Premises:

- (a) comply with relevant Environmental Law;
- (b) use its best endeavours to prevent a breach of any Environmental Law;
- (c) report any breach even if accidental; and
- (d) provide to the Lessor as soon as reasonably practicable details of notices received by or proceedings commenced against the Lessee pursuant to an Environmental Law:

- (i) relating to a breach or alleged breach by the Lessee of an Environmental Law; or
- (ii) requiring the Lessee to carry out works to decrease the affectation of the Premises by any Hazardous Substance.

53. LESSEE'S FAILURE TO COMPLY WITH STATUTORY REQUIREMENTS

Where the Lessee breaches any law in relation to its use of the Premises it is taken to breach a condition of this Lease, provided that:

- (a) the Lessee has been found guilty of the breach, and
- (b) the Lessor determines that the breach warrants the Termination of this lease.

54. INDEMNITY FOR NON-COMPLIANCE WITH LEGISLATION

The Lessee will indemnify and keep indemnified the Lessor from and against any Claims arising from the non-compliance by the Lessee with any New South Wales or Commonwealth legislation that may apply to the Lessee's use and occupation of the site and access thereto and the Lessee's operation of their business from the site and access thereto.

This clause shall not merge on the expiration or other determination of this Lease in respect of any act, deed, matter or thing happening before such expiration or determination.

55. INDEMNITY FOR BREACH OF ENVIRONMENTAL LAW

Without prejudice to any other indemnity granted by this Lease, the Lessee shall indemnify and keep the Lessor indemnified against all Claims arising from a breach by the Lessee of any Environmental Law which breach is in relation to the Premises. This clause shall not merge on expiration or other determination of this Lease in respect of any act, deed, matter or thing happening before such expiration or determination.

DISPUTE RESOLUTION

56. PROCEDURE - DISPUTE RESOLUTION

- (a) In the event that the Lessor and the Lessee are in dispute regarding any matter relating to or arising under this Lease or in respect of any approvals or consents to be granted by the Lessor (except those approvals or consents where the Lessor has an obligation to act reasonably) to the Lessee hereunder, then either the Lessor or the Lessee may give notice and particulars of such dispute to the other Party.
- (b) Where a notice of dispute is served pursuant to this clause the Parties agree to enter into informal negotiations to try and resolve the dispute in good faith and in an amicable manner.
- (c) If the dispute is not resolved informally within 21 days of service of written notice, the Parties may confer with a mutually agreed third party whose role will be to assist in the resolution of the dispute by mediation or expert appraisal of the dispute. The Parties agree to provide all information and

assistance reasonably requested by such third party, including access to any accounting or other business records relating to or arising out of the Lease.

- (d) A third party appointed in accordance with this clause may decide in which proportions any fees will be borne by the respective Parties. In the absence of any such decision by the third party fees shall be borne equally by the Parties.
- (e) Neither Party shall be entitled to commence or maintain any proceedings in any court or tribunal until negotiations or mediations have taken place pursuant to this clause except where either Party seeks urgent interlocutory relief.
- (f) Either Party may at any time bring negotiations or mediation to an end by serving upon the other Party written notice stating that the dispute has failed to be resolved. Upon service of such notice both Parties shall be entitled to pursue any legal remedies available to them in relation to the dispute. This sub-clause does not in any way limit a mediator's power to apportion fees under sub-clause 56(d).
- (g) Notwithstanding the existence of a dispute being dealt with under this clause the Parties must, unless acting in accordance with an express provision of this Lease, continue to perform their obligations under this Lease.

57. NOTICES

57.1 Service of Notice on Lessee

Any notice served by the Lessor on the Lessee must be in writing and will be sufficiently served if:

- (a) served personally or left addressed to the Lessee at the address stated in Column 2 of Item 10 of Schedule 1 or such other address as the Lessee notifies in writing to the Lessor; or
- (b) sent by email to the Lessee's email address stated in Column 2 of Item 10 of Schedule 1 or such other address as the Lessee notifies in writing to the Lessor;
- (c) sent by facsimile to the Lessee's facsimile number stated in Column 2 of Item 10 of Schedule 1 or such other number as the Lessee notifies in writing to the Lessor; or
- (d) forwarded by prepaid security mail addressed to the Lessee at the address stated in Column 2 of Item 10 of Schedule 1

and every such notice must also be served on the Lessee's solicitors, as they may be nominated from time to time, or such other address or facsimile number as the Lessee's solicitors notify in writing to the Lessor, by any methods identified in clauses 57.1 (a), (b) and (c).

57.2 Service of Notice on Lessor

Any notice served by the Lessee on the Lessor must be in writing and will be sufficiently served if:

- (a) served personally or left addressed to the Lessor at the address stated in

Column 2 of Item 11 of Schedule 1 or such other address as the Lessor notifies in writing to the Lessee; or

- (b) sent by email to the Lessor's email address stated in Column 2 of Item 11 of Schedule 1 or such other address as the Lessor notifies in writing to the Lessee;
- (c) sent by facsimile to the Lessor's facsimile number stated in Column 2 of Item 11 of Schedule 1 or such other number as the Lessor notifies in writing to the Lessee; or
- (d) forwarded by prepaid security mail addressed to the Lessor at the address stated in Column 2 of Item 11 of Schedule 1

and every such notice must also be served on the Lessor's solicitors, as they may be nominated from time to time, or such other address or facsimile number as the Lessor's solicitors notify in writing to the Lessee, by any methods identified in clauses 57.1 (a), (b) and (c).

57.3 Notices

- (a) Any notice served by the Lessor or the Lessee under this Lease will be effective if signed by a director or secretary or the solicitors for the Party giving the notice or any other person or persons nominated in writing from time to time respectively by the Lessor or by the Lessee to the other.
- (b) Any notice sent by prepaid security mail will be deemed to be served at the expiration of 2 Business Days after the date of posting.
- (c) Any notice sent by facsimile machine will be deemed to be served on the first Business Day after the date of transmission (provided that the sending Party receives a facsimile machine verification report indicating that the notice has been transmitted).

MISCELLANEOUS

58. NO MORATORIUM

Any present or future legislation which operates to vary obligations between the Lessee and the Lessor, except to the extent that such legislation is expressly accepted to apply to this Lease or that its exclusion is prohibited, is excluded from this Lease.

59. NO WAIVER

No waiver by a Party of any breach of any covenant obligation or provision in this Lease either express or implied shall operate as a waiver of another breach of the same or of any other covenant obligation or provision in this Lease contained or implied. None of the provisions of this Lease shall be taken either at law or in equity to have been varied waived discharged or released by a Party unless by express consent in writing.

60. NO MERGER

Nothing in this lease merges, postpones, extinguishes, lessens or otherwise

prejudicially affects the rights and remedies of the Parties under this Lease or under any other agreement.

61. COUNTERPARTS

- (a) A Party may execute this lease by signing any counterpart.
- (b) All counterparts constitute one document when taken together.

62. CONTACT PERSON

The Lessor and the Lessee each must nominate a person to contact about matters arising under this Lease. The person so nominated is the person referred to in Column 2 of Items 13 and 14 of Schedule 1 or such other person as the Lessor nominates in writing to the Lessee and the Lessee nominates in writing to the Lessor from time to time.

63. APPLICABLE LAW

This Lease shall be construed and interpreted in accordance with the law of New South Wales.

64. NO HOLDING OUT

The Lessee will not in connection with the Premises or otherwise directly or indirectly hold out or not permit to be held out to any member of the public any statement, act, deed, matter or thing indicating that the Premises or the business conducted or operated thereon or any parts or parts thereof are or is being carried on or managed or supervised by the Lessor nor shall the Lessee act as or represent itself to be the servant or agent of the Lessor.

65. WHOLE AGREEMENT

- (a) The provisions contained in this Lease expressly or by statutory implication cover and comprise the whole of the agreement between the Parties.
- (b) No further or other provisions whether in respect of the Premises or otherwise will be deemed to be implied in this Lease or to arise between the Parties hereto by way of collateral or other agreement by reason or any promise representation warranty or undertaking given or made by any Party hereto to another on or prior to the execution of this Lease.
- (c) The existence of any such implication or collateral or other agreement is hereby negated.

66. SPECIAL CONDITIONS

The Special Conditions set out in Column 2 of Item 16 of Schedule 1 apply and form part of this Lease.

SCHEDULE 1

Item	Clause	Column 1	Column 2
1	2	Commencing Date	1 November 2015
2	7	Term	Five (5) Years
3	21	Terminating Date	31 October 2020
4	8	Permitted Use	Golf Course
5	9	Initial Rent	\$38,250.00 plus GST by equal monthly instalments in advance of \$3,187.50 plus GST
5A	7.3	Rent Adjustment	Consumer Price Index (All Groups Index) – Sydney
6	9	Rent Rebate	N/A
7	9	Due Date	First (1 st) day of each month commencing on the Commencing Date
8	9	Market Rent Review Date	N/A
9	18	Address for Payment of Rent	Mona Vale Customer Service Centre, 1 Park Street, Mona Vale
10	60	Lessee's address for Service of Notices	Golf Avenue, Mona Vale NSW 2103 <u>Attention:</u> Andy Hugill, General Manager <u>Phone:</u> (02) 9999 4266 <u>Facsimile:</u> (02) 9997 5791 <u>Email:</u> manager@mvgc.com.au
11	60	Lessor's address for Service of Notices	c/- Northern Beaches Council, 1 Park St, Mona Vale NSW 2103 <u>Attention:</u> Manager, Commercial Property & Projects <u>Phone:</u> (02) 9970 1111 <u>Facsimile:</u> (02) 9970 1200 <u>Email:</u> Pittwater_council@pittwater.nsw.gov.au

12	48	Public Risk Insurance amount	\$20,000,000
13	65	Lessor's Contact Person	Leo Li
14	65	Lessee's Contact Person	Andy Hugill
15	5	Essential Conditions	5, 6, 7, 9, 10, 18, 19, 24, 25, 37, 45, 46, 51, 53
16	69	Special Conditions	The special conditions set out in Schedule 3
17		Bank Guarantee/Security Deposit	Nil

End of Schedule 1

SCHEDULE 2

Part 1

Description of the Premises

Part of the Mona Vale Golf Course being Lot 2 in Deposited Plan 251053, Lot 4 in Deposited Plan 251053 and Lot 1 in Deposited Plan 1033971 and the Lessor's building, fixtures, goods, plant and equipment in, on or affixed thereto.

SCHEDULE 3

Special Conditions

1. Workers Compensation Insurance

In addition to the insurance policy for public risk in clause 45 of this Lease, and in accordance with clause 46 of this Lease, the Lessee must effect and maintain workers compensation insurance with a reputable and solvent insurer with respect to the Premises and the activities carried on in the Premises, which covers all workers with a common law extension or endorsement in an amount approved by the Lessor.

2. Public Safety Responsibilities

- (a) The Lessee will take all reasonable precautions whether by rules, regulations, warning notices or otherwise for the protection of members of the public against accident arising from the playing of golf and shall maintain the links as to prevent so far as is reasonably possible golf balls straying on or over adjacent land or roads.
- (b) The Lessee will adhere to all reasonable directions provided by the Lessor in providing such protection to the public.

3. Membership of Lessee

Membership of the Lessee shall be at the discretion of the Lessee provided that at all times members of the Lessee shall be, wherever possible, residents within the Northern Beaches Municipality and the Lessee, in accepting any new members, shall give preference to persons who are such residents, and, subject to the rules of the Lessee, capacity of the accommodation and the limitations imposed by this Lease, the Lessee shall ensure that membership of the Lessee shall be open to any reputable person.

4. Playing Rights and Rules

- (a) Playing on the golf course by members of the public shall be permitted only after booking with the starter and payment of the prescribed green fees.
- (b) The right to play by members of the public shall be subject to the availability of starting times on the time sheet, which will be available in the office of the Lessee or in a place allotted to the starter for the time being of the Lessee.
- (c) All green fees shall remain the property of the Lessee.
- (d) The standard of behaviour and dress shall be in accordance with the rules and regulations of the Lessee.
- (e) The Lessee shall be entitled to refuse permission to play to any member of the public refusing to conform to the Lessee's rules and regulations or wilfully causing damage to the golf course.
- (f) The Lessee shall erect a notice in a conspicuous position on the course advising of public times available for booking or for play by members of the public.
- (g) Without in any way limiting the powers of the Lessor, the Lessee shall allow

the playing of golf on the Premises in accordance with the rules and regulations of the Lessee by the members of or visitors to the Lessee and shall also permit the playing of golf by any member of the public except the Lessee shall be entitled to the exclusive use and occupation of the Premises as follows:

- (i) on any eight (8) days during any one year of the Term, for the full playing period of such days subject to notification by the Lessee to the Lessor of the days so reserved;
- (ii) during one continuous period of seven and a half (7.5) hours on Saturdays and public holidays;
- (iii) during one (1) continuous period of six (6) hours on Sundays;
- (iv) during one (1) continuous period of seven (7) hours on one (1) mid-week day and five (5) hours on one (1) other mid-week day subject to notification by the Lessee to the Lessor of the two (2) days so reserved;
- (v) the Lessee shall have discretion to allocate such other playing times Monday to Friday not including public holidays for the purpose of conducting clubs match program for members to complete such events as play-offs, grade matches and practice rounds, provided that at all times the Lessee must ensure that no less than 33% of weekday playing times are available to the general public.
- (h) The green fees chargeable to members of the public shall not exceed those agreed from time to time by the Lessor.
- (i) The Lessee shall not be obliged to extend to public players the same privileges with regard to fees and charges as in the case of its own members.
- (j) Recreation Areas

The Lessee must ensure that the Premises, except for fairways, greens and tees and adjacent areas likely to be dangerously exposed, shall be available to the public for the purpose of passive recreation, provided that the Lessee shall have the right to require members of the public to remove themselves from any location on the course where there is likely to be any danger or where they are interfering with the act of playing golf provided further that members of the public shall be permitted to enter the golf course in company of a player for the purpose of watching that part of the Premises which is a golf course for the playing of golf, provided that such persons comply with any reasonable directions which may be given to them by any player using the golf course.

5. Youth Development Programs

The Lessee shall contribute to youth development programs to provide a community benefit to the Northern Beaches Local Government Area including the provision of:

- (a) Ongoing development programs to the youth within the Northern Beaches Local Government Area; and
- (b) The Mona Vale Golf Course or part thereof for youth golf training for the local community.

EXECUTION

Dated this day of

Signed by **NORTHERN BEACHES COUNCIL**
by its Attorney
who states that he has no notice of revocation
of Power of Attorney Registered Book
4707 No 77 pursuant to which this documents
has been executed in the presence of:

Witness Signature

Attorney Signature

Witness Name (BLOCK LETTERS)

Executed by THE MONA VALE GOLF CLUB
LTD (ACN 000 024 224) in accordance with
section 127(1) of the Corporations Act 2001
(Cth) in the presence of:

Director

Director/Secretary (Delete as applicable)

Name [BLOCK LETTERS]

Name [BLOCK LETTERS]

Form: 07L
Licence: 05-11-667
Licensee: Sofidocs
Matthews Folbigg Pty Limited

LEASE
New South Wales
Real Property Act 1900

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

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

STAMP DUTY

Office of State Revenue use only

(A) TORRENS TITLE

Property leased: if appropriate, specify the part or premises

7092/1051073

(B) LODGED BY

Document Collection Box	Name, Address or DX, Telephone and Customer Account Number if any Acc. No. 123198L Matthews Folbigg Pty Limited DX 8233 PARRAMATTA Tel: 9635 7966 Reference (optional): DTS:152072	CODE L
307V		

(C) LESSOR

BEEBY PARK (R45244) RESERVE TRUST THE AFFAIRS OF WHICH ARE MANAGED BY
NORTHERN BEACHES COUNCIL (ABN 57 284 295 198)

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

(D)

Encumbrances (if applicable):

(E) LESSEE

THE MONA VALE GOLF CLUB LTD (ACN 000 024 224)

(F)

TENANCY:

(G) 1. TERM Five (5) Years

2. COMMENCING DATE

3. TERMINATING DATE

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

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

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

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

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

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

Form: 07L

DATE / /

- (H) Certified correct for the purposes of the Real Property Act 1900
Signed by NORTHERN BEACHES COUNCIL by its Attorney

who states that he has no notice of revocation of Power of Attorney
Book 4707 No 77 pursuant to which this documents has been
executed as Reserve Trust Manager of the BEEBY PARK
(R45244) RESERVE TRUST in the presence of:

Signature of Witness:
Name of Witness:
Address of Witness:

Signature of Attorney:
Name of Attorney:

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

Certified correct for the purposes of the Real Property Act 1900
and executed on behalf of the company named below by the
authorised person(s) whose signature(s) appear(s) below
pursuant to the authority specified.
Company: THE MONA VALE GOLF CLUB LTD (ACN 000 024
224)
Authority: Section 127(1) of the Corporations Act 2001

Signature of authorised person:

Signature of authorised person:

Name of authorised person:
Office held:

Name of authorised person:
Office held:

(I) STATUTORY DECLARATION #

I,
solemnly and sincerely declare that -

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

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

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

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

☐ Other qualified witness [specify]

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

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

Signature of witness: Signature of applicant:

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

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

ANNEXURE "A"

This and the following 31 pages comprise Annexure "A" referred to in the Lease between the Beeby Park (R45244) Reserve Trust as Lessor and The Mona Vale Golf Club Ltd (ACN 000 024 224) as Lessee.

Ministerial Consent*

under authority of Section 102 of the Crown Lands Act 1989.

Dated this day of

SIGNED by under delegation

Print Name

Print Position of Delegate

***Notes on Minister's Consent to a lease**

A. Before consenting to a lease by a reserve trust, the delegated departmental officer should consider whether the proposed lease:

- ☐ conforms with the Lands template as appropriate in the circumstances
- ☐ purpose is compatible with the reserve purpose
- ☐ is in the public interest and in particular whether special or exclusive rights should be granted to the proposed lessee
- ☐ is compatible with the plan of management (if applicable)
- ☐ is for an appropriate term
- ☐ was or is proposed to be selected by public competition or, if not, the circumstances relating to the selection of the proposed lessee
- ☐ proposed rent represents a proper return to the public for the use of the public land
- ☐ contains provisions for the periodic updating or review of the rent
- ☐ has no native title impacts
- ☐ contains clauses relating to:
 - o the termination of the lease in the event of a revocation of the reserve
 - o the indemnification of the Reserve Trust, the Crown and the NSW Government against claims for compensation
 - o appropriate insurance provisions.
- ☐ has been advertised (if the lease term exceeds 5 years) with respect to the Minister's intention to give consent in accordance with Section 102(2) of the *Crown Lands Act 198* ; a fee for advertising costs has been received; and the results of advertising are acceptable.

B. If Ministerial consent is not required under Section 102 of the Crown Lands Act, please attach evidence of authorisation.

The Lessor and the Lessee hereby covenant and agree the one with the other as follows:

1. INTERPRETATION DEFINITIONS AND ADMINISTRATION

Authority for Grant of Lease

1.1 The Lessor warrants

- (a) that the Premises comprise the whole or part of a Reserve within the meaning of Part 5 of the Crown Lands Act 1989;
- (b) that the Lessor was established and appointed as trustee of the Reserve under Section 92 of the Crown Lands Act 1989; and
- (c) that the Lessor has power under Section 102 of the Crown Lands Act 1989 to grant a lease of the Reserve or part thereof subject to the Minister's consent

Effect of Instrument

- 1.2 The Lessor and the Lessee expressly acknowledge that no rights or interests are conferred on either Party by the provisions of this instrument unless the Minister has granted consent under Section 102 of the CL Act to the grant of this Lease.

2. DEFINITIONS

In this Lease unless the contrary intention appears:

Business Day means any day which is not a Saturday, Sunday or Public Holiday in New South Wales;

CL Act means the Crown Lands Act 1989;

Commencing Date means the date specified in Column 2 of Item 1 of Schedule 1;

Council Land Lease means the lease entered into between Northern Beaches Council (ABN 57 284 295 198) as lessor and the Lessee over part of the Mona Vale Golf Club, being the land comprised in Certificates of Title Folio Identifier 2/251053, 4/251053 and 1/1033971 with the same commencing date, terminating date and term of this Lease.

Environmental Law means any Law or State protection policy incorporated by reference to or being part of any Law relating to protection of the Environment;

Terminating Date means the date on which the Term expires, as specified in Column 2 of Item 3 of Schedule 1;

Hazardous Substance means a substance that because of its quantity, concentration, acute or chronic toxic effects, carcinogenicity, teratogenicity, mutagenicity, corrosiveness, flammability, or physical, chemical or infectious characteristics, may pose a hazard to property, human health or the environment when improperly treated, stored, disposed of or otherwise managed;

Improvements mean any structure or work of a permanent nature attached to the

land;

Lease means this Lease Agreement including the Schedules, and all Annexures hereto;

Local Council means the council established under the Local Government Act 1993 for the Local Government Area in which the Premises are situated;

Minister means the Minister for the time being administering the CL Act or any act consolidating or replacing that Act;

Party means a party to this Lease;

Premises means the land and/or buildings described in Part 2 of Schedule 2;

Regulations mean the Crown Lands Regulation 2006 and successors;

Rent means the rent reserved under Clause 9 of this Lease;

Reserve means the Reserve described in Part 1 of Schedule 2;

Revocation means the revocation of a Reserve under Sections 83, 84, 89 or 90 of the CL Act;

Sub-Lessee means a person who holds a sub-lease of any part of the Premises from the Lessee in accordance with a provision of this Lease;

Tenant Fixtures means any plant equipment fittings or improvements in the nature of fixtures brought onto the Premises by, on behalf of, or at the request of the Lessee;

Term means the period specified in Column 2 of Item 2 of Schedule 1;

Termination means a termination of this lease as a consequence of the expiration of the Term (or any extension thereof), a termination by virtue of Section 109 of the CL Act under Clause 22 or a termination under Clause 23.

3. CONSTRUCTION

3.1 Construction in accordance with this Clause

This Lease shall be construed in accordance with this clause unless the context requires otherwise.

3.1.1 Plurals

Words importing the singular include the plural and vice versa.

3.1.2 Genders

Words importing any gender include the other genders.

3.1.3 Persons

A reference to a person includes:

- (a) an individual, a firm, unincorporated association, corporation and a government or statutory body or authority; and

- (b) the legal personal representatives, successors and assigns of that person.

3.1.4 Headings

Headings (including any headings described as parts and sub-headings within clauses) wherever appearing shall be ignored in construing this Lease.

3.1.5 Clauses and Sub-clauses

- (a) A reference to a clause includes all sub-clauses, paragraphs, subparagraphs and other components which form part of the clause referred to.

- (b) A reference to a sub-clause includes any sub-paragraphs and other components of the sub-clause referred to.

3.1.6 Time

A reference to time is a reference to local time in Sydney.

3.1.7 Money

A reference to \$ or "dollars" is a reference to the lawful currency of Australia.

3.1.8 Defined Terms

If a word or phrase is defined cognate words and phrases have corresponding definitions. A defined term, unless inconsistent with the context of its use, is denoted by the appearance of that word using a capital letter at the beginning of that word.

3.1.9 Writing

A reference to writing includes any mode of representing or reproducing words in tangible and permanently visible form.

3.1.10 Contra Preferentum

No rules of construction shall apply to the disadvantage of any party responsible for preparation of this Lease or any part of it.

3.1.11 Statutes

A reference to a statute, legislation, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them made by any legislative authority.

3.1.12 Lease

A reference to this Lease shall include any extension or variation of this Lease.

3.1.13 Priority

If an inconsistency occurs between the provisions of this Lease and the provisions of a lease granted in accordance with this Lease, the provisions of this Lease shall prevail.

3.2 Warranties and Undertakings

- (a) The Lessee warrants that it:
 - (i) has relied only on its own inquiries about this Lease; and
 - (ii) has not relied on any representation or warranty by the Lessor or any person acting or seeming to act on the Lessor's behalf.
- (b) The Lessee must comply on time with undertakings given by or on behalf of

the Lessee.

3.3 Further assurances

Each Party must do everything necessary to give full effect to this Lease.

3.4 Relationship of Lessor and Lessee

Nothing contained or implied in this Lease will be deemed or construed to create the relationship of partnership or of principal and agent or of joint venture between the Lessor and the Lessee. Specifically, the Parties understand and agree that neither the method of computation of Rent, nor any other provision, nor any acts of the Lessee and the Lessor or either of them will be deemed to create any relationship between them other than the relationship of Lessor and Lessee upon the terms and conditions only as provided in this Lease.

3.5 Time to be of the essence

Where in any provision of this Lease a party is given or allowed a specified time within which to undertake or do any act or thing or any power is conferred or any event occurs after the lapsing of a specified time, time shall be the essence of the contract in that regard.

4. SEVERABILITY

Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall as to such jurisdiction be ineffective to the extent of such prohibition or inability to enforce without invalidating the remaining provisions of such provisions in any other jurisdiction.

5. ESSENTIAL TERMS OF LEASE

The Lessor and the Lessee agree that the clauses specified in Column 2 of Item 15 of Schedule 1 are essential conditions of this Lease.

6. SECTIONS OF LEGISLATION NOT TO APPLY

6.1 The covenants and powers implied in every lease by virtue of Sections 84, 84A, 132, 133, 133A and 133B of the Conveyancing Act 1919 do not apply or are not implied in this Lease and are expressly negatived except in so far as the same or some part or parts of it are included in the covenants hereinafter contained. The employment in this Lease of any words in any of the forms of words contained in the first column of Part II of the Fourth Schedule to the Conveyancing Act 1919 shall not imply any covenant under Section 86 of that Act.

6.2 Part 4 of the Civil Liability Act 2002 (NSW) does not apply to this Lease.

TERM AND PERMITTED USE

7. TERM OF LEASE

The Lessor grants to the Lessee a lease of the Premises for the Term specified in Column 2 of Item 2 of Schedule 1. The Term shall commence on the Commencing Date specified in Column 2 of Item 1 of Schedule 1.

8. PERMITTED USE

- 8.1 The Lessee will not use the Premises or allow the Premises to be used for any purpose other than the Permitted Use specified in Column 2 of Item 4 of Schedule 1.
- 8.2 Unless expressly permitted under a provision of this Lease the Lessee will not reside on the Premises, permit any other person to reside on the Premises, or use the Premises to be used for the purposes of a residence in any regard.
- 8.3 The Lessee and its employees, agents or invitees must not obstruct any path, driveway or entry giving egress from, access to or passage across the Premises used or intended to be used by members of the public except with the prior written approval of the Lessor.
- 8.4 The Lessee shall not permit the sale of liquor on the Premises, nor permit any person to take onto the Premises any liquor, without the prior consent of the Lessor.

LESSEE'S RENT AND OUTGOINGS

9. PAYMENT OF RENT

9.1 Definitions

For the purposes of this clause:

Base Annual Rent means:

- (a) the Initial Rent where the Rent has not been adjusted or redetermined in accordance with sub-clauses 9.3 or 9.4; or
- (b) in any other case - the Rent as last redetermined or adjusted in accordance with the provisions of sub-clauses 9.3 or 9.4;

Due Date means the date for payment of Rent under this Lease as is specified in Column 2 of Item 7 of Schedule 1 and thereafter each anniversary of that date;

Initial Rent means the Rent payable under this Lease in respect of the Premises as is specified in Column 2 of Item 5 of Schedule 1 expressed as an annual amount;

Market Rent means the Rent that would reasonably be expected to be paid for the Premises if it were offered for the same or a substantially similar use to which the Premises may be put under this lease and on similar terms and conditions;

Market Rent Review Date means the date specified in Column 2 of Item 8 of Schedule 1;

Rent means the greater of:

- (a) the Base Annual Rent payable upon each Due Date less any Rent Rebate granted to the Lessee by the Lessor; or
- (b) the statutory minimum Rent payable in respect of a lease granted under the CL Act which is not subject to any rebate;

Rent Adjustment means an adjustment of Rent made under sub-clause 9.3.

Rent Rebate means such amount as specified in Column 2 of Item 6 of Schedule 1 granted to the Lessee by the Lessor under Clause 9.5 and expressed either as an absolute dollar value or a percent of the Base Annual Rent.

9.2 Lessee to Pay Rent

The Lessee covenants with the Lessor that the Lessee will on the Commencing Date and thereafter during the whole of the Term on the Due Date pay the Rent to the Lessor in accordance with the provisions of this clause without demand free of exchange and without deduction whatsoever.

9.3 Calculation of Rent Adjustment

- (a) On each Anniversary of the Due Date the Rent will be adjusted in accordance with the following formula:

$$R = B \times \frac{C}{D}$$

where

R represents the Base Annual Rent following adjustment under this Clause;

B represents the Base Annual Rent before adjustment under this Clause;

C represents the Consumer Price Index number for the last quarter for which such a number was published before the due date; and

D represents the Consumer Price Index number for the last quarter of the last adjustment of rent for which such a number was published.

- (b) In this clause "Consumer Price Index number" in relation to a quarter means the number for that quarter appearing in the Consumer Price Index (All Groups Index) for Sydney published by the Australian Statistician. In the event that such index be discontinued or abolished the Minister may at his absolute discretion nominate another Index.
- (c) If the reference base for the Consumer Price Index is changed regard shall be had only to Index numbers published in terms of the new reference base or to Index numbers converted to the new reference base in accordance with an arithmetical conversion factor specified by the Australian Statistician.
- (d) Any Rent adjusted under this sub-clause must be adjusted to the nearest whole dollar.
- (e) An adjustment of Rent made under this clause shall take effect on its Due Date notwithstanding that any Rent notice to the Lessee is not issued until after that date.

9.4 Market Rent Review

- (a) In addition to the Rent adjustment provided for in clause 9.3 the Rent may, subject to the following provisions of this clause, be redetermined to an amount that is the market Rent on that date with effect on and from each Market Rent Review Date by the Lessor.

- (b) A redetermination of Rent for the purposes of sub-clause 9.4(a) will be taken to have been made on the Market Rent Review Date if it is made at any time within the period of six months before and up to six months after that Market Rent Review Date.
- (c) Where the Lessor does not redetermine the Rent as provided for in clause 9.4(a) it may subsequently redetermine the Rent at any time before the next Market Rent Review Date. No succeeding Market Rent Review Date will be postponed by reason of the operation of this clause.
- (d) An adjustment of Rent made under sub-clause 9.4(c) will take effect and be due and payable on the next due date following the date of issue of the notice of adjustment (or where the said due date and the date of issue of the notice of redetermination are the same, then that date) even if the Lessee wishes to dispute the redetermination.

9.5 Rent Rebate for Charitable or Non Profit Organisations

At the absolute discretion of the Lessor, the Lessor may determine that the Lessee is entitled to a Rent Rebate as specified in Column 2 of Item 6 of Schedule 1 on the basis that the Lessee is a recognised charitable or non-profit organisation.

10. CONTINUING OBLIGATION

The obligation of the Lessee to pay the Rent is a continuing one during the Term of this Lease and any extension of it and shall not abate in whole or in part or be affected by any cause whatsoever.

11. NO REDUCTION IN RENT

Subject to this Lease the Lessee will not without the written consent of the Lessor by any act, matter or deed or by failure or omission impair, reduce or diminish directly or indirectly the Rent required to be paid under this Lease. However, if at any time during the Lease:

- (a) some natural disaster or other serious event occurs which is beyond the reasonable control of the Lessee; or
- (b) as a result of the damage, the Lessee is not able to use the Premises in a reasonable manner,

the Lessee's obligations to pay Rent will abate to the extent proportional to the effect on the Lessee's ability to occupy and use the Premises until the Premises are restored to a condition in which the Lessee is able to conduct the Lessee's activities and/or occupy the Premises in a reasonable manner.

12. LESSEE TO PAY RATES

- 12.1 The Lessee will when the same become due for payment pay all (or in the first and last year of the Term the appropriate proportionate part) rates, taxes (including Land Tax), assessments, duties, charges and fees whether municipal, local government, parliamentary or otherwise which are at any time during the currency of this Lease separately assessed and lawfully charged upon, imposed or levied in respect of the Lessee's use or occupation of the Premises to the extent referable to the Lessee's use or occupation of the Premises.

- 12.2 The Lessee will if required by the Lessor produce to the Lessor evidence for such payments within 10 business days after the respective due dates for payment and in case such rates, taxes, duties and fees so covenanted to be paid by the Lessee are not paid when they become due the Lessor may if it thinks fit pay the same and any such sum so paid may be recovered by the Lessor from the Lessee.

13. LESSEE TO PAY OTHER CHARGES

The Lessee will pay all other fees, charges and impositions not referred to in clause 12 for which it may properly be liable and which are at any time during the Term payable in respect of the Premises or on account of the use and occupation of the Premises by the Lessee.

14. LESSEE TO PAY FOR SERVICES

The Lessee will as and when the same become due for payment pay to the Lessor or to any other person or body authorised to supply the same all proper charges for gas, electricity, water or other services supplied to the Lessee or consumed in or on the Premises, by the Lessee.

15. LESSEE TO PAY COST OF WORK

Whenever the Lessee is required under this Lease to do or effect any act, matter, work or thing then the doing of such act matter or thing will unless this Lease otherwise provides be at the sole risk, cost and expense of the Lessee.

16. COSTS PAYABLE

16.1 Costs Payable to Lessor

Except where a law limits costs being incurred by a Lessee being recovered from the Lessor, the Lessee will pay in full the Lessor's fees of all consultants and all duties fees, charges and expenses incurred reasonably, properly and in good faith by the Lessor in consequence of or in connection with or incidental to:

- (a) stamping and registration of this Lease;
- (b) any variation of this Lease made otherwise than at the request of the Lessor;
- (c) any application for the consent of the Lessor and the Minister if applicable under this Lease;
- (d) any and every failure to comply, breach or default by the Lessee under this Lease;
- (e) the exercise or attempted exercise of any right power privilege authority or remedy of the Lessor under or by virtue of this Lease;
- (f) the examination of plans, drawings and specifications of any improvement erected or constructed or to be erected or constructed on the Premises by the Lessee and the inspection of it, in this case the costs to be mutually agreed;
- (g) any entry, inspection, examination, consultation or the like which discloses a breach by the Lessee of any provision of this Lease;

- (h) the Lessee requiring the Lessor to do any act, matter or thing under this Lease, unless otherwise provided for in this Lease, the Lessee will reimburse the Lessor for all reasonable costs and expenses incurred in complying with that requirement.

16.2 Costs payable by Lessor

The Lessor will pay its own direct and external consultants costs in relation to any rental redetermination matter without reimbursement from the Lessee.

16.3 Legal costs

Each party will pay its own legal costs and disbursements in connection with the preparation of this Lease.

17. INTEREST ON OVERDUE MONEYS

The Lessee will pay interest to the Lessor on any moneys due and payable under the Lease or on any judgment in favour of the Lessor in an action arising from the Lease until all outstanding moneys including interest are paid in full. The rate of interest applicable is the rate set by the Lessor's Bank for the time being as its benchmark rates for overdrafts of one hundred thousand dollars (\$100,000.00) or more. Interest will accrue and be calculated daily.

18. MANNER OF PAYMENT OF RENT AND OTHER MONEYS

The Rent and other moneys payable in accordance with this Lease must be paid to the address or bank account specified in Column 2 of Item 9 of Schedule 1 or to such other person or at such other address as the Lessor may from time to time direct by notice in writing served on the Lessee.

19. GOODS AND SERVICES TAX

- (a) For the purposes of this Lease, "GST", "taxable supply", "consideration" and "tax invoice" have the meanings given to those terms in A New Tax System (Goods and Services Tax) Act 1999.
- (b) All payments to be made or other consideration to be provided under this Lease are GST exclusive unless otherwise expressly stated. If any payment or consideration to be made or provided by the Lessee to the Lessor is for a taxable supply under the Lease on which the Lessor must pay GST and the Lessor gives the Lessee a tax invoice, the Lessee must pay to the Lessor an amount equal to the GST payable (the "GST Amount") by the Lessor for that taxable supply upon receipt of that tax invoice.
- (c) The Parties agree that they are respectively liable to meet their own obligations under the GST Law. The GST Amount must not include any amount incurred in respect of penalty or interest or any other amounts payable by the Lessor as a result of default by the Lessor in complying with the GST Law.

20. SUBLEASING, ASSIGNMENT AND PARTING WITH POSSESSION

- 20.1 The Lessee may not sublet, assign this Lease or part with possession of the

Premises or any part of them without the consent of the Lessor. The Lessor will not unreasonably withhold its consent.

- 20.2 The Lessee agrees that consent will be taken not to have been "unreasonably withheld" if the Lessor has been served with a notice by the Minister requiring the Minister's consent to any assignment or sub lease or parting with possession of the Premises and the Minister has been requested to give consent but has not given that consent.
- 20.3 If the Lessee is a corporation, it will be treated as assigning this Lease, for the purposes of sub-clause 20.1, if the person or persons who beneficially own or control a majority of its voting shares at the commencement of this Lease cease to do so, except as a result of transmission on the death of a shareholder. This clause will not apply if the Lessee is a corporation, the voting shares of which are listed on a Stock Exchange in Australia.
- 20.4 The Lessee is to pay the Lessor's reasonable legal and other costs relating to considering and giving consent, including any costs which the landlord incurs in making inquiries as to the respectability, solvency, responsibility, stature, experience and capability of any proposed subtenant or assignee or the person to whom possession is to be transferred.
- 20.5 The Lessee may not mortgage or charge this Lease or any estate or interest in the leased Premises.

21. TERMINATION OF LEASE

- 21.1 Subject to Clauses 22 and 23 this Lease terminates on the date specified in Column 2 of Item 3 of Schedule 1.

22. TERMINATION OF LEASE UNDER SECTION 109 OF CL ACT

- 22.1 The Lessor and Lessee acknowledge that, subject to sub-clause 22.2, this Lease will terminate under Section 109 of the CL Act if the Reserve is revoked or that part of the Reserve is revoked that comprises the whole or part of the Premises unless the revocation notification otherwise provides.
- 22.2 Where only part of Premises is affected by a revocation or proposed revocation the Lessor undertakes to consult with the Lessee and the Lessee undertakes to consult with the Lessor to determine if an agreement under Section 109(3) can be reached for the continuation of this Lease in respect to that part of the Premises not affected by the revocation.
- 22.3 The Lessee expressly acknowledges that as provided by Section 109(5) of the CL Act no compensation is payable in respect of the Termination of this Lease by the operation of Section 109 and no compensation shall be payable.

23. TERMINATION OF LEASE ON DEFAULT

- 23.1 The Lessor may end the Lease in the manner set out below in the following circumstances:
- (a) if the Rent or any part of it or any other moneys owing to the Lessor under the Lease is or are in arrears for one month, whether formally demanded or not;

- (b) if the Lessee breaches an essential condition of this Lease or any rule or regulation made under this Lease;
- (c) if defects notified under a provision of this Lease are not remedied within the time specified in the notice;
- (d) if the Lessee is a corporation and an order is made or a resolution is passed for its winding up except for reconstruction or amalgamation;
- (e) if the Lessee is a company and ceases or threatens to cease to carry on business or goes into liquidation, whether voluntary or otherwise, or is wound up or if a liquidator or receiver (in both cases whether provisional or otherwise) is appointed;
- (f) if the Lessee is a company and is placed under official management under the corporations law or enters a composition or scheme of arrangement;
- (g) if the interest of the Lessee under this Lease is taken in execution;
- (h) if the Lessee or any person claiming through the Lessee conducts any business from the leased Premises after the Lessee has committed an act of bankruptcy;
- (i) if the Council Land Lease terminates or otherwise comes to an end.

23.2 In the circumstances set out in sub clause 23.1, the Lessor may end the Lease by:

- (a) notifying the Lessee that it is ending the Lease; or
- (b) re-entering the Premises, with force if necessary, and ejecting the Lessee and all other persons from the Premises and repossessing them; or
- (c) doing both.

23.3 If the Lessor ends this Lease under this clause, the Lessee will not be released from liability for any prior breach of this Lease and other remedies available to the Lessor to recover arrears of Rent or for breach of this Lease will not be prejudiced.

23.4 If the Lessor ends this Lease under this clause or under clause 22, it may remove the Lessee's property and store it at the Lessee's expense without being liable to the Lessee for trespass, detinue, conversion or negligence. After storing it for at least one month, the Lessor may sell or dispose of the property by auction or private sale. It may apply any proceeds of the auction or sale towards any arrears of Rent or other moneys or towards any loss or damage or towards the payment of storage and other expenses.

23.5 If the Lessor ends this Lease under this clause, it may, besides any other rights and remedies that it might have, recover from the Lessee damages for the loss of the benefit of the rest of this Lease.

23.6 The Lessee indemnifies and holds indemnified the Lessor in respect of the removal and storage of the Tenant Fixtures and the Lessee's property and also in respect of all claims, demands, losses, damages, proceedings, costs, charges and expenses which the Lessor may suffer or incur at the suit of any person claiming an interest in the Tenant Fixtures in respect of the Lessor's rights under this clause.

24. ACCEPTANCE OF RENT NOT WAIVER

Demand for, or acceptance of Rent or any other moneys due under this Lease by the Lessor after forfeiture does not operate as a waiver of forfeiture.

25. HOLDING OVER BY LESSEE

- (a) On and from the Terminating Date of this Lease, the Lessee shall be entitled with the consent of the Lessor and the Minister to remain in possession of the Premises on the following terms and conditions:
 - (i) the Lessee shall become a monthly tenant of the Lessor at a monthly rental equivalent to one twelfth of the annual Rent payable at the time of expiration of this Lease;
 - (ii) the Lessee shall comply with and be bound by the terms and conditions of this Lease insofar as the terms and conditions are applicable, provided that the Lessor may from time to time by notice in writing served on the Lessee direct that any particular condition not apply or be amended in the manner set out in the notice.
- (b) The Lessor and the Lessee expressly agree that where any provision of this Lease confers any right, duty, power or obligation on a Party upon the expiration of this Lease and the Lessee is authorised to remain in possession of the Premises pursuant to a consent granted under this clause the emergence of the right, duty, power or obligation shall be postponed until such time as the Lessee ceases to be entitled to possession pursuant to this clause.
- (c) The tenancy created by operation of this clause may be determined by the Lessor serving on the Lessee a notice to quit. The notice shall take effect at the expiration of the period of one month from the date of service of the notice or such further period as may be specified in the notice.
- (d) The tenancy created by operation of this clause may be determined by the Lessee serving on the Lessor a notice stating that as from a date specified in the notice the tenancy is surrendered.

26. LESSEE TO YIELD UP

26.1 The Lessee will forthwith upon the expiry or determination of this Lease or any extension of it peaceably vacate the Premises at the Lessee's expense.

26.2 The Lessee must:

- (a) unless otherwise provided for in this Lease, remove the Tenant Fixtures and must remove any signs, names, advertisements, notices or hoardings erected, painted, displayed, affixed or exhibited upon, to or within the Premises by or on behalf of the Lessee (other than a notice displayed by the Lessor); and
- (b) unless otherwise provided for in this Lease, rehabilitate the Premises, (to the extent to which it has been altered or affected by the Lessee's occupation and use of the Premises) as nearly as practicable to the original condition before the installation of the Tenant Fixtures to the reasonable satisfaction of the Lessor; and

- (c) ensure that when it vacates the Premises, the Premises comply with any Environmental Law to the extent that it did so at the time of granting of this Lease; and
 - (d) leave the Premises in a clean and tidy condition.
- 26.3 Should the Lessee cause any damage to the Premises in vacating the Premises as required under this clause, the Lessee must rectify any such damage, failing which the Lessor may rectify such damage at the expense of and as agent for the Lessee and recover from the Lessee the cost to the Lessor of doing so as a liquidated debt payable on demand.
- 26.4 Sub-clause 26.2 does not apply unless the Lessor permits the Lessee to carry out any works on the Premises reasonably required in order to comply with the clause.

OBLIGATIONS AND RESTRICTIONS RELATING TO PREMISES

27. ADDITIONS AND ALTERATIONS

The Lessee shall not make any additions or alterations to the Premises without first obtaining the written consent of the Lessor, the Minister and the local Council (in its role as the statutory planning authority). Any additions or alterations consented to by the Lessor and the Minister shall be carried out at the Lessee's expense and in a workmanlike manner.

28. MAINTENANCE OF PREMISES AND ENCLOSED AREAS

The Lessee will keep the Premises clean and tidy and in good order and condition.

29. LESSEE TO ERECT BARRICADES ETC.

Where the Premises or any part of the Premises become to the knowledge of the Lessee (or which ought reasonably to be in the knowledge of the Lessee) unsafe, hazardous or dangerous the Lessee will forthwith erect such warning signs, fences and barricades as may be necessary until the Premises are rendered safe.

30. LESSEE NOT TO REMOVE MATERIALS

- (a) The Lessee will not mine, remove, extract, dig up or excavate any sand, stone, gravel, clay, loam, shell or similar substance from, on or in the Premises or permit any other person to undertake such action without the prior consent in writing of the Lessor and the Minister and subject to such conditions as the Lessor or the Minister may determine.
- (b) Sub clause 30(a) does not apply to any removal, digging up or excavation as may be necessary to construct or undertake any improvement authorised by or under this Lease provided that any such removal, digging up or excavation is undertaken in accordance with the requirements of that authorisation.
- (c) A failure by the Lessee to comply with any condition imposed pursuant to sub clause 30(a) constitutes a failure by the Lessee to comply with a provision or covenant of this Lease.

31. ADVERTISING

- (a) The Lessee must not permit to be displayed or placed on the Premises or any part of them any sign, advertisement or other notice without first obtaining the Lessor's written consent other than safety signs, in respect of which the Lessor's consent will not be required; and
- (b) The Lessor may at any time by notice in writing require the Lessee to discontinue to use any piece or mode of advertising to which the Lessor has granted consent under sub-clause 31(a) which in the opinion of the Lessor has ceased to be suitable or has become unsightly or objectionable and the Lessee on receipt of the notice must comply accordingly.

32. NOTIFICATION OF ACCIDENT

The Lessee will give to the Lessor prompt notice in writing of any serious accident to any person or accident to the Premises or serious defect at or to the Premises unless that defect or accident is capable of being and is promptly remedied by the Lessee.

33. RODENTS AND VERMIN

The Lessee will take all reasonable precautions to keep the Premises free of rodents, vermin, insects and pests and will in the event of failing to do so if required by the Lessor but at the cost of the Lessee employ from time to time a duly certified pest exterminator approved by the Lessor whose approval will not be unreasonably withheld. In performing its obligations pursuant to this clause the Lessee and any person acting on the Lessee's behalf will not use any substance or undertake any activity prohibited by any law.

34. LESSEE NOT TO BURN OFF

If applicable, the Lessee will not carry out any burning off on the Premises except with the prior consent of the Lessor in writing, which consent shall not be unreasonably withheld, and after compliance with the requirements of the Rural Fires Act 1997. Any consent granted in accordance with this condition shall be subject to such reasonable conditions as the Lessor may impose.

35. LESSEE NOT TO COMMIT NUISANCE ETC

The Lessee will not:

- (a) carry on or permit to be carried on at the Premises any noxious, nuisance or offensive trade or business; or
- (b) do or permit to be carried on at the Premises any act, matter or thing which results in nuisance damage or disturbance to the Lessor or owners or occupiers of adjoining or neighbouring lands or buildings; or
- (c) use the Premises for any illegal activity.

36. HAZARDOUS SUBSTANCES, ETC.

- 36.1 The Lessee must not bring on to the Premises or keep any Hazardous Substance on the Premises without the prior consent of the Lessor, which consent shall not be unreasonably withheld.

- 36.2 The Lessee must, in the event of any infectious illness occurring in or on the Premises, immediately notify the Lessor and any relevant authority.

37. RELICS

- (a) Unless authorised to do so by a permit under section 87 or a consent under section 90 of the National Parks and Wildlife Act 1974 and subject to observance and compliance with any conditions imposed on the grant of such permit or consent the Lessee will not knowingly disturb, destroy, deface or damage any aboriginal relic or place or other item of archaeological significance within the Premises and will take reasonable precautions in drilling excavating or carrying out other operations or works on the Premises against any such disturbance, destruction, defacement or damage.
- (b) If the Lessee becomes aware of any aboriginal relic or place or other item of archaeological significance within the Premises the Lessee will within 24 hours notify the Lessor and the Director-General of the Department of Environment and Conservation of the existence of such relic, place or item.
- (c) The Lessee will not continue any operations or works on the Premises likely to interfere with or disturb any relic, place or item referred to in sub clause 37(b) without the approval of the Director-General of the Department of Environment and Conservation and the Lessee will observe and comply with all reasonable requirements of the said Director-General in relation to carrying out the operations or works.

38. ARTEFACTS

All fossils, artefacts, coins, articles of value, articles of antiquity, structure and other remains or things of geological historical or archaeological interest discovered on or under the surface of the Premises shall be deemed to be the absolute property of the Lessor and the Lessee will as authorised by the Lessor watch or examine any excavations and the Lessee will take all reasonable precautions to prevent such articles or things being removed or damaged and will as soon as practicable after discovery thereof notify the Lessor of such discovery and carry out the Lessor's orders as to the delivery up to or disposal of such articles or things at the Lessor's expense.

IMPROVEMENTS AND PLANT

39. OWNERSHIP AND REMOVAL OF IMPROVEMENTS AND TENANT FIXTURES

- (a) Upon expiry or sooner determination of this Lease all Improvements undertaken by the Lessee become the property of the Lessor.
- (b) During the Term and any extension of it, ownership of Tenant Fixtures vests in the Lessee. Notwithstanding anything contained in this Lease, so long as any Rent or other moneys are due by the Lessee to the Lessor or if the Lessee has committed any breach of this Lease which has not been made good or remedied and whether the Lessee is still in possession or not, the Lessee shall not be entitled to remove any of the Tenant Fixtures, fittings or equipment from the leased property.

40. GENERAL REQUIREMENT TO REPAIR

- 40.1 Without prejudice to any specific obligations contained in this Lease, the Lessee will, to the reasonable satisfaction of the Lessor, at all times during the Term of this Lease and any holding over period keep the Premises and the Lessor's fixtures and fittings and all improvements and plant and equipment erected or installed on the Premises by the Lessee in good repair and properly maintained in all respects, including but not limited to the Lessee's obligations to:
- (a) repair or, where appropriate, replace lighting, electrical or plumbing fittings in or on the Premises;
 - (b) keep such of the plant and equipment, mechanical or otherwise, located within and exclusively servicing the Premises maintained, serviced and in good repair and to enter into and keep current at its own expense such maintenance, service and repair contracts as are reasonably required by the Lessor for that purpose with contractors approved by the Lessor; and
 - (c) keep the Premises maintained in accordance with good golf course maintenance standards including those standards set out in the plan of management in respect of the Mona Vale Golf Course dated March 1996 published by the Lessor.
- 40.2 The Lessee must, upon request by the Lessor, provide the Lessor with copies of the relevant maintenance and service contracts entered into by the Lessee for the purpose of this clause and of all reports, certificates and other statements issued in connection with such contracts.

41. BREAKAGES

The Lessee will immediately at the Lessee's expense make good any breakage defect or damage to the Premises (including but not limited to broken glass) or to any adjoining premises or to any facility or appurtenance of the Lessor occasioned by want of care, misuse or abuse on the part of the Lessee, the Lessee's agents, servants, invitees or licensees.

42. LESSOR'S RIGHT TO ENTER INSPECT, REPAIR AND CLOSE

- 42.1 The Lessor, the Lessor's agents, the Minister and the Minister's delegates may at all reasonable times upon giving to the Lessee reasonable notice (except in the case of emergency when no notice shall be required) and accompanied by the Lessee or an employee or agent of the Lessee enter upon the Premises and view the state of repair of the Premises and may serve upon the Lessee a notice in writing of any defect (the repair of which is the Lessee's obligation under this Lease to undertake) requiring the Lessee within two months to repair the same. If the Lessee fails to carry out the repair obligations herein within the requisite period, the Lessor may elect to carry out such repair and any costs incurred, whether incidental or otherwise, shall be payable on demand by the Lessee to the Lessor.
- 42.2 The Lessor, the Lessor's agents, the Minister and the Minister's delegates reserve the right to close off access to the Premises or any part thereof in the case of an emergency or if the Lessor, the Lessor's agents, the Minister and the Minister's delegates otherwise deem such action reasonably necessary for the safety of any person or property within or upon the Premises.

43. INDEMNITIES AND INSURANCE

Definition

For the purposes of clauses 44, 45, 46, 47, 48, 49, 57 and 58 –

Lessor means the Lessor, Her Majesty the Queen Her Heirs and Successors, the State of New South Wales, the Minister and the agents, servants, employees and contractors of Her Majesty, Her Majesty's Heirs and Successors, the State of New South Wales and the Minister.

Claim/s means actions, suits, claims, demands, proceedings, losses, damages, compensation, costs, legal costs, charges and expenses.

44. INDEMNITIES

44.1 Indemnity for use of Premises

- (a) The Lessee will indemnify and keep indemnified the Lessor from and against all Claims whatsoever to which the Lessor shall or may be or become liable for or in respect of the Lessee's occupation operation and use of the Premises or for or in respect of all Claims of whatsoever nature or kind and howsoever arising (and whether to any property or to any person resulting in the destruction or damage of any property or the death or injury of any person) at or upon the Premises or originating on the Premises, although occurring or sustained outside the Premises, except to the extent that any such Claims:
 - (i) arise from or are contributed to by the negligence or wilful act or omission on the part of the Lessor; or
 - (ii) arise from the occupation, operation or use of the Premises by any other occupier, or the acts of any person who has access to the Premises with the consent of another occupier, and the Lessor is adequately indemnified by that other occupier in respect of the relevant Claim or demand, and the Lessor will use its reasonable endeavours to ensure that an indemnity in or to the effect of this form is contained in any agreement with any other occupier of the Premises.

44.2 Indemnity Continues After Expiration of Lease

The obligations of the Lessee under this clause continue after the expiration or other determination of this Lease in respect of any act, deed, matter or thing happening before such expiration or determination for the period limited by the Statute of Limitations.

44.3 Exclusion of Consequential Loss

Despite any other provision of this Lease, both Parties exclude, (and agree that they will have no rights against the other for) liability for consequential or indirect loss arising out of this Lease including (without limitation) in respect of loss of profits or loss of business. This clause does not apply in respect of wilful acts by either Party.

45. RELEASE OF LESSOR FROM LIABILITY

- (a) The Lessee shall occupy, use and keep the Premises at the risk of the Lessee and hereby releases to the full extent permitted by law the Lessor from all Claims resulting from any accident, damage or injury occurring therein (but

excluding such Claims to the extent that such Claims arise out of the negligent or wilful acts omissions or default of the Lessor) and the Lessor shall have no responsibility or liability for any loss of or damage to fixtures and/or personal property of the Lessee or any agent or servant of the Lessee or of any member of the public whilst in or upon the Premises (but excluding such Claims to the extent that such Claims arise out of the negligent acts or wilful omissions or default of the Lessor).

- (b) The obligations of the Lessee under this clause shall continue after the expiration or other determination of this Lease in respect of any act, deed, matter or thing happening before such expiration or determination for which the Lessee is responsible. Such obligation is to be governed by the Statute of Limitations.

46. NO LIABILITY FOR FAILURE OF SERVICES

The Lessor will not be under any liability for any loss, injury or damage sustained by the Lessee or any other person at any time as a result of or arising in any way out of the failure of the electricity, telephones, gas, water supply, sewerage, drainage or any other services or facilities provided by the Lessor or enjoyed by the Lessee in conjunction with the Premises or this Lease provided that such failure is not due to the negligent or wilful act or omission of the Lessor its servants or agents.

47. LESSEE NOT TO IMPOSE LIABILITY ON LESSOR

Subject to any other provision of this Lease, the Lessee will not without the written consent of the Lessor or Minister by any act, matter or deed or by failure or omission cause or permit to be imposed on the Lessor or Minister any liability of the Lessee under or by virtue of this Lease even though the Lessee is entitled to do so under any law present or future or otherwise.

48. INSURANCE - PUBLIC RISK

The Lessee will effect and maintain with a reputable and solvent insurer with respect to the Premises and the activities carried on in the Premises public risk insurance for an amount not less than the amount set out in Column 2 of Item 12 of Schedule 1 (or such other amount as the Lessor may from time to time reasonably require) as the amount payable in respect of liability arising out of any one single accident or event. The Lessor acknowledges that the Lessee may effect the public risk insurance pursuant to an insurance policy which is not specific as to the location of risk.

49. PROVISIONS RE POLICIES

- (a) All insurance policies required to be effected by the Lessee pursuant to this Lease are specified in Schedule 3 - Special Conditions and shall be in place prior to occupying the Premises noting the interest of the Lessor.
- (b) The Lessee will produce to the Lessor, once per calendar year or once per period of insurance (whichever first occurs), a certificate of insurance and/or a certificate of currency in respect of the insurance policies required to be effected by the Lessee pursuant to this Lease.
- (c) The Lessee will not at any time during the Term do any act or omit to do any act which it ought reasonably believe may render void or voidable any policy

of insurance. If the Lessee does any act or fails to do any act whereby the rate of premium on such insurance shall be liable to be increased, the Lessee will obtain insurance cover for such increased risk and pay all additional premiums required on account of the additional risk caused by the use to which the Premises are put by the Lessee.

- (d) The Lessee will use all reasonable endeavours to ensure that full, true and particular information is given to the office or company with which the said insurances are effected of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or policies of insurance or the payment of all or any moneys there under.

LESSOR'S WARRANTIES AND COVENANTS

50. HAZARDOUS CHEMICALS

The Lessor warrants that it has not received any notice pursuant to the Environmentally Hazardous Chemical Act, 1985 (NSW).

51. QUIET ENJOYMENT

The Lessor warrants that subject to:

- (a) the Lessor's rights under this Lease;
- (b) the Lessee complying with its obligations under this Lease;

the Lessee may hold and occupy the Premises without undue interference by the Lessor.

LESSOR'S POWERS AND FUNCTIONS

52. APPROVAL BY THE LESSOR

- (a) This clause does not apply to a consent or approval under clause 20.
- (b) In any case where pursuant to this Lease the doing or executing of any act, matter or thing by the Lessee is dependent upon the approval or consent of the Lessor such approval or consent will not be effective unless given in writing and may be given or withheld (unless the context otherwise requires) by the Lessor and may be given subject to such conditions as the Lessor may determine unless otherwise provided in this Lease provided such consent or approval is not unreasonably withheld or such terms and conditions are not unreasonable.
- (c) Any failure by the Lessee to comply with a condition imposed by the Lessor pursuant to sub-clause 52(b) constitutes a failure by the Lessee to comply with a condition of this Lease.

53. OPINION OF THE LESSOR

Any opinion to be formed by the Lessor for the purposes of this Lease may be formed by the Lessor on such grounds and material as the Lessor determines to be sufficient. If the Lessor deems it necessary, such opinion will be formed after consultation with any New South Wales Government Department, the Local Council or other public

authority or the Standards Association of Australia or any other body whose objects and functions are relevant. In forming any such opinion the Lessor is deemed to be exercising merely administrative functions.

COMPLIANCE WITH STATUTES AND OTHER INSTRUMENTS

54. LESSEE TO COMPLY WITH ALL COMMONWEALTH AND NSW STATE LAWS

- (a) The Lessee will comply with the requirements of all statutes, regulations or by-laws and requirements of all relevant public and local authorities in so far as they apply in relation to the use and occupation of the Premises to the extent to which the Lessee is bound at law to comply with the same and nothing in this Lease affects this obligation.
- (b) The Lessee will forthwith on being served with a notice by the Lessor comply with any notice or direction served on the Lessor by a competent authority relating to the destruction of noxious animals or plants or pests or the carrying out of repairs alterations or works on or to the Premises.

55. LESSEE TO COMPLY WITH ENVIRONMENTAL LAWS

In relation to its use of the Premises, the Lessee must, during the Term, and in relation to the Premises:

- (a) comply with relevant Environmental Law;
- (b) use its best endeavours to prevent a breach of any Environmental Law;
- (c) report any breach even if accidental; and
- (d) provide to the Lessor as soon as reasonably practicable details of notices received by or proceedings commenced against the Lessee pursuant to an Environmental Law:
 - (i) relating to a breach or alleged breach by the Lessee of an Environmental Law; or
 - (ii) requiring the Lessee to carry out works to decrease the affectation of the Premises by any Hazardous Substance.

56. LESSEE'S FAILURE TO COMPLY WITH STATUTORY REQUIREMENTS

Where the Lessee breaches any law in relation to its use of the Premises it is taken to breach a condition of this Lease, provided that:

- (a) the Lessee has been found guilty of the breach, and
- (b) the Lessor determines that the breach warrants the Termination of this lease.

57. INDEMNITY FOR NON-COMPLIANCE WITH LEGISLATION

The Lessee will indemnify and keep indemnified the Lessor from and against any Claims arising from the non-compliance by the Lessee with any New South Wales or Commonwealth legislation that may apply to the Lessee's use and occupation of the

site and access thereto and the Lessee's operation of their business from the site and access thereto.

This clause shall not merge on the expiration or other determination of this Lease in respect of any act, deed, matter or thing happening before such expiration or determination.

58. INDEMNITY FOR BREACH OF ENVIRONMENTAL LAW

Without prejudice to any other indemnity granted by this Lease, the Lessee shall indemnify and keep the Lessor indemnified against all Claims arising from a breach by the Lessee of any Environmental Law which breach is in relation to the Premises. This clause shall not merge on expiration or other determination of this Lease in respect of any act, deed, matter or thing happening before such expiration or determination.

DISPUTE RESOLUTION

59. PROCEDURE - DISPUTE RESOLUTION

- (a) In the event that the Lessor and the Lessee are in dispute regarding any matter relating to or arising under this Lease or in respect of any approvals or consents to be granted by the Lessor (except those approvals or consents where the Lessor has an obligation to act reasonably) to the Lessee hereunder, then either the Lessor or the Lessee may give notice and particulars of such dispute to the other Party.
- (b) Where a notice of dispute is served pursuant to this clause the Parties agree to enter into informal negotiations to try and resolve the dispute in good faith and in an amicable manner.
- (c) If the dispute is not resolved informally within 21 days of service of written notice, the Parties may confer with a mutually agreed third party whose role will be to assist in the resolution of the dispute by mediation or expert appraisal of the dispute. The Parties agree to provide all information and assistance reasonably requested by such third party, including access to any accounting or other business records relating to or arising out of the Lease.
- (d) A third party appointed in accordance with this clause may decide in which proportions any fees will be borne by the respective Parties. In the absence of any such decision by the third party fees shall be borne equally by the Parties.
- (e) Neither Party shall be entitled to commence or maintain any proceedings in any court or tribunal until negotiations or mediations have taken place pursuant to this clause except where either Party seeks urgent interlocutory relief.
- (f) Either Party may at any time bring negotiations or mediation to an end by serving upon the other Party written notice stating that the dispute has failed to be resolved. Upon service of such notice both Parties shall be entitled to pursue any legal remedies available to them in relation to the dispute. This sub-clause does not in any way limit a mediator's power to apportion fees under sub-clause 59(d).
- (g) Notwithstanding the existence of a dispute being dealt with under this clause

the Parties must, unless acting in accordance with an express provision of this Lease, continue to perform their obligations under this Lease.

60. NOTICES

60.1 Service of Notice on Lessee

Any notice served by the Lessor on the Lessee must be in writing and will be sufficiently served if:

- (a) served personally or left addressed to the Lessee at the address stated in Column 2 of Item 10 of Schedule 1 or such other address as the Lessee notifies in writing to the Lessor; or
- (b) sent by email to the Lessee's email address stated in Column 2 of Item 10 of Schedule 1 or such other address as the Lessee notifies in writing to the Lessor;
- (c) sent by facsimile to the Lessee's facsimile number stated in Column 2 of Item 10 of Schedule 1 or such other number as the Lessee notifies in writing to the Lessor; or
- (d) forwarded by prepaid security mail addressed to the Lessee at the address stated in Column 2 of Item 10 of Schedule 1

and every such notice must also be served on the Lessee's solicitors, as they may be nominated from time to time, or such other address or facsimile number as the Lessee's solicitors notify in writing to the Lessor, by any methods identified in clauses 60.1 (a), (b) and (c).

60.2 Service of Notice on Lessor

Any notice served by the Lessee on the Lessor must be in writing and will be sufficiently served if:

- (a) served personally or left addressed to the Lessor at the address stated in Column 2 of Item 11 of Schedule 1 or such other address as the Lessor notifies in writing to the Lessee; or
- (b) sent by email to the Lessor's email address stated in Column 2 of Item 11 of Schedule 1 or such other address as the Lessor notifies in writing to the Lessee;
- (c) sent by facsimile to the Lessor's facsimile number stated in Column 2 of Item 11 of Schedule 1 or such other number as the Lessor notifies in writing to the Lessee; or
- (d) forwarded by prepaid security mail addressed to the Lessor at the address stated in Column 2 of Item 11 of Schedule 1

and every such notice must also be served on the Lessor's solicitors, as they may be nominated from time to time, or such other address or facsimile number as the Lessor's solicitors notify in writing to the Lessee, by any methods identified in clauses 60.1 (a), (b) and (c).

60.3 Notices

- (a) Any notice served by the Lessor or the Lessee under this Lease will be effective if signed by a director or secretary or the solicitors for the Party giving the notice or any other person or persons nominated in writing from time to time respectively by the Lessor or by the Lessee to the other.
- (b) Any notice sent by prepaid security mail will be deemed to be served at the expiration of 2 Business Days after the date of posting.
- (c) Any notice sent by facsimile machine will be deemed to be served on the first Business Day after the date of transmission (provided that the sending Party receives a facsimile machine verification report indicating that the notice has been transmitted).

MISCELLANEOUS

61. NO MORATORIUM

Any present or future legislation which operates to vary obligations between the Lessee and the Lessor, except to the extent that such legislation is expressly accepted to apply to this Lease or that its exclusion is prohibited, is excluded from this Lease.

62. NO WAIVER

No waiver by a Party of any breach of any covenant obligation or provision in this Lease either express or implied shall operate as a waiver of another breach of the same or of any other covenant obligation or provision in this Lease contained or implied. None of the provisions of this Lease shall be taken either at law or in equity to have been varied waived discharged or released by a Party unless by express consent in writing.

63. NO MERGER

Nothing in this lease merges, postpones, extinguishes, lessens or otherwise prejudicially affects the rights and remedies of the Parties under this Lease or under any other agreement.

64. COUNTERPARTS

- (a) A Party may execute this lease by signing any counterpart.
- (b) All counterparts constitute one document when taken together.

65. CONTACT PERSON

The Lessor and the Lessee each must nominate a person to contact about matters arising under this Lease. The person so nominated is the person referred to in Column 2 of Items 13 and 14 of Schedule 1 or such other person as the Lessor nominates in writing to the Lessee and the Lessee nominates in writing to the Lessor from time to time.

66. APPLICABLE LAW

This Lease shall be construed and interpreted in accordance with the law of New
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South Wales.

67. NO HOLDING OUT

The Lessee will not in connection with the Premises or otherwise directly or indirectly hold out or not permit to be held out to any member of the public any statement, act, deed, matter or thing indicating that the Premises or the business conducted or operated thereon or any parts or parts thereof are or is being carried on or managed or supervised by the Lessor nor shall the Lessee act as or represent itself to be the servant or agent of the Lessor.

68. WHOLE AGREEMENT

- (a) The provisions contained in this Lease expressly or by statutory implication cover and comprise the whole of the agreement between the Parties.
- (b) No further or other provisions whether in respect of the Premises or otherwise will be deemed to be implied in this Lease or to arise between the Parties hereto by way of collateral or other agreement by reason or any promise representation warranty or undertaking given or made by any Party hereto to another on or prior to the execution of this Lease.
- (c) The existence of any such implication or collateral or other agreement is hereby negated.

69. SPECIAL CONDITIONS

The Special Conditions set out in Column 2 of Item 16 of Schedule 1 apply and form part of this Lease.

SCHEDULE 1

Item	Clause	Column 1	Column 2
1	2	Commencing Date	1 November 2015
2	7	Term	Five (5) Years
3	21	Terminating Date	31 October 2020
4	8	Permitted Use	Golf Course
5	9	Initial Rent	\$38,250.00 plus GST by equal monthly instalments in advance of \$3,187.50 plus GST
5A	9.3	Rent Adjustment	Consumer Price Index (All Groups Index) – Sydney
6	9	Rent Rebate	N/A
7	9	Due Date	First (1 st) day of each month commencing on the Commencing Date
8	9	Market Rent Review Date	N/A
9	18	Address for Payment of Rent	Mona Vale Customer Service Centre, 1 Park Street, Mona Vale
10	60	Lessee's address for Service of Notices	Golf Avenue, Mona Vale NSW 2103 <u>Attention:</u> Andy Hugill, General Manager <u>Phone:</u> (02) 9999 4266 <u>Facsimile:</u> (02) 9997 5791 <u>Email:</u> manager@mvgc.com.au
11	60	Lessor's address for Service of Notices	c/- Northern Beaches Council, 1 Park St, Mona Vale NSW 2103 <u>Attention:</u> Manager, Commercial Property & Projects <u>Phone:</u> (02) 9970 1111 <u>Facsimile:</u> (02) 9970 1200 <u>Email:</u> Pittwater_council@pittwater.nsw.gov.au

12	48	Public Risk Insurance amount	\$20,000,000
13	65	Lessor's Contact Person	Leo Li
14	65	Lessee's Contact Person	Andy Hugill
15	5	Essential Conditions	7, 8, 9, 11, 12, 20, 21, 27, 28, 40, 48, 49, 54, 56
16	69	Special Conditions	[The special conditions set out in Schedule 3]
17		Bank Guarantee/Security Deposit	Nil

End of Schedule 1

SCHEDULE 2

Part 1

Particulars of the Reserve

BEEBY PARK (RESERVE NO. R45244) RESERVE TRUST

1 Golf Avenue, Mona Vale in the State of New South Wales

Part 2

Description of the Premises

Part of the Mona Vale Golf Course being Lot 7092 in Deposited Plan 1051073 and the Lessor's building, fixtures, goods, plant and equipment in, on or affixed thereto.

SCHEDULE 3

Special Conditions

1. Workers Compensation Insurance

In addition to the insurance policy for public risk in clause 48 of this Lease, and in accordance with clause 49 of this Lease, the Lessee must effect and maintain workers compensation insurance with a reputable and solvent insurer with respect to the Premises and the activities carried on in the Premises, which covers all workers with a common law extension or endorsement in an amount approved by the Lessor.

2. Works

- (a) The Lessee and Lessor shall, in collaboration, continue public safety works that consist of the construction of a public walking track/path and associated mounding/vegetation planting adjacent to the 17th hole on the Mona Vale Golf Course, connecting 1 Golf Avenue, Mona Vale and Mona Vale Hospital (**Works**).
- (b) The Lessor has applied for and been successfully awarded a grant from the "Metropolitan Greenspace Program 2016" offered by the NSW Government – Planning and Environment to assist with funding for the works (**Additional Funding**). The grant provides funding of \$98,458 excluding GST for the works and the Lessor will provide matched funding of \$98,458 excluding GST by way of two contributions. The Lessor will contribute \$76,500 + GST as a contribution towards the Works plus \$21,958 excluding GST in cash and/or in-kind (**Lessor's Contribution**). The Works will be carried out in consultation with Mona Vale Golf Club.
- (c) The Lessee acknowledges and agrees that the Lessor's Contribution is for the purposes of the Works only and not for any other purpose, and that the Lessor may spend the Lessor's Contribution in its discretion, provided that any expenditure does not exceed the Lessor's Contribution and Additional Funding and is solely for the Works as described.
- (d) The Lessee must at its own cost spend no less than \$120,000 as a capital investment for Works to improve public safety between the existing walking track on the Premises leading through to Surfview Road, Mona Vale. The Lessor acknowledges that the lessee has already met the minimum contribution of \$120,000 for the Works already completed in stages 1 and 2 of the public walking track.

3. Public Safety Responsibilities

- (a) The Lessee will take all reasonable precautions whether by rules, regulations, warning notices or otherwise for the protection of members of the public against accident arising from the playing of golf and shall maintain the links as to prevent so far as is reasonably possible golf balls straying on or over adjacent land or roads.
- (b) The Lessee will adhere to all reasonable directions provided by the Lessor in providing such protection to the public.

4. Shed

- (a) The parties acknowledge that there is a building structure on the Premises, being a maintenance shed and storage facility for the Lessee (**Shed**).
- (b) The Lessee is responsible for the maintenance and repair of the Shed at its own cost, unless damage to the Shed is caused by an act of the Lessor.
- (c) All other rights and obligations of the parties under this Lease apply to the upkeep, service and use of the Shed.

5. Membership of the Lessee

Membership of the Lessee shall be at the discretion of the Lessee provided that at all times members of the Lessee shall be, wherever possible, residents within the Northern Beaches Municipality and the Lessee, in accepting any new members, shall give preference to persons who are such residents, and, subject to the rules of the Lessee, capacity of the accommodation and the limitations imposed by this Lease, the Lessee shall ensure that membership of the Lessee shall be open to any reputable person.

6. Playing Rights and Rules

- (a) Playing on the golf course by members of the public shall be permitted only after booking with the starter and payment of the prescribed green fees.
- (b) The right to play by members of the public shall be subject to the availability of starting times on the time sheet, which will be available in the office of the Lessee or in a place allotted to the starter for the time being of the Lessee.
- (c) All green fees shall remain the property of the Lessee.
- (d) The standard of behaviour and dress shall be in accordance with the rules and regulations of the Lessee.
- (e) The Lessee shall be entitled to refuse permission to play to any member of the public refusing to conform to the Lessee's rules and regulations or wilfully causing damage to the golf course.
- (f) The Lessee shall erect a notice in a conspicuous position on the course advising of public times available for booking or for play by members of the public.
- (g) Without in any way limiting the powers of the Lessor, the Lessee shall allow the playing of golf on the Premises in accordance with the rules and regulations of the Lessee by the members of or visitors to the Lessee and shall also permit the playing of gold by any member of the public except the Lessee shall be entitled to the exclusive use and occupation of the Premises as follows:
 - (i) on any eight (8) days during any one year of the Term, for the full playing period of such days subject to notification by the Lessee to the Lessor of the days so reserved;
 - (ii) during one continuous period of seven and a half (7.5) hours on Saturdays and public holidays;

- (iii) during one (1) continuous period of six (6) hours on Sundays;
- (iv) during one (1) continuous period of seven (7) hours on one (1) mid-week day and five (5) hours on one (1) other mid-week day subject to notification by the Lessee to the Lessor of the two (2) days so reserved;
- (v) the Lessee shall have discretion to allocate such other playing times Monday to Friday not including public holidays for the purpose of conducting clubs match program for members to complete such events as play-offs, grade matches and practice rounds, provided that at all times the Lessee must ensure that no less than 33% of weekday playing times are available to the general public.
- (h) The green fees chargeable to members of the public shall not exceed those agreed from time to time by the Lessor.
- (i) The Lessee shall not be obliged to extend to public players the same privileges with regard to fees and charges as in the case of its own members.
- (j) Recreation Areas

The Lessee must ensure that the Premises, except for fairways, greens and tees and adjacent areas likely to be dangerously exposed, shall be available to the public for the purpose of passive recreation, provided that the Lessee shall have the right to require members of the public to remove themselves from any location on the course where there is likely to be any danger or where they are interfering with the act of playing golf provided further that members of the public shall be permitted to enter the golf course in company of a player for the purpose of watching that part of the Premises which is a golf course for the playing of golf, provided that such persons comply with any reasonable directions which may be given to them by any player using the golf course.

7. Youth Development Programs

The Lessee shall contribute to youth development programs to provide a community benefit to the Northern Beaches Local Government Area including the provision of:

- (a) Ongoing development programs to the youth within the Northern Beaches Local Government Area; and
- (b) The Mona Vale Golf Course or part thereof for youth golf training for the local community.

EXECUTION

Dated this day of

Signed by **NORTHERN BEACHES COUNCIL**
by its Attorney
who states that he has no notice of revocation
of Power of Attorney Registered Book
4707 No 77 pursuant to which this documents
has been executed as Reserve Trust
Manager of the Beeby Park (R45244)
Reserve Trust in the presence of:

Witness Signature

Attorney Signature

Witness Name (BLOCK LETTERS)

Executed by THE MONA VALE GOLF CLUB
LTD (ACN 000 024 224) in accordance with
section 127(1) of the Corporations Act 2001
(Cth) in the presence of:

Director

Director/Secretary (Delete as applicable)

Name [BLOCK LETTERS]

Name [BLOCK LETTERS]



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</i> (2011) 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.

Attachment 1: Subject Land Map



Attachment 2: Proposed Additional Permitted Uses Map

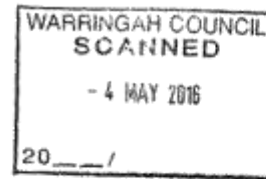


Attachment 3: Current Additional Permitted Uses Map





Planning &
Environment



Mr Rik Hart
General Manager
Warringah Council
725 Pittwater Road
Dee Why NSW 2099



Our ref: PP_2016_WARRI_002_00 (16/05938)

Dear Mr Hart

Planning proposal to amend Warringah Local Environmental Plan 2011

I am writing in response to your Council's letter dated 1 April 2016 requesting a Gateway determination under section 56 of the *Environmental Planning and Assessment Act 1979* (the Act) in respect of the planning proposal to amend the *Warringah Local Environmental Plan 2011* for 632-634 Warringah Road, Forestville to amend Schedule 1 and the Additional Permitted Uses Map applying to Lots 8 and 9 DP 25052.

As delegate of the Greater Sydney Commission, I have now determined the planning proposal should proceed subject to the conditions in the attached Gateway determination.

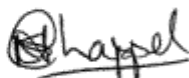
Plan making powers were delegated to councils in October 2012. It is noted that Council has requested to be issued with delegation for this planning proposal. I have considered the nature of Council's planning proposal and have decided to issue an authorisation for Council to exercise delegation to make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

The amending Local Environmental Plan (LEP) is to be finalised within 6 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 LEP 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 LEP's 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 Greater Sydney Commission may take action under section 54(2)(d) of the Act if the time frames outlined in this determination are not met.

Should you have any queries in regard to this matter, I have arranged for Mr James Sellwood of the Department's regional office to assist you. Mr Sellwood can be contacted on (02) 9228 6583.

Yours sincerely



29.4.16

Sandy Chappel
Acting Director, Sydney Region East
Planning Services

Encl:
Gateway determination
Written authorisation to exercise delegation



Planning & Environment

Gateway Determination

Planning proposal (Department Ref: PP_2016_WARRI_002_00): to allow a service station and neighbourhood shop at 632-634 Warringah Road, Forestville.

I, Acting Director, Sydney Region East at the Department of Planning and Environment as delegate of the Greater Sydney Commission, 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* should proceed subject to the following conditions:

1. Prior to public exhibition, the planning proposal is to be updated to include maps which clearly identify the lots comprising the subject site and showing both the current and proposed planning controls. Maps are to be consistent with the Department's 'Standard Technical Requirements for Spatial Datasets and Maps'.
2. Consultation is required with the following public authorities under section 56(2)(d) of the Act:
 - Roads and Maritime Services; and
 - Office of Environment and Heritage.

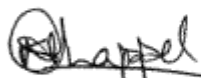
Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material, and given at least 21 days to comment on the proposal.

3. Community consultation is required under sections 56(2)(c) and 57 of the Act as follows:
 - (a) the planning proposal 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 Infrastructure 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 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).

PP_2016_WARRI_002_00 (16/05938)

5. The timeframe for completing the Local Environmental Plan is to be **9 months** from the week following the date of the Gateway determination.

Dated 29th day of April 2016



Sandy Chappel
Acting Director, Sydney Region East
Planning Services
Department of Planning and Environment
Delegate of the Greater Sydney Commission

PP_2016_WARRI_002_00 (16/05938)

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

Warringah Council is authorised to exercise the functions of the Greater Sydney Commission 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_2016_WARRI_002_00	Planning proposal to allow a service station and neighbourhood shop at 632-634 Warringah Road, Forestville

In exercising the Greater Sydney Commission's functions under section 59, the Council must comply with the Department's 'A Guide to Preparing Local Environmental Plans' and 'A Guide to Preparing Planning Proposals'.

Dated 29 April 2016

A handwritten signature in black ink, appearing to read "S Chappel".

Sandy Chappel
Acting Director, Sydney Region East
Planning Services
Department of Planning and Environment

Delegate of the Greater Sydney Commission

PP_2016_WARRI_002_00 (16/05938)

Planning proposal to allow a service station and neighbourhood shop at 632-634 Warringah Road, Forestville

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_2016_WARRI_002_00
Date Sent to Department under s56	04/04/2016
Date considered at LEP Review Panel (if applicable)	N/A
Gateway determination date	

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:

Suite 1 No.9 Narabang Way Belrose NSW 2085 • acn 121 577 768
t (02) 9986 2535 • f (02) 99863050 • www.bbfplanners.com.au

BostonBlythFleming
Town Planners

PLANNING PROPOSAL

Warringah Local Environmental Plan 2011

Part rezoning

LOT 907, DP 867091, 9 NARABANG WAY

BELROSE

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Planning Proposal

Part rezoning

Warringah Local Environmental Plan 2011

Lot 907, DP 867091, No. 8 Narabang Way, Belrose

Prepared on behalf of

Adrenalin Angling Pty Limited

By

Greg Boston

B Urb & Reg Plan (UNE) MPA CPP
B Env Hlth (UWS)

Boston Blyth Fleming Pty Ltd Town Planners

(ACN 121 577 768)
Suite 1/9 Narabang Way
Belrose NSW 2085
Tel: (02) 99862535

June 2016

Planning Proposal - Lot 907, DP 867091, No. 8 Narabang Way, Belrose

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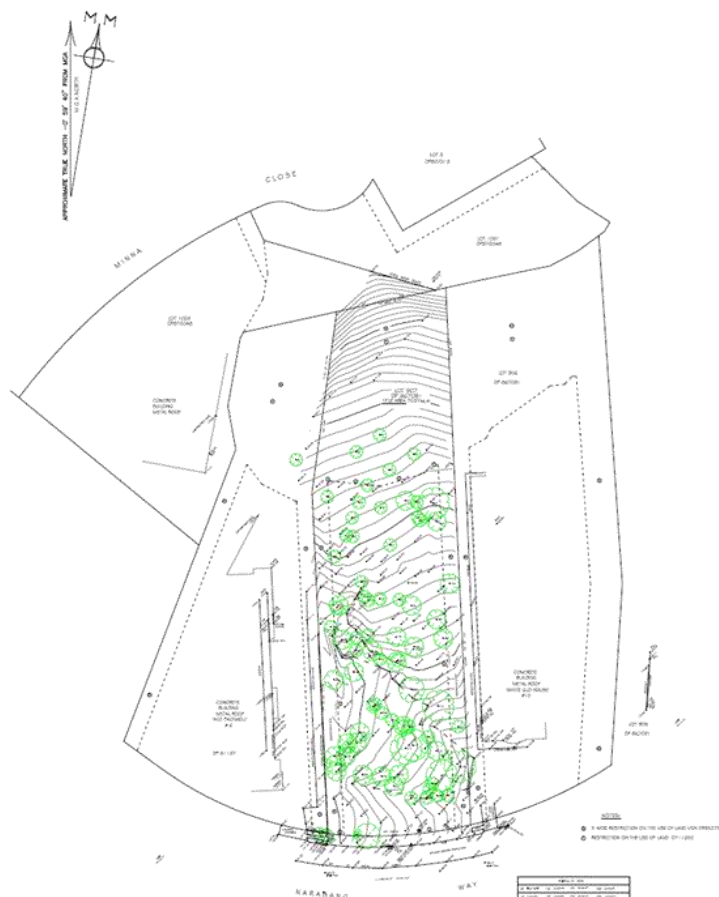
EXECUTIVE SUMMARY

- (i) This Planning Proposal involves an amendment to Warringah Local Environmental Plan 2011 (WLEP 2011) Land Zoning Map - Sheet LZN_007 to remove the E2 Environmental Conservation zone from the southern portion of the subject property resulting in the entire southern portion of the site being zoned B7 Business Park. The E2 Environmental Conservation zoning on the northern portion of the land will remain.
- (ii) This Planning Proposal has been prepared in accordance with the 'Guide to Preparing Planning Proposals' prepared by the NSW Department of Planning and Infrastructure.
- (iii) The accompanying Flora and Fauna Assessment, Preliminary Contamination Investigation and Aboriginal Heritage Assessment confirm that there is no biodiversity, contamination or Aboriginal archaeological constraints to the development of the portion of the site the subject of this Planning Proposal. Further, given the size and gradient of the small area of land, potential geotechnical issues can be appropriately managed.
- (iv) It has been determined that the E2 Environmental Conservation zoned portion of land, the subject of this application, does not display any ecological, scientific, cultural or aesthetic value to justify its current E2 Environmental Conservation zoning.
- (v) The Planning Proposal will facilitate the orderly and economic use and development of the land as intended by the B7 Business Park zoning of the balance of the southern portion of the site and as reflected by development on the balance of the properties located on the northern side of Narabang Way.
- (vi) Being employment lands such outcome will enable the B7 Business Park zone objectives to be achieved consistent with that anticipated by the Warringah Employment Study 2013 for Austlink Business Park. Not proceeding with the Planning Proposal will severely restrict the development and employment generating potential of the land such that it may remain vacant.

- (vii) This Planning Proposal is assessed against the consistency of the relevant State Environmental Planning Policies and s.117 Directions issued by the Director General and includes an evaluation of the proposal against the 'Net Community Benefit Test' criteria established in the draft Centres Policy.
- (viii) This Planning Proposal is consistent with the relevant strategic planning policies, directions and guidelines and achieves a net community benefit. Accordingly, it is appropriate for the proposal to receive the support of Council, being the relevant planning authority.

The subject property is legally described as Lot 907 in DP 867901, No. 8 Narabang Way, Belrose. The site is irregular in shape having a curved frontage and address to Narabang Way of 45.225 metres, depth of approximately 160 metres, a width at the rear boundary of 35.125 metres and an area of 7237 square metres.

The site is vacant being one of the only remaining undeveloped lots within Austlink Business Park. The property is well vegetated and also contains a number of exposed rock outcrops. The site falls approximately 24 metres across its surface towards the street frontage. The property is serviced and is able to gravity drain to the street drainage system. A survey extract is at Figure 1 below



Planning Proposal - Lot 907, DP 867091, No. 8 Narabang Way, Belrose

Figure 1 – Survey extract



Source: Google Earth

Figure 2 – Aerial location/ context photograph

The balance of land located with the Austlink Business Park has been developed in association with a range of uses including bulk good retailing, warehousing/ office development and ancillary retail support services. The site adjoins Council owned land to the north west No. 1A Minna Close. Mona Vale Road is located to the north, Forest Way to the east and Garigal National Park to the south and west of the Business Park.

2.0 PROJECT OVERVIEW

This report has been prepared in support of a Planning Proposal seeking an amendment to Warringah Local Environmental Plan 2011 (WLEP 2011) Land Zoning Map - Sheet LZN_007 to remove the E2 Environmental Conservation zone from the southern portion of the subject property resulting in the entire southern portion of the site being zoned B7 Business Park. The E2 Environmental Conservation zoning on the northern portion of the land will remain. The portion of the site to which this proposal relates is depicted in Figure 3 below.

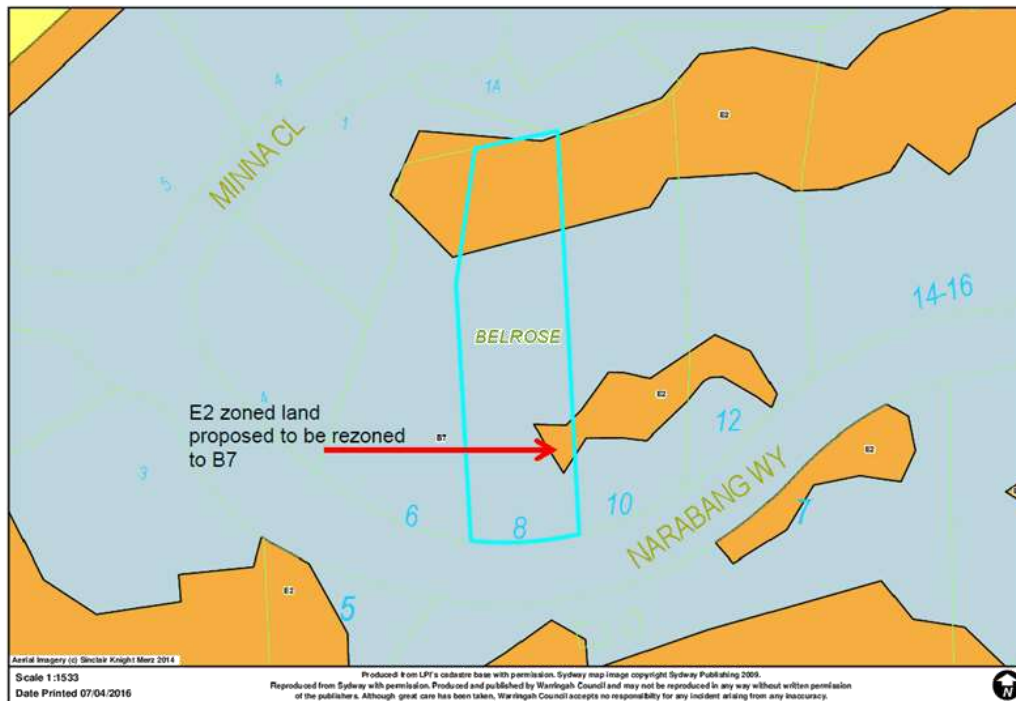


Figure 3 – Portion of site proposed to be rezoned

3.0 PART 1 – OBJECTIVES OR INTENDED OUTCOMES

3.1 Objectives

This Planning Proposal seeks an amendment to Warringah Local Environmental Plan 2011 (WLEP 2011) Land Zoning Map - Sheet LZN_007 to remove the E2 Environmental Conservation zone from the southern portion of the subject property resulting in the entire southern portion of the site being zoned B7 Business Park.

Such rezoning will facilitate the orderly and economic use and development of the land as intended by the B7 Business Park zoning of the balance of the southern portion of the site and as reflected by development on the balance of the properties located on the northern side of Narabang Way.

3.2 Intended Outcomes

The intended outcomes of the Planning Proposal are:

- To amend Warringah Local Environmental Plan 2011 (WLEP 2011) Land Zoning Map - Sheet LZN_007 to remove the E2 Environmental Conservation zone from the southern portion of the subject property resulting in the entire southern portion of the site being zoned B7 Business Park. The E2 zoning on the northern portion of the land will remain.
- To provide certainty to all stakeholders in relation to the future development potential of the land as reflected by is predominant B7 Business Park zoning.
- To facilitate a future development application to Council for the construction of an office/ warehouse development on the site the desired footprint of which was the subject of formal pre-DA discussions with Council on 17th December 2015 PLM2015/0132. This footprint is depicted in Figure 4 over page.

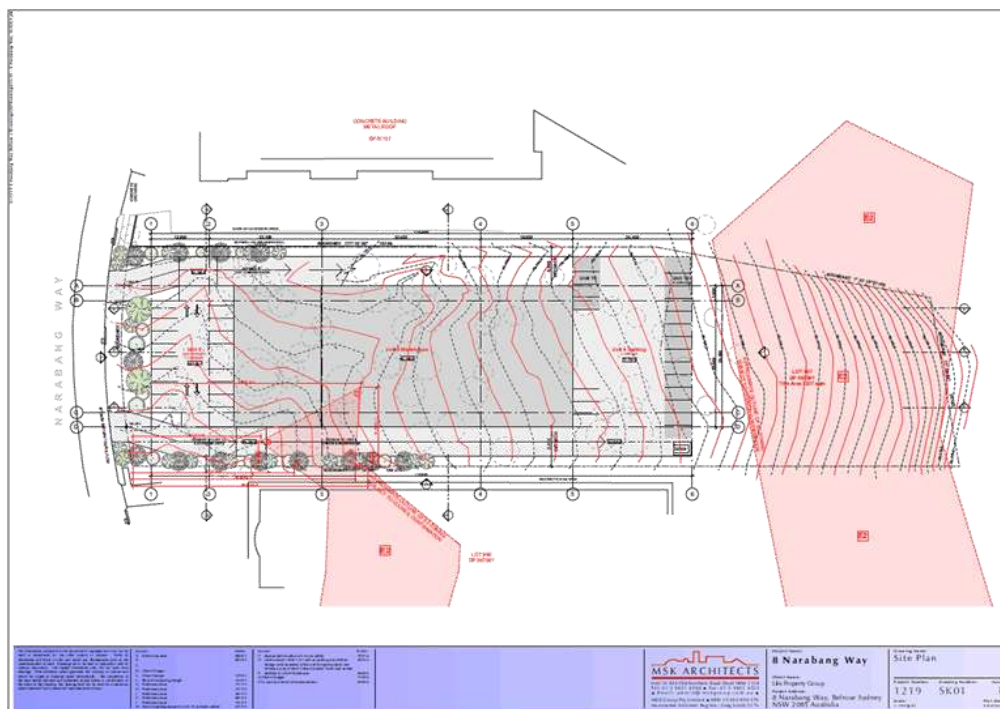


Figure 4 – Desired building footprint as presented at Pre-DA meeting of 17th December 2015 (PLM2015/0132)

4.0 PART 2 – EXPLANATION OF THE PROVISIONS

The application proposes an amendment to Warringah Local Environmental Plan 2011 (WLEP 2011) Land Zoning Map - Sheet LZN_007 to remove the E2 Environmental Conservation zone from the southern portion of the subject property resulting in the entire southern portion of the site being zoned B7 Business Park.

No changes are required to the written instrument or any other maps.

5.0 PART 3 – JUSTIFICATION

5.1 Section A - Need for the Planning Proposal

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

No.

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

The Planning Proposal is the best means of achieving the intended outcomes. The intrusion of the E2 Environmental Conservation zoning onto the southern portion of the land severely compromises the design and siting of future development on the site consistent with that realised on the balance of the properties located on the high side of Narabang Way.

5.1.3 Is there a net community benefit?

The *Guide to Preparing a Planning Proposal* produced by the Department of Planning states that the guidance on conducting a Net Community Benefit Test included in the Draft Centres Policy should be followed when assessing the net community benefit of a Planning Proposal.

The proposal is assessed against the evaluation criteria for the net community benefit test in the following table.

Criteria	Comment
<i>Will the LEP be compatible with agreed State and regional strategic direction for development in the area (eg land release, strategic corridors, development within</i>	The development of the site is not antipathetic to any State and Regional strategic direction as they relate to the

Planning Proposal - Lot 907, DP 867091, No. 8 Narabang Way, Belrose

800 metres of a transit node)?	location of B4 Business Park land.
<i>Is the LEP located in a global/regional city, strategic centre or corridor nominated within the Metropolitan Strategy or other regional/subregional strategy?</i>	No.
<i>Is the LEP likely to create a precedent or create or change the expectations of the landowner or other landholders?</i>	<p>No. The site specific rezoning seeks to remove a residual and isolated portion of E2 Environmental Conservation zoned land on the basis that its environmental characteristics do not support its environmental conservation zoning.</p> <p>No precedent will be created given the balance of the isolated E2 Environmental Protection zoned land on No's 10 and 12 Narabang Way has already been developed in accordance with the B7 Business Use zoning applying to the southern portion of these sites. Refer to Figures 2 and 3.</p>
<i>Have the cumulative effects of other spot rezoning proposals in the locality been considered? What was the outcome of these considerations?</i>	<p>We are not aware of any other spot rezonings within the Business Park.</p> <p>We note however that the balance of the isolated E2 Environmental Protection zoned land on No's 10 and 12 Narabang Way has effectively been rezoned given that it is occupied by existing warehouse/ office development. These properties were developed pursuant to Warringah Local Environmental Plan 2000.</p> <p>Given the small, isolated and site specific nature of the portion of land to which this rezoning proposal relates we do not consider there to be any potential cumulative rezoning impacts.</p>
<i>Will the LEP facilitate a permanent employment generating activity or result in a loss of employment lands?</i>	<p>No employment generating activities are permissible on the E2 Environmental Conservation zoned portion of the site. The majority of the site is zoned B7 Business Park an objective of which is to encourage employment opportunities.</p> <p>The Planning Proposal will facilitate the orderly and economic use and development of the land as intended by</p>

	the B7 Business Park zoning of the balance of the southern portion of the site and as reflected by development on the balance of the properties located on the northern side of Narabang Way.
<i>Will the LEP impact upon the supply of residential land and therefore housing supply and affordability?</i>	No.
<i>Is the existing public infrastructure (roads, rail, utilities) capable of servicing the proposed site?</i>	Yes. The existing site is fully serviced with anticipated traffic generation considered at the time of subdivision/ creation.
<i>Is there good pedestrian and cycling access? Is public transport currently available or is there infrastructure capacity to support future public transport?</i>	The site is accessed from Forest Way from the east and Mona Vale Road to the south and west. Forest Coach Lines run frequent bus services to and from Austlink Business Park. The Business Park is relatively isolated from residential and other commercial areas such that pedestrian and cycling access to and from the Business Park is generally poor.
<i>Will the proposal result in changes to the car distances travelled by customers, employees and suppliers? If so, what are the likely impacts in terms of greenhouse gas emissions, operating costs and road safety?</i>	No.
<i>Are there significant Government investments in infrastructure or services in the area whose patronage will be affected by the proposal? If so, what is the expected impact?</i>	No.
<i>Will the proposal impact on land that the Government has identified a need to protect (e.g. land with high biodiversity values) or have other environmental impacts? Is the land constrained by environmental factors such as flooding?</i>	Yes. The objectives of the E2 Environmental Protection zone are as follows: <ul style="list-style-type: none"> • To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values. • To prevent development that could destroy, damage or otherwise have an adverse effect on those values. • To protect and enhance the quality and character of visually sensitive

	<p>areas and preserve significant natural landforms in their natural state.</p> <ul style="list-style-type: none"> • To manage development in areas having steep sloping topography or that are subject to any potential landslip. • To manage water quality in significant water catchment areas. • To ensure that development, by way of its type, design and location, complements and enhances the natural environment in environmentally sensitive areas. <p>These objectives demonstrate that the portion of the site the subject of this rezoning proposal is considered to be of high ecological, scientific, cultural or aesthetic value.</p> <p>As previously indicated the E2 Environmental Conservation zoned portion of the land is small and isolated with any concern in relation to the ecological, scientific, cultural or aesthetic value of the balance of this fragmented zoning, as it extends onto No. 10 and 12 Narabang Way, clearly abandoned.</p> <p>We also note that an office/ warehouse development was previously approved on the subject site (DA2000/4802), and over the E2 Environmental Conservation zoned portion of land the subject of this application, pursuant to Warringah LEP 2000. At the date of determination, the site was located within Locality C9 – Austlink Business Park with the E2 zoned area of land in question cross hatched on the map. The Desired Future Character statement stated that areas shown cross hatched could only be developed if it was clearly demonstrated that the topography of the land was suitable for development and any Aboriginal relics found on the site were preserved in their natural state. Council had formed a clear opinion that these considerations had been satisfied.</p>
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	<p>The accompanying Flora and Fauna Assessment, dated June 2016, prepared by Travers Bushfire and Ecological (Attachment 1) confirms that the vegetation within the E2 Environmental Conservation zone portion of the site, to which this proposal relates, is <u>not</u> the threatened Ecological Community, Duffys Forest and that development of this portion of land will not likely cause any significant impact on locally occurring threatened fauna species.</p> <p>Further, the accompanying Preliminary Contamination Investigation, dated 31st May 2016, prepared by Geo-Logix (Attachment 2) confirms that a review of historical data, including aerial imagery, indicates that the site is greenfields and has not formerly been subject of any potentially contaminating land uses.</p> <p>Finally, the accompanying Aboriginal Assessment, dated 9th June 2016, prepared by MDCA (Attachment 3) confirms that such assessment has found no Aboriginal archaeological constraint to the proposed rezoning of the E2 lands in the south eastern portion of the development site</p> <p>In terms of aesthetics, the E2 zoned portion of land is not readily discernible as viewed from the street and does not display any aesthetically significant or unique environmental characteristics as to warrant its protection.</p> <p>Accordingly, we have formed the considered opinion that the E2 zoned portion of land, the subject of this application, does not display any ecological, scientific, cultural or aesthetic value to justify its current zoning.</p>
<p><i>Will the LEP be compatible/ complementary with surrounding land uses? What is the impact on amenity in the location and wider community? Will the public domain improve?</i></p>	<p>The proposal seeks to remove the E2 Environmental Conservation zone from the southern portion of the subject property resulting in the entire southern portion of the site being zoned B7 Business Park.</p>

	<p>The Planning Proposal will facilitate the orderly and economic use and development of the land as intended by the B7 Business Park zoning of the balance of the southern portion of the site and as reflected by development on the balance of the properties located on the northern side of Narabang Way.</p> <p>There will be a neutral impact on the public domain.</p>
<i>Will the proposal increase choice and competition by increasing the number of retail and commercial premises operating in the area?</i>	N/A
<i>If a stand-alone proposal and not a centre, does the proposal have the potential to develop into a centre in the future?</i>	N/A
<i>What are the public interest reasons for preparing the draft plan? What are the implications of not proceeding at that time?</i>	<p>The Planning Proposal will provide certainty to all stakeholders in relation to the future development potential of the land.</p> <p>The Planning Proposal will facilitate the orderly and economic use and development of the land as intended by the B7 Business Park zoning of the balance of the southern portion of the site and as reflected by development on the balance of the properties located on the northern side of Narabang Way.</p> <p>Being employment lands such outcome will enable the B7 Business Park zone objectives to be achieved consistent with that anticipated by the Warringah Employment Study 2013 for Austlink Business Park.</p> <p>Not proceeding will severely and unreasonably restrict the development and employment generating potential of the land such that it may remain vacant.</p> <p>In this regard the rezoning proposed is in the public interest.</p>

Based on the above evaluation criteria it is considered that the proposal will have a net community benefit.

5.2 Section B - Relationship to strategic planning framework

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

The Planning Proposal is not antipathetic to the objectives and actions contained within "A Plan for Growing Sydney (December 2014), the Draft North-East Subregional Strategy and the Metropolitan Plan for Sydney 2036 as it will facilitate the orderly and economic use and development of existing employment zoned land.

5.2.2 Is the Planning Proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?

The proposal is not antipathetic to the Warringah Council Strategic Community Plan 2012 or the Warringah Employment Study 2013

5.2.3 Is the Planning Proposal consistent with applicable state environmental planning policies?

The Planning Proposal is consistent with the all relevant State Environmental Planning Policies as summarised in the following table:

SEPP	Comment	Consistent
SEPP 55 – Remediation of Land	<p>When carrying out planning functions under the Act (including undertaking LEP amendments), SEPP 55 requires that a planning authority must consider the possibility that a previous land use has caused contamination of the site as well as the potential risk to health or the environment from that contamination.</p> <p>The accompanying Preliminary Contamination Investigation, dated 31st May 2016, prepared by Geo-Logix confirms that a review of historical data, including aerial imagery, indicates that the site is greenfields and has not formerly been subject of any potentially contaminating land uses.</p>	Yes

5.2.4 Is the Planning Proposal consistent with applicable Ministerial Directions (s.117 directions)?

The following table summarises the Planning Proposal's consistency with applicable Ministerial Directions:

S.117 Direction No. and Title	Comment	Consistent
1.1 Business and Industrial Zones	<p>The planning proposal will achieve the objectives of this direction by:</p> <ul style="list-style-type: none"> (a) facilitating and encouraging employment generating development on the land, (b) protecting the employment zoned land, and (c) support the viability of identified strategic centres. <p>Further the planning proposal does:</p> <ul style="list-style-type: none"> (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. 	Yes
2.1 Environmental Protection Zones	<p>The objective of this direction is to protect and conserve environmentally sensitive areas.</p> <p>The objectives of the E2 Environmental Protection zone are as follows:</p> <ul style="list-style-type: none"> • To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values. • To prevent development that could destroy, damage or otherwise have an adverse effect on those values. • To protect and enhance the quality and character of visually sensitive areas and preserve significant natural landforms in their natural state. • To manage development in areas having steep sloping topography or that are subject to any 	Yes

	<p><i>potential landslide.</i></p> <ul style="list-style-type: none"> <i>• To manage water quality in significant water catchment areas.</i> <i>• To ensure that development, by way of its type, design and location, complements and enhances the natural environment in environmentally sensitive areas.</i> <p>These objectives demonstrate that the portion of the site the subject of this rezoning proposal is considered to be of high ecological, scientific, cultural or aesthetic value.</p> <p>As previously indicated the E2 Environmental Conservation zoned portion of the land is small and isolated with any concern in relation to the ecological, scientific, cultural or aesthetic value of the balance of this fragmented zoning, as it extends onto No. 10 and 12 Narabang Way, clearly abandoned.</p> <p>The accompanying Flora and Fauna Assessment, dated June 2016, prepared by Travers Bushfire and Ecological confirms that the vegetation within the E2 Environmental Conservation zone portion of the site, to which this proposal relates, is <u>not</u> the threatened Ecological Community, Duffys Forest and that development of this portion of land will not likely cause any significant impact on locally occurring threatened fauna species.</p> <p>Further, the accompanying Preliminary Contamination Investigation, dated 31st May 2016, prepared by Geo-Logix confirms that a review of historical data including aerial imagery indicates that the site is greenfields and has not formerly been subject of any potentially contaminating land uses.</p> <p>Finally, the accompanying Aboriginal Assessment, dated 9th June 2016, prepared by MDCA confirms that such assessment has found no Aboriginal archaeological constraint to the proposed rezoning of the E2 lands in the south eastern portion of the development site</p> <p>In terms of aesthetics, the E2 zoned portion of land is not readily discernible as viewed from the street and does not display any aesthetically significant or unique environmental characteristics as to warrant its protection.</p>	
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	<p>In this regard, we have formed the considered opinion that the E2 zoned portion of land the subject of this application does not display any ecological, scientific, cultural or aesthetic value to justify its current Environmental Protection zoning.</p> <p>Accordingly, the planning proposal is not inconsistent with the terms of this direction.</p>	
2.3 Heritage Conservation	<p>The objective of this direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.</p> <p>The accompanying Aboriginal Assessment, dated 9th June 2016, prepared by MDCA confirms that such assessment has found no Aboriginal archaeological constraint to the proposed rezoning of the E2 lands in the south eastern portion of the development site</p> <p>Accordingly, the planning proposal is not inconsistent with the terms of this direction.</p>	Yes
4.4 Planning for Bushfire Protection	<p>The planning proposal is not inconsistent with the terms of this direction given that the majority of the site is already zoned B7 Business Park and able to be developed subject to appropriate bushfire hazard management.</p>	Yes
6.3 Site Specific Provisions	<p>The objective of this direction is to discourage unnecessarily restrictive site specific planning controls.</p> <p>The direction applies when a relevant planning authority prepares a Planning Proposal that will allow a particular development to be carried out.</p> <p>The application proposes that the land be zoned B7 Business Park, consistent with the existing zoning of the majority of the site, with no change to any existing planning controls or the creation of any site specific provisions necessary.</p>	Yes

7.1 Implementation of the Metropolitan Strategy	In accordance with this direction Planning Proposals shall be consistent with the NSW Government's <i>Metropolitan Strategy: City of Cities, A Plan for Sydney's Future</i> . As discussed previously in this report, the planning proposal is consistent with the relevant provisions of the Metropolitan Strategy.	Yes
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5.3 Section C - Environmental, social and economic impact

5.3.1 *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 accompanying Flora and Fauna Assessment, dated June 2016, prepared by Travers Bushfire and Ecological confirms that the vegetation within the E2 Environmental Conservation zone portion of the site, to which this proposal relates, is not the threatened Ecological Community, Duffys Forest and that development of this portion of land will not likely cause any significant impact on locally occurring threatened fauna species.

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

The Planning Proposal will facilitate development over the entire southern portion of the site with an assessment of other likely environmental effects appropriately deferred to an assessment of any future development application against the provisions of Section 79C of the Environmental Planning and Assessment Act 1979.

5.3.3 *How has the Planning Proposal adequately addressed any social and economic effects?*

The Planning Proposal will have no adverse economic or social effects.

The Planning Proposal will however facilitate the orderly and economic use and development of the land as intended by the B7 Business Park zoning of the balance of the southern portion of the site and as reflected by development on the balance of the properties located on the northern side of Narabang Way.

Being employment lands such outcome will enable the B7 Business Park zone objectives to be achieved consistent with that anticipated by the Warringah Employment Study 2013 for Austlink Business Park.

5.4 Section D - State and Commonwealth interests

5.4.1 *Is there adequate public infrastructure for the Planning Proposal?*

The site is fully serviced with no augmentation of public infrastructure required to accommodate future development. The Planning Proposal will not result in any traffic generation.

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

Relevant public authorities will be consulted following the gateway determination.

6.0 PART 4 - COMMUNITY CONSULTATION

Relevant community stakeholders and public authorities will be consulted following the gateway determination. 'A guide to preparing local environmental plans' produced by the NSW Department of Planning sets out the community consultation requirements for Planning Proposals.

The guide indicates that consultation will be tailored to specific proposals. The exhibition for low impact Planning Proposals will generally be 14 days and all other Planning Proposals will be 28 days. The subject Planning Proposal is considered to be a low impact proposal.

Community consultation is to be commenced by giving notice of the public exhibition of the Planning Proposal in a local newspaper, on the Warringah Council website and in writing to adjoining landowners. The written notice of the Planning Proposal will:

- Give a brief description of the objectives or intended outcomes of the Planning Proposal;
- Indicate the land affected by the Planning Proposal;
- State where and when the Planning Proposal can be inspected;

- Give the name and address of the relevant planning authority (Council) for the receipt of submissions; and
- Indicate the last date for submissions.

During the exhibition period, the following material will be made available for inspection:

- The Planning Proposal, in the form approved for community consultation by the Director General of Planning;
- The gateway determination; and
- Any studies relied upon by the Planning Proposal.

7.0 CONCLUSION

This Planning Proposal involves an amendment to Warringah Local Environmental Plan 2011 (WLEP 2011) Land Zoning Map - Sheet LZN_007 to remove the E2 Environmental Conservation zone from the southern portion of the subject property resulting in the entire southern portion of the site being zoned B7 Business Park. The E2 zoning on the northern portion of the land will remain.

This Planning Proposal has been prepared in accordance with the '*Guide to Preparing Planning Proposals*' prepared by the NSW Department of Planning (DP&I).

The accompanying Flora and Fauna Assessment, Preliminary Contamination Investigation and Aboriginal Heritage Assessment confirm that there is no biodiversity, contamination or Aboriginal archaeological constraints to the development of the portion of the site the subject of this Planning Proposal.

Further, the E2 zoned portion of land is not readily discernible as viewed from the street and does not display any aesthetically significant or unique environmental characteristics as to warrant its protection. Finally, given the size and gradient of the small area of land, the subject of this application, potential geotechnical issues can be appropriately managed.

Accordingly, it has been determined that the E2 Environmental Conservation zoned portion of land, the subject of this application, does not display any ecological, scientific, cultural or aesthetic value to justify its current E2 Environmental Conservation zoning.

The Planning Proposal will facilitate the orderly and economic use and development of the land, as intended by the B7 Business Park zoning of the balance of the southern portion of the site, and as reflected by development on the balance of the properties located on the northern side of Narabang Way.

Being employment lands such outcome will enable the B7 Business Park zone objectives to be achieved consistent with that anticipated in the Warringah Employment Study 2013 for Austlink Business Park. Not proceeding with the Planning Proposal will severely restrict the development and employment generating potential of the land such that it may remain vacant.

For the reasons outlined above, in our opinion, it would be appropriate for Northern Beaches Council, as the relevant planning authority, to support the Planning Proposal as outlined.

Yours faithfully

Boston Blyth Fleming Pty Limited



Greg Boston

B Urb & Reg Plan (UNE) MPIA CPP

Director

Attachments

Attachment 1 - Flora and Fauna Assessment, dated June 2016, prepared by Travers Bushfire and Ecological

Attachment 2 - Preliminary Contamination Investigation, dated 31st May 2016, prepared by Geo-Logix

Attachment 3 - Aboriginal Assessment, dated 9th June 2016, prepared by MDCA

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PLANNING PROPOSAL

NARABANG WAY, BELROSE

Proposed rezoning of parts of the properties at Nos. 8, 10 and 12 Narabang Way,
Belrose

AUGUST 2016

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Part 1 – Intended Outcomes

This planning proposal applies to parts of the properties at Nos. 8, 10 and 12 Narabang Way, Belrose (Lots 907, 906 and 905 in DP 867091) as shown in Part 4 (Map 1).

The intended outcome of the planning proposal is to rezone the southern part of these properties from E2 Environmental Conservation zoned land to B7 Business Park, as shown in Part 4 (Map 2). This is in recognition that the land does not meet the criteria for the application of the E2 zone, that is, land which comprises high ecological, scientific, cultural or aesthetic values.



Part 2 – Explanation of Provisions

The proposed amendment to Warringah Local Environmental Plan 2011 is:

- Amend Land Zoning Map – Sheet LZN_007 to rezone part of the properties at Nos. 8, 10 and 12 Narabang Way, Belrose from Zone E2 Environmental Conservation to Zone B7 Business Park as shown in Part 4 (Map 2).

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Part 3 – Justification

Section A – Need for the planning proposal

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

No. 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 land owner. Council has amended the applicant's planning proposal to include Nos. 10 and 12 Narabang Way.

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

Yes. The majority of the site is zoned B7 Business Park. This planning proposal will remove the southern portion of E2 zoned land on the site. This land no longer meets the objectives of the E2 zone, which is to comprise high ecological, scientific, cultural or aesthetic values. In particular:

- Nos. 10 and 12 Narabang Way are already developed under the previous planning instrument for the site, Warringah Local Environmental Plan 2000 (WLEP 2000). WLEP 2000 permitted development over the now E2 zoned area, subject to merit assessment.
- No. 8 Narabang Way does not form part of an endangered ecological community (EEC) as identified under the NSW Threatened Species Conservation Act 1995.
- No obvious natural features differentiate the E2 zoned area at No. 8 Narabang Way from adjoining vegetated areas on the site which are zoned B7 Business Park.
- Topography is not a significant constraint to development and can be addressed in any future development application for construction at No. 8 Narabang Way.
- A Preliminary Aboriginal Heritage Assessment confirms that the proposed area for rezoning at No. 8 Narabang Way contains no Aboriginal archaeological potential.

Section B – Relationship to strategic planning framework

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

Yes. This planning proposal achieves the overall intent of 'A Plan for Growing Sydney' and does not undermine the achievement of its planning principles, directions and priorities for subregions, strategic centres and transport gateways.

Due to the small scale of the planning proposal, overlaps with the directions and actions are limited. Notwithstanding this, the planning proposal is consistent with the following directions and actions:

- **Direction 3.1: Revitalise existing suburbs:** This planning proposal provides an opportunity for an employment land use within an established business park. This will improve access to jobs and services for the community.

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- **Action 4.1.1 – Protect and deliver a network of high conservation value land by investing in green corridors and protecting native vegetation and biodiversity:**
This planning proposal relates to the southern portion of E2 zoned land only. Nos. 10 and 12 Narabang Way are already developed and contain no conservation value, with the exception of the E2 zoned area on the northern boundary, which is to remain. The applicant's Flora and Fauna Study notes that whilst the area zoned E2 at No. 8 Narabang Way contains remnant native vegetation and mature trees in good condition, no obvious natural features differentiate it from the adjoining remnant vegetation that is currently zoned B7.

In addition, independent assessment of the proposed area for rezoning at No. 8 Narabang Way by Council staff found that it did not form part of an endangered ecological community (EEC) as identified under the NSW Threatened Species Conservation Act 1995.

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

4. Is the planning proposal consistent with a council's local strategy or other local strategic plan?

Yes. This planning proposal is consistent with the Warringah Community Strategic Plan 2023. The Warringah Community Strategic Plan 2023 identifies the actions to achieve Council's vision, namely:

- Objective 5.1 - We have attractive and functional urban and commercial centres that adapt to the needs of residents and business

This planning proposal provides the opportunity for an employment land use within an established business park. This will be consistent with the function and role of the Austlink Business Park as an important employment area for the local area.

The planning proposal is also consistent with the adopted Warringah Employment Study 2013. The Employment Study is a strategic planning background study used to inform Council's land use planning projects. The Study provides an assessment of all employment lands in the former Warringah Local Government area and identifies recommendations to improve and strengthen employment. The Austlink Business Park is recognised as a strategic employment site within the region to help meet employment targets. The planning proposal is consistent with the recommendations of this Study.

5. Is the planning proposal consistent with applicable State Environmental Planning Policies?

This planning proposal is consistent with applicable state environmental planning policies (as shown in Attachment 1), namely:

- **SEPP No. 19 (Bushland in Urban Areas):** This planning proposal takes into consideration the aims of the policy to protect and preserve bushland. The Applicant has prepared a Flora and Fauna Study for No. 8 Narabang Way. This study has also been reviewed by Council staff. The proposal is considered appropriate as the land subject to the proposed rezoning does not meet the objectives of the E2 Environmental Conservation zone, which is to comprise high ecological, scientific, cultural or aesthetic values, specifically.

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- **SEPP No. 55 (Remediation of Land):** This planning proposal involves the rezoning of an E2 to B7 zone. The Applicant has submitted a Preliminary Contamination Investigation for No. 8 Narabang Way in accordance with the requirements of State Environmental Planning Policy No. 55 – Remediation of Land. The study concludes that the potential for site contamination is low and the subject site is considered suitable for rezoning. Council's records indicate no potential land contaminating uses for Nos. 10 and 12 Narabang Way.

6. Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?

This planning proposal is consistent with applicable Ministerial s.117 directions (as shown in Attachment 2) including:

- **Direction 1.1 – Business and Industrial Zones:** This planning proposal retains the capacity of an existing employment area.
- **Direction 2.3 – Heritage Conservation:** This planning proposal takes into consideration a Preliminary Aboriginal Heritage Assessment to identify whether No. 8 Narabang Way contains Aboriginal archaeological potential. The Study concludes that there are no Aboriginal archaeological constraints to the proposal. Nos. 10 and 12 Narabang Way are already developed.
- **Direction 3.4 – Integrating Land Use and Transport:** The site is located in the vicinity of a local bus route and is within the Austlink Business Park. This planning proposal ensures land uses and building forms relate to walkable catchments to public transport and services.
- **Direction 7.1 – Implementation of A Plan for Growing Sydney:** This planning proposal is consistent with the actions contained in A Plan for Growing Sydney (see Section B(3)).

However, this planning proposal is likely to be inconsistent with certain Ministerial s.117 directions, namely:

- **Direction 2.1 – Environment Protection Zones:** This planning proposal is inconsistent with this direction as it proposes to rezone the southern parcel of E2 zoned land on the site.

In accordance with clause 6(b) of this direction, the Applicant has submitted a Flora and Fauna Study for No. 8 Narabang Way to address the inconsistency. Council has also reviewed this study. The Study concludes that the subject site does not contain the threatened ecological community, Duffys Forest. The Study also concludes that development of the subject site will not likely cause any significant impact on locally occurring threatened fauna species.

Further, in accordance with clause 6(d) of this direction, the inconsistency is considered to be of minor significance, given Nos. 10 and 12 are already developed.

- **Direction 4.4 – Planning for Bushfire Protection:** The site is located in a bushfire prone buffer in proximity to land mapped as bushfire prone land. Clause (4) requires

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Council to consult with the Commissioner of the NSW Rural Fire Service following receipt of the Gateway determination.

Section C – Environmental, social and economic impact

7. 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?

It is unlikely that critical habitat or threatened species, populations or ecological communities or their habitats will be adversely affected as a result of the proposal. Nos. 10 and 12 Narabang Way are already developed. The applicant's Flora and Fauna Study for No. 8 Narabang Way notes that whilst the area zoned E2 contains remnant native vegetation and mature trees in good condition, no obvious natural features differentiate it from the adjoining remnant vegetation that is currently zoned B7.

In addition, independent assessment of the area proposed for rezoning at No. 8 Narabang Way by Council staff found that it did not form part of an endangered ecological community (EEC) as identified under the NSW Threatened Species Conservation Act 1995.

Given that No. 8 Narabang Way is undeveloped, Council also conducted an assessment in accordance with sections 78A, 79B, 79C, 111 and 112 of the Environmental Planning and Assessment Act (EPA Act) (see Table 1).

Table 1: Assessment for significant effect on threatened species, populations or ecological communities, or their habitats

Species, Community, Population	Is the assessment adequate?	Comment / Recommendations
Threatened Flora Epacris purpurascens var. purpurascens Microtis angusii Persoonia hirsuta Pimelea curviflora var. curviflora Tetratheca glandulosa	Yes	It is noted that surveys for cryptic species (e.g. <i>Pimelea curviflora</i> var. <i>curviflora</i> and <i>Tetratheca glandulosa</i>) were outside the flowering season. Given the previous level of flora surveys undertaken on site, it is considered unlikely that these species would occur.
Threatened Fauna Giant Burrowing Frog Red-crowned Toadlet Rosenberg's Goanna Little Eagle Square-tailed Kite Gang-gang Cockatoo Glossy Black- Cockatoo Little Lorikeet Barking Owl Powerful Owl Masked Owl Sooty Owl Varied Sittella Scarlet Robin Spotted-tailed Quoll Southern Brown Bandicoot	Yes – for planning proposal purposes only Further assessment required at the development application stage.	Assessment is considered sufficient for the purposes of the current planning proposal (rezoning of 200m ² E2 zone in south of site). Given the scale of impacts associated with the pending warehouse development application, further fauna survey is required to properly assess potential usage of the site by threatened fauna species. It is recommended that fauna survey is undertaken on site during the appropriate season and climatic conditions (e.g for Red-crowned Toadlet). Survey methods need to be updated in accordance with relevant industry guidelines and should include the use of nest boxes (for detection of Eastern Pygmy Possum) and motion sensor cameras (for detection of Southern Brown Bandicoot). Given that the proposed future development would result in increased fragmentation and isolation of habitat, surveys should include the adjoining and potentially isolated areas of habitat (e.g. across the northern E2 portion).

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Species, Community, Population	Is the assessment adequate?	Comment / Recommendations
Was the level of survey effort employed and techniques used adequate for the site and proposal?		Comment: The level of survey effort is considered adequate in relation to the area affected by the planning proposal.
<input checked="" type="checkbox"/> Yes – for planning proposal purposes only		As above, further survey for threatened fauna is recommended to make a more informed assessment for the pending warehouse development application proposal.

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

This planning proposal addresses the natural hazards that impact on the subject site, namely bushfire hazard, as outlined in the Warringah Bush Fire Prone Land Map 2016. It is considered that this issue can be managed at the development assessment stage. In addition, the planning proposal will include consultation with the Commissioner of the NSW Rural Fire Service following receipt of the Gateway determination.

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

Due to the scale of the planning proposal, there are unlikely to be sizeable social or economic effects. The intended outcome of the planning proposal represents an opportunity to provide for employment within an established business park.

Section D – State and Commonwealth interests

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

Yes. The existing local infrastructure is considered adequate to allow for the development of No. 8 Narabang Way resulting from the planning proposal.

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

An update to this section of the planning proposal will occur following consultation with the State and Commonwealth public authorities following the gateway determination.

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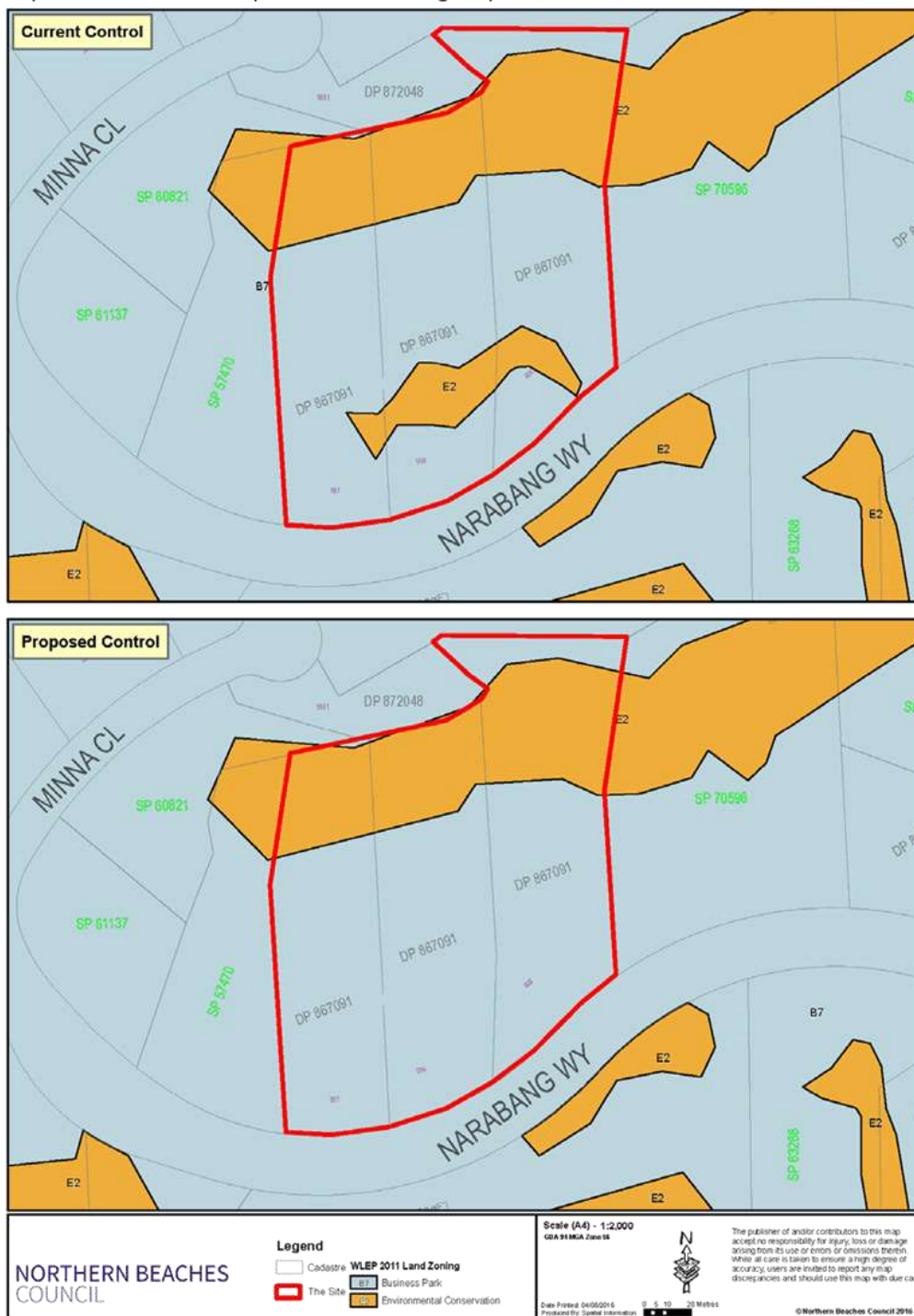
Part 4 – Maps

Map 1 – Site Identification Map



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Map 2 – Current and Proposed Land Zoning Map





Part 5 – Community Consultation

Council placed the applicant's planning proposal on non-statutory public exhibition in accordance with the adopted Warringah Community Engagement Policy and Matrix from Saturday 25 June 2016 to Saturday 9 July 2016 (2 weeks). Notification included:

- A public notice in the Manly Daily notifying of the public exhibition on 25 June 2016
- Letters to land owners and occupiers within 100m of the subject site
- Electronic copies of the exhibition material on Council's website
- Email to registered community members who have listed their interest on Council's Community Engagement Register for the former Warringah local government area

28 submissions were received in response to the public exhibition period. Council's response to the submissions is contained within the attached Council report of 23 August 2016. Key issues raised included environmental and traffic concerns.

It is noted that Sydney Water raised no objection to the planning proposal as existing water and waste water services are available for the site.

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

The Gateway determination will confirm the public consultation that must be undertaken. It is recommended that the following government agencies be consulted:

- Office of Environment and Heritage
- NSW Rural Fire Service

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Part 6 – Project Timeline

Task	Anticipated timeframe
Referral to Department of Planning & Environment for Gateway determination	August 2016
Issue of Gateway determination	October 2016
Government agency consultation (if required)	November 2016
Public exhibition period	December 2016
Consideration of submissions	January 2017
Report to Council	February 2017
Submit planning proposal to the Department of Planning & Environment for determination	February 2017

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Attachment 1 – State Environmental Planning Policies (SEPPs)

SEPPs (as at July 2016)		Applicable	Consistent
1	Development Standards	Yes	Yes
14	Coastal Wetlands	No	N/A
15	Rural Landsharing Communities*	No	N/A
19	Bushland in Urban Areas	Yes	Yes
21	Caravan Parks	Yes	Yes
26	Littoral Rainforests	No	N/A
29	Western Sydney Recreation Area*	No	N/A
30	Intensive Agriculture	Yes	Yes
32	Urban Consolidation (Redevelopment of Urban Land)*	Yes	Yes
33	Hazardous and Offensive Development	Yes	Yes
36	Manufactured Home Estates	No	N/A
39	Spit Island Bird Habitat*	No	N/A
44	Koala Habitat Protection	Yes	Yes
47	Moore Park Showground	No	N/A
50	Canal Estate Development	Yes	Yes
52	Farm Dams and Other Works in Land and Water Management Plan Areas	No	N/A
55	Remediation of Land	Yes	Yes
59	Central Western Sydney Regional Open Space and Residential*	No	N/A
62	Sustainable Aquaculture	Yes	Yes
64	Advertising and Signage	Yes	Yes
65	Design Quality of Residential Apartment Development	No	N/A
70	Affordable Housing (Revised Schemes)	No	N/A
71	Coastal Protection	No	N/A
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	Yes	Yes
	(Affordable Rental Housing) 2009	Yes	Yes
	(Building Sustainability Index: BASIX) 2004	Yes	Yes
	(Exempt and Complying Development Codes) 2008	Yes	Yes
	(Housing for Seniors or People with a Disability) 2004	No	N/A
	(Infrastructure) 2007	Yes	Yes
	(Integration and Repeals) 2016	Yes	Yes
	(Kosciuszko National Park – Alpine Resorts) 2007	No	N/A
	(Kurnell Peninsula) 1989	No	N/A
	(Mining, Petroleum Production and Extractive Industries) 2007	Yes	Yes
	(Miscellaneous Consent Provisions) 2007	Yes	Yes
	(Penrith Lakes Scheme) 1989	No	N/A
	(Rural Lands) 2008	No	N/A
	(SEPP 53 Transitional Provisions) 2011*	No	N/A
	(State and Regional Development) 2011	Yes	Yes
	(State Significant Precincts) 2005	Yes	Yes
	(Sydney Drinking Water Catchment) 2011	Yes	Yes
	(Sydney Region Growth Centres) 2006	No	N/A
	(Three Ports) 2013	No	N/A
	(Urban Renewal) 2010	No	N/A
	(Western Sydney Employment Area) 2009	No	N/A
	(Western Sydney Parklands) 2009	No	N/A

* SEPP to be repealed on 5 August 2016 in accordance with SEPP (Integration and Repeals) 2016.

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Attachment 2 – Ministerial s.117 directions

Directions	Applicable	Consistent
1 Employment and Resources		
1.1 Business and Industrial Zones	Yes	Yes
1.2 Rural Zones	No	N/A
1.3 Mining, Petroleum Production and Extractive Industries	No	N/A
1.4 Oyster Aquaculture	No	N/A
1.5 Rural Lands	No	N/A
2 Environment and Heritage		
2.1 Environment Protection Zones	Yes	Yes
2.2 Coastal Protection	No	N/A
2.3 Heritage Conservation	Yes	Yes
2.4 Recreation Vehicle Areas	Yes	Yes
2.5 Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEP's	No	N/A
3 Housing, Infrastructure and Urban Development		
3.1 Residential Zones	No	N/A
3.2 Caravan Parks and Manufactured Home Estates	Yes	Yes
3.3 Home Occupations	Yes	Yes
3.4 Integrating Land Use and Transport	Yes	Yes
3.5 Development Near Licensed Aerodromes	No	N/A
3.6 Shooting Ranges	No	N/A
4 Hazard and Risk		
4.1 Acid Sulfate Soils	No	N/A
4.2 Mine Subsidence and Unstable Land	No	N/A
4.3 Flood Prone Land	No	N/A
4.4 Planning for Bushfire Protection	Yes	Yes
5 Regional Planning		
5.1 Implementation of Regional Strategies	No	N/A
5.2 Sydney Drinking Water Catchments	No	N/A
5.3 Farmland of State and Regional Significance on the NSW Far North Coast	No	N/A
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	No	N/A
5.5 Development in the vicinity of Ellalong, Paxton and Millfield (Cessnock LGA) (Revoked 18 June 2010)	No	N/A
5.6 Sydney to Canberra Corridor (Revoked 10 July 2008 See amended Direction 5.1)	No	N/A
5.7 Central Coast (Revoked 10 July 2008. See amended Direction 5.1)	No	N/A
5.8 Second Sydney Airport: Badgerys Creek	No	N/A
5.9 North West Rail Link Corridor Strategy	No	N/A
5.10 Implementation of Regional Plans	No	N/A
6 Local Plan Making		
6.1 Approval and Referral Requirements	Yes	Yes
6.2 Reserving Land for Public Purposes	Yes	Yes
6.3 Site Specific Provisions	No	N/A
7 Metropolitan Planning		
7.1 Implementation of A Plan for Growing Sydney	Yes	Yes
7.2 Implementation of Greater Macarthur Land Release Investigation	No	N/A