

## Greater Sydney Commission Bill 2015

First print  
New South Wales  
**Greater Sydney Commission Bill 2015**  
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**Explanatory note**

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The objects of this Bill are as follows:

- (a) to constitute the Greater Sydney Commission (the **Commission**) as a NSW Government agency having functions relating to planning and development in the Greater Sydney Region,
- (b) to provide for the constitution of Sydney planning panels for the Greater Sydney Region which will operate as joint regional planning panels under the *Environmental Planning and Assessment Act 1979* (the **Planning Act**),
- (c) to amend the Planning Act to authorise the Commission to make local environmental plans under that Act for the Greater Sydney Region and to establish a scheme for strategic planning in the Greater Sydney Region and other regions declared by the Minister.

## Outline of provisions

**Part 1 Preliminary**

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** defines words and phrases used in the proposed Act. The **Greater Sydney Region** is the region identified by the map in Schedule 1 to the proposed Act.

**Clause 4** provides that the regulations may amend Schedule 1 to replace the map so as to extend or reduce the Greater Sydney Region.

## **Part 2 Greater Sydney Commission**

### **Division 1 Constitution of Commission**

**Clause 5** constitutes the Greater Sydney Commission as a body corporate and provides that it is a NSW Government agency (which has the effect of conferring the status, privileges and immunities of the Crown on the Commission).

**Clause 6** provides that the Commission will consist of persons appointed by the Minister and 3 ex-officio members (being the Secretaries of the Department of Planning and Environment, the Department of Transport and the Treasury). The appointed persons consist of 4 persons (referred to as **Greater Sydney Commissioners**) who will have expertise in specified areas, and those persons appointed by the Minister to represent the districts declared under proposed section 75AB (b) of the Planning Act in respect of the Greater Sydney Region (referred to as **District Commissioners**). One of the Greater Sydney Commissioners is to be appointed by the Minister as the Chief Commissioner. The other Greater Sydney Commissioners will have principal responsibility for the activities of the Commission to the extent they relate to environmental, social and economic matters.

**Clause 7** provides that the Chief Executive Officer of the Commission (who is employed in the Public Service) is responsible for the day to day management of the affairs of the Commission in accordance with any directions of the Commission.

**Clause 8** provides that staff may be employed in the Public Service to enable the Commission to exercise its functions.

### **Division 2 Objectives and functions of Commission**

**Clause 9** specifies the principal objectives of the Commission which include leading metropolitan planning for the Greater Sydney Region.

**Clause 10** specifies the functions of the Commission which include providing advice and making recommendations to the Minister on matters relating to planning and development in the Greater Sydney Region. The Commission has such other functions as are conferred or imposed on it (including functions delegated to it) under any other Act such as the Planning Act.

**Clause 11** enables the Commission to delegate its functions (including functions delegated to it) to certain authorised persons or bodies.

### **Division 3 Committees**

**Clause 12** establishes the Finance and Governance Committee of the Commission which will comprise the Greater Sydney Commissioners.

**Clause 13** establishes the Strategic Planning Committee of the Commission which will comprise the Greater Sydney Commissioners and the District Commissioners representing the districts of the Greater Sydney Region in respect of which the Committee is exercising its functions.

**Clause 14** establishes the Infrastructure Delivery Committee of the Commission which will comprise the Greater Sydney Commissioners, the ex-officio members and optional District Commissioners appointed by the Chief Commissioner.

**Clause 15** enables the Commission to establish other committees.

**Clause 16** provides for the establishing of subcommittees of any committee of the Commission.

**Clause 17** provides for the procedure of committees of the Commission and any subcommittee of a committee.

### **Part 3 Sydney planning panels**

**Clause 18** enables the Minister to constitute a Sydney planning panel for any part (or for the whole) of the Greater Sydney Region. A Sydney planning panel is taken to be a joint regional planning panel under and for the purposes of the Planning Act and the instruments made under that Act. However the membership of a Sydney planning panel will be determined in accordance with the proposed Act (see proposed Schedule 3).

### **Part 4 Miscellaneous**

**Clause 19** provides that the proposed Act binds the Crown.

**Clause 20** requires local councils in the Greater Sydney Region to co-operate with the Commission in connection with the exercise of its functions.

**Clause 21** requires the Commission to report annually on the outcomes achieved by the Commission and on the implementation of strategic plans made under proposed Part 3B of the Planning Act for the Greater Sydney Region.

**Clause 22** prohibits the disclosure of information obtained in connection with the administration of the proposed Act.

**Clause 23** limits personal liability for matters or things done or omitted to be done in good faith for the purposes of executing the proposed Act or the provisions of any other Act that confer or impose functions on the Commission.

**Clause 24** provides for proceedings for an offence under the proposed Act to be dealt with summarily before the Local Court.

**Clause 25** provides for the making of regulations for the purposes of the proposed Act.

**Clause 26** provides for the review of the proposed Act 5 years after its commencement.

### **Schedule 1 Greater Sydney Region**

**Schedule 1** contains a map of the Greater Sydney Region.

### **Schedule 2 Members and procedure of Commission**

**Schedule 2** contains standard provisions relating to the members and procedure of the Commission.

### **Schedule 3 Sydney planning panels**

**Schedule 3** contains provisions with respect to the members and procedure of Sydney planning panels. A Sydney planning panel is to consist of 3 members appointed by the Minister (one of whom is a District Commissioner) and 2 nominees of an applicable council (being the council of an area situated in the part of the Greater Sydney Region for which the planning panel is constituted).

### **Schedule 4 Savings, transitional and other provisions**

**Schedule 4** provides for the making of savings and transitional regulations consequent on the enactment of the proposed Act and Acts that amend it.

## Schedule 5 Amendment of Environmental Planning and

### Assessment Act 1979 No 203

**Schedule 5 [1] and [2]** make it clear that the Greater Sydney Commission may be the consent authority in relation to a development application if legislation so specifies.

**Schedule 5 [3]** inserts a definition of **Greater Sydney Region** for the purposes of the Planning Act.

**Schedule 5 [4]** adds a note in the definition of **joint regional planning panel** referring to Part 3 of the proposed Act which provides that a Sydney planning panel constituted under that Part is taken to be a joint regional planning panel.

**Schedule 5 [5]** enables certain functions to be delegated to the Greater Sydney Commission.

**Schedule 5 [6]** makes it clear that the Planning Assessment Commission can exercise functions delegated to it under Acts other than the Planning Act.

**Schedule 5 [7]** makes it clear that a joint regional planning panel can exercise functions delegated to it under the Planning Act or any other Act.

**Schedule 5 [9] and [12]** provide that the matters in respect of which SEPPs and LEPs may be made will include matters that are of environmental planning significance to a district under proposed Part 3B (to be inserted by the proposed Act).

**Schedule 5 [11]** authorises the Greater Sydney Commission to make local environmental plans for local government areas in the Greater Sydney Region. **Schedule 5 [8]** is a consequential amendment and **Schedule 5 [10]** precludes the Minister from making local environmental plans for local government areas in the Greater Sydney Region.

**Schedule 5 [13]** provides that the Minister may direct that a person or body other than a local council is the relevant planning authority for a proposed instrument if the Secretary of the Department of Planning and Environment has recommended that the proposed instrument should be submitted for a “gateway” determination under section 56 of the Planning Act or should be made.

**Schedule 5 [14]** inserts a new Part that makes provision for strategic planning in relation to regions of the State (being the Greater Sydney Region and any other region declared by the Minister) and to districts in those regions. Under the proposed Part, draft regional plans and district plans may be prepared (or required to be prepared) for the region or district concerned. Once such a plan is made by the Minister (or, in the case of district plans for the Greater Sydney Region, by the Greater Sydney Commission) it must be published on the NSW planning portal. The existing document called *A Plan for Growing Sydney* is taken to be the regional plan for the Greater Sydney Region and the Greater Sydney Commission will be required to review this initial plan. The proposed Part also provides for the content, public exhibition and implementation of plans prepared and made under the proposed Part.

### Schedule 6 Amendment of other Acts

**Schedule 6.1** amends the *Public Finance and Audit Act 1983* to provide for financial auditing and annual reporting in relation to the Commission.

**Schedule 6.2** amends the *Statutory and Other Offices Remuneration Act 1975* to provide that the remuneration payable to any Greater Sydney Commissioner who is appointed to hold office on a full-time basis is to be determined by the Statutory and Other Offices Remuneration Tribunal.



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No , 2015

# A Bill for **Greater Sydney Commission Bill 2015**

## New South Wales

An Act to constitute and confer functions on the Greater Sydney Commission and to provide for the constitution of planning panels for the Greater Sydney Region; to amend the *Environmental Planning and Assessment Act 1979* to make provision in relation to strategic planning; and for other purposes.

**The Legislature of New South Wales enacts:**

## **Part 1 Preliminary**

### **1 Name of Act**

This Act is the *Greater Sydney Commission Act 2015*.

### **2 Commencement**

This Act commences on a day or days to be appointed by proclamation.

### **3 Definitions**

(1) In this Act:

**Chief Commissioner** means the person appointed by the Minister as the Chief Commissioner of the Commission.

**Chief Executive Officer** means the person employed in the Public Service as the Chief Executive Officer of the Commission.

**Commission** means the Greater Sydney Commission constituted under Part 2.

**District Commissioner** means a member of the Commission appointed under section 6 (1) (b).

**ex-officio member** means a member of the Commission referred to in section 6 (1) (c).

**function** includes a power, authority or duty, and **exercise** a function includes perform a duty.

**Greater Sydney Commissioner** means a member of the Commission appointed under section 6 (1) (a).

**Greater Sydney Region** means the region comprising the local government areas within the boundary shown on the map in Schedule 1.

**Planning Act** means the *Environmental Planning and Assessment Act 1979*.

**Sydney planning panel** means a Sydney planning panel constituted under Part 3.

(2) Notes included in this Act do not form part of this Act.

### **4 Amendment of area comprising Greater Sydney Region**

The regulations may amend Schedule 1 to replace the map in that Schedule so as to extend or reduce the Greater Sydney Region.

## Part 2 Greater Sydney Commission

### Division 1 Constitution of Commission

#### 5 Constitution of Commission

(1) There is constituted by this Act a body corporate with the corporate name of the Greater Sydney Commission.

(2) The Commission is a NSW Government agency.

**Note.** See section 13A of the *Interpretation Act 1987*.

(3) The Commission is not subject to the control and direction of the Minister (except to the extent specifically provided for in this or any other Act).

#### 6 Members of Commission

(1) The Commission is to consist of the following members:

(a) 4 persons appointed by the Minister (the **Greater Sydney Commissioners**), each of whom has, in the opinion of the Minister, expertise in at least one of the following areas, namely, environmental sustainability, environmental science, sustainable design, strategic planning, infrastructure planning and delivery, architecture, urban design, traffic and transport, engineering, community development and services, local government, environmental planning law, social justice, property development, community engagement, economics, tourism or heritage,

(b) each person appointed by the Minister to represent a district declared under section 75AB (b) of the Planning Act as a district in the Greater Sydney Region (the **District Commissioners**), being a person who has, in the opinion of the Minister, expertise in at least one of the following areas, namely, planning, architecture, heritage, the environment, urban design, land economics, traffic and transport, law, engineering, tourism or government and public administration,

(c) the Secretary of each of the following (the **ex-officio members**):

- (i) the Department of Planning and Environment,
- (ii) the Department of Transport,
- (iii) the Treasury.

(2) One of the Greater Sydney Commissioners is, by the instrument of the Commissioner's appointment as a member or by a subsequent instrument executed by the Minister, to be appointed as the Chief Commissioner of the Commission.

(3) Of the 3 other Greater Sydney Commissioners:

- (a) one is to be appointed by the Minister as the Commissioner with principal responsibility for the activities of the Commission to the extent they relate to environmental matters, and
- (b) one is to be appointed by the Minister as the Commissioner with principal responsibility for the activities of the Commission to the extent they relate to social matters, and
- (c) one is to be appointed by the Minister as the Commissioner with principal responsibility for the activities of the Commission to the extent they relate to economic matters.

(4) Before appointing a person as a District Commissioner to represent a district in the Greater Sydney Region, the Minister is to seek the advice of the local council of each local government area in that district in relation to the proposed appointment. However, the Minister is not prevented from making an appointment if a local council fails to provide any such advice when requested to do so.

(5) Schedule 2 contains provisions with respect to the members and procedure of the Commission.

#### 7 Role of Chief Executive Officer

The Chief Executive Officer is responsible for the day to day management of the affairs of the Commission in accordance with any directions of the Commission.

## **8 Staff of Commission**

(1) Persons may be employed in the Public Service to enable the Commission to exercise its functions.

**Note.** Section 59 of the *Government Sector Employment Act 2013* provides that the persons so employed (or whose services the Commission makes use of) may be referred to as officers or employees, or members of staff, of the Commission. Section 47A of the *Constitution Act 1902* precludes the Commission from employing staff.

(2) The Commission may also:

- (a) arrange for the use of the services or facilities of a public authority within the meaning of the Planning Act, and
- (b) engage such consultants as it requires to exercise its functions.

## **Division 2 Objectives and functions of Commission**

### **9 Principal objectives of Commission**

The principal objectives of the Commission in exercising its functions are as follows:

- (a) to lead metropolitan planning for the Greater Sydney Region,
- (b) to promote orderly development in the Greater Sydney Region, integrating social, economic and environmental considerations with regard to the principles of ecologically sustainable development contained in section 6 (2) of the Protection of the Environment Administration Act 1991,
- (c) to promote the alignment of Government infrastructure decision-making with land use planning,
- (d) to promote the supply of housing, including affordable housing,
- (e) to encourage development that is resilient and takes into account natural hazards,
- (f) to support ongoing improvement in productivity, liveability and environmental quality.

### **10 Functions of Commission**

(1) The Commission has the following functions:

- (a) to provide advice and make recommendations to the Minister on matters relating to planning and development in the Greater Sydney Region,
- (b) to prepare and provide reports to the Minister on the implementation (including any impediments to the implementation) of any plan or proposal relating to development in the Greater Sydney Region,
- (c) to provide advice and make recommendations to the Minister on any impediments to the implementation of any plan or proposal relating to development in the Greater Sydney Region,
- (d) to provide advice to the Minister on the application of any development fund created under section 129 of the Planning Act in respect of land in the Greater Sydney Region,
- (e) to assist local councils in the Greater Sydney Region and other government agencies (including an agency of the Commonwealth) on the implementation of any plan or proposal relating to development in the Greater Sydney Region,
- (f) to provide the Minister with such information, advice or reports as the Minister may request,
- (g) if requested to do so by a Minister other than the Minister administering this Act (the other Minister), to provide the other Minister with such information, advice or reports as may be requested by the other Minister.

(2) Any such other Minister must obtain the approval of the Minister administering this Act before making a request under subsection (1) (g).

(3) The Commission has such other functions as are conferred or imposed on it by or under this or any other Act.

**Note.** Those other functions include the power to make local environmental plans under Part 3 of the Planning Act and to prepare draft strategic plans for the Greater Sydney Region under Part 3B of that Act.

(4) Without limiting subsection (3), the Commission may exercise functions delegated to it under any other Act.

## **11 Delegation of Commission's functions**

(1) The Commission may delegate to an authorised person or body any of its functions, other than this power of delegation. This power of delegation extends to a function delegated to the Commission, but only if the Commission is authorised in writing by the delegator to delegate the function.

(2) A delegate may sub-delegate to an authorised person or body any function delegated by the Commission if the delegate is authorised in writing to do so by the Commission.

(3) In this section, **authorised person or body** means any of the following:

- (a) a member of the Commission,
- (b) a committee of the Commission or member of such a committee,
- (c) a Sydney planning panel or member of such a panel,
- (d) a member of the staff of the Commission (including the Chief Executive Officer),
- (e) the Secretary or other person employed in the Department of Planning and Environment,
- (f) a joint regional planning panel constituted under section 23G of the Planning Act,
- (g) the Planning Assessment Commission constituted under section 23B of the Planning Act,
- (h) a local council, or the general manager or other employee of a local council, for any local government area in the Greater Sydney Region,
- (i) a person or body, or a person or body of a class, authorised by the regulations for the purposes of this section.

(4) Section 381 of the *Local Government Act 1993* does not apply to a delegation under this section to the general manager or other employee of a local council.

## **Division 3 Committees**

### **12 Finance and Governance Committee**

(1) There is established a committee of the Commission to be known as the Finance and Governance Committee (the **FGC**).

(2) The members of the FGC are the Greater Sydney Commissioners.

(3) The FGC has the following functions:

- (a) to advise and assist the Commission in connection with such functions of the Commission as are determined by the Minister,
- (b) to advise and assist the Commission in connection with any of the other functions of the Commission,
- (c) to advise and assist the Minister on each of the matters for which the Greater Sydney Commissioners have responsibility as referred to in section 6 (3).

### **13 Strategic Planning Committee**

(1) There is established a committee of the Commission to be known as the Strategic Planning Committee (the **SPC**).

(2) The members of the SPC are as follows:

- (a) the Greater Sydney Commissioners,
- (b) the District Commissioners representing the districts of the Greater Sydney Region in respect of which the SPC is exercising its functions.

(3) The SPC has the following functions:

- (a) to advise and assist the Commission in connection with such functions of the Commission as may be determined by the Minister,
- (b) if requested to do so by the Commission:
  - (i) to prepare draft strategic plans under Part 3B of the Planning Act for the Greater Sydney Region, and

- (ii) to provide information, advice and quarterly reports on the implementation of strategic plans for the Greater Sydney Region, and
- (iii) to advise and assist the Commission in connection with any of the other functions of the Commission.

#### **14 Infrastructure Delivery Committee**

(1) There is established a committee of the Commission to be known as the Infrastructure Delivery Committee (the **IDC**).

(2) The members of the IDC are as follows:

- (a) the Greater Sydney Commissioners,
- (b) the ex-officio members.

(3) The Chief Commissioner may also appoint a District Commissioner as an additional casual member of the IDC for the purposes of exercising specific functions of the IDC in relation to a particular matter.

(4) The IDC has the following functions:

- (a) to advise and assist the Commission in connection with such functions of the Commission as may be determined by the Minister,
- (b) if requested to do so by the Commission:
  - (i) to provide information, advice and regular reports on the infrastructure requirements to support housing and employment opportunities in the Greater Sydney Region, and
  - (ii) to advise and assist the Commission in connection with any of the other functions of the Commission.

#### **15 Other committees**

(1) The Commission may establish other committees to give advice and assistance to the Commission in connection with any of its functions.

(2) A committee established by the Commission need not include a member of the Commission.

#### **16 Subcommittees**

(1) Any committee of the Commission may establish subcommittees to assist it in connection with the exercise of any of its functions.

(2) A subcommittee of a committee of the Commission need not include a member of the committee.

#### **17 Procedure for committees and subcommittees**

(1) The procedure for the calling of meetings of a committee of the Commission and for the conduct of business at those meetings is to be as determined by the Commission or (subject to any determination of the Commission) by the committee.

(2) The procedure for the calling of meetings of a subcommittee of a committee of the Commission and for the conduct of business at those meetings is to be as determined by the committee or (subject to any determination of the committee) by the subcommittee.

## Part 3 Sydney planning panels

### 18 Constitution and functions of Sydney planning panels

(1) The Minister may, by order published on the NSW legislation website, constitute a Sydney planning panel for the part of the Greater Sydney Region specified in the order.

(2) The part of the Greater Sydney Region for which a Sydney planning panel is constituted may comprise the whole of the Region.

(3) A Sydney planning panel is taken to be a joint regional planning panel under and for the purposes of the Planning Act and the instruments made under that Act. Accordingly, the provisions of or under that Act (other than section 23G (1) and Schedule 4) that apply to or in respect of a joint regional planning panel apply, subject to the regulations, to or in respect of a Sydney planning panel.

**Note.** Development within the area of the City of Sydney is excluded from the classes of development in respect of which a joint regional planning panel may be authorised by an environmental planning instrument to exercise the consent authority functions of a local council—see clause 2 of Schedule 4A to the Planning Act.

(4) Section 23 (1B) of the Planning Act, in its application to a Sydney planning panel, is taken to be modified to authorise the planning panel to delegate, in accordance with that subsection, any of its functions to the general manager or other employee of a local council for a local government area situated wholly or partly in the part of the Greater Sydney Region for which the panel is constituted. Section 381 of the *Local Government Act 1993* does not apply to any such delegation to the general manager or other employee of a local council.

(5) Subsection (4) does not limit section 23 (1B) of the Planning Act in its application to a Sydney planning panel.

(6) If a Sydney planning panel is constituted for a part of the Greater Sydney Region, any joint regional planning panel constituted under section 23G (1) of the Planning Act for that part of the Greater Sydney Region is taken to be abolished on the constitution of the Sydney planning panel. The regulations may contain savings and transitional provisions consequent on the abolition of any such joint regional planning panel.

(7) Schedule 3 contains provisions with respect to Sydney planning panels.

## Part 4 Miscellaneous

### 19 Act to bind Crown

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.

### 20 Co-operation by local councils

A local council in the Greater Sydney Region is, if requested to do so in writing by the Commission:

- (a) to allow the Commission to have access to, and take copies of, any documents held by the council that are relevant to the functions of the Commission, and
- (b) to provide the Commission with such staff and facilities, or such other assistance, as may be required to assist the Commission in exercising its functions.

### 21 Annual report to include certain matters

The annual report of the Commission required to be prepared under the *Annual Reports (Statutory Bodies) Act 1984* is to include a report as to the following:

- (a) the outcomes achieved by the Commission during the reporting period,
- (b) the implementation of strategic plans made under Part 3B of the Planning Act for the Greater Sydney Region (including information about any related monitoring or evaluation undertaken by the Commission).

## **22 Disclosure of information**

A person must not disclose any information obtained in connection with the administration or execution of this Act unless that disclosure is made:

- (a) with the consent of the person from whom the information was obtained, or
- (b) in connection with the administration or execution of this Act, or
- (c) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings, or
- (d) in accordance with a requirement made under the Ombudsman Act 1974, or
- (e) with other lawful excuse.

Maximum penalty: 20 penalty units.

## **23 Exclusion of personal liability**

(1) A matter or thing done or omitted to be done by:

- (a) a member of the Commission, or
- (b) a member of a committee of the Commission or a member of a subcommittee of such a committee, or
- (c) a member of staff of the Commission (including the Chief Executive Officer), or
- (d) a person acting under the direction of any person referred to in paragraphs (a)–(c), does not, if the matter or thing was done or omitted to be done in good faith for the purposes of executing this Act, subject any such member or person so acting personally to any action, liability, claim or demand.

(2) A reference in subsection (1) to the execution of this Act includes a reference to the execution of the provisions of any other Act that confer or impose functions on the Commission or a committee of the Commission.

## **24 Nature of proceedings for offences**

Proceedings for an offence under this Act may be dealt with summarily before the Local Court.

## **25 Regulations**

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

## **26 Review of Act**

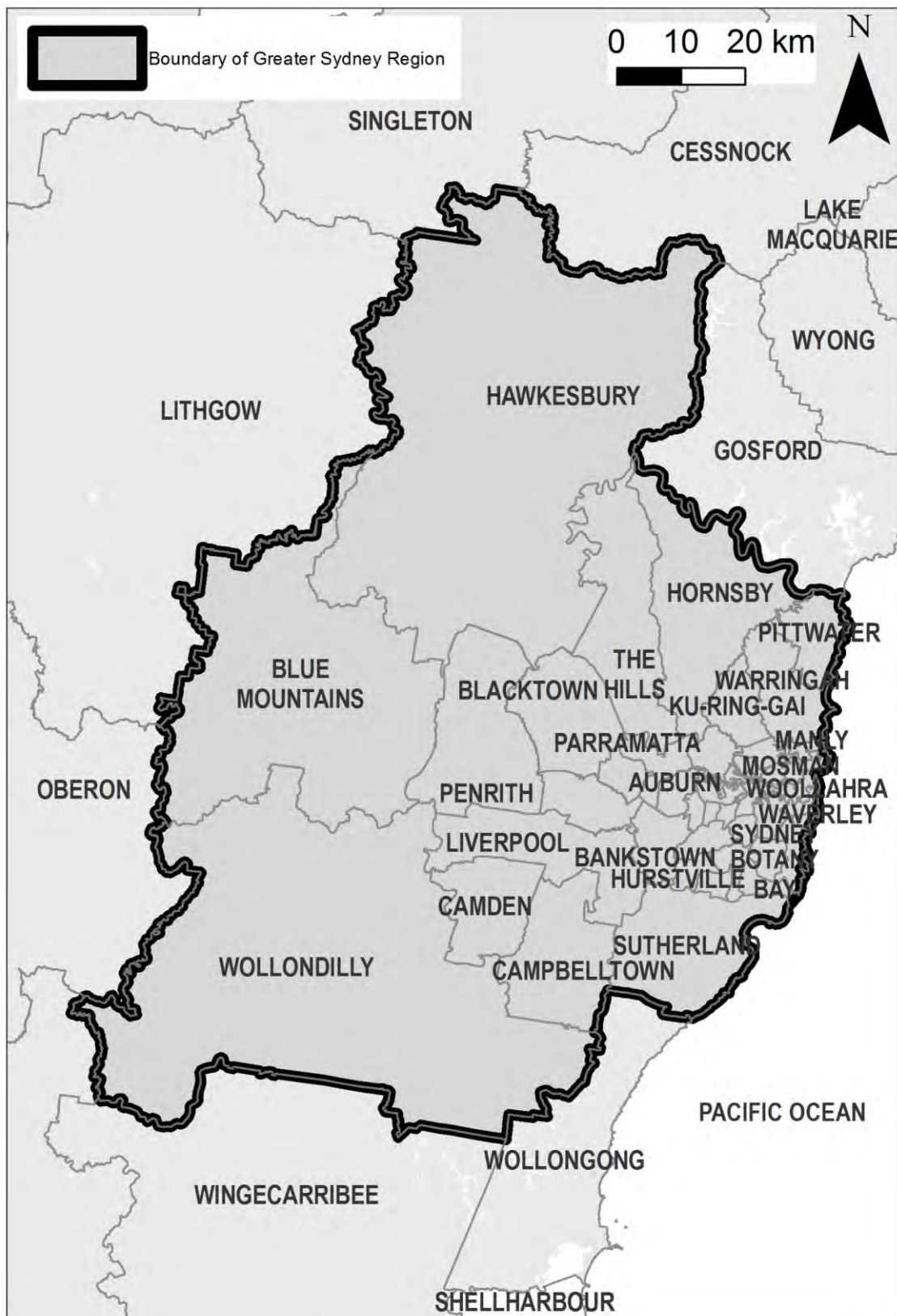
(1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

(2) The review is to be undertaken as soon as possible after the period of 5 years from the commencement of this Act.

(3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.



(Sections 3 and 4)



## **Schedule 2 Members and procedure of Commission**

(Section 6 (5))

### **1 Definitions**

In this Schedule:

**appointed member** means a Greater Sydney Commissioner or District Commissioner.

**member** means any member of the Commission.

### **2 Terms of office of appointed members**

(1) Subject to this Schedule and the regulations, an appointed member holds office for such period (not exceeding 4 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

(2) An appointed member may not hold office as a member for more than 8 years in total.

### **3 Basis on which members are appointed**

An appointed member may be appointed on either a full-time or part-time basis. The Minister may change the basis of the appointment during the member's term of office.

### **4 Remuneration of appointed members**

(1) A member appointed on a full-time basis is entitled to be paid such remuneration (including travelling and subsistence allowances) as is determined by the Statutory and Other Offices Remuneration Tribunal.

(2) A member appointed on a part-time basis is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

### **5 Vacancy in office of member**

(1) The office of an appointed member becomes vacant if the member:

- (a) dies, or
- (b) completes a term of office and is not re-appointed, or
- (c) resigns the office by instrument in writing addressed to the Minister, or
- (d) is removed from office by the Minister under this clause or by the Governor under Part 6 of the Government Sector Employment Act 2013, or
- (e) is absent from 3 consecutive meetings of the Commission of which reasonable notice has been given to the member personally or by post, except on leave granted by the Minister or unless the member is excused by the Minister for having been absent from those meetings, or
- (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
- (g) becomes a mentally incapacitated person, or
- (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

(2) The Minister may remove an appointed member from office at any time for any or no stated reason and without notice.

(3) In particular, the Minister may remove an appointed member from office if the Independent Commission Against Corruption, in a report referred to in section 74C of the *Independent Commission Against Corruption Act 1988*, recommends that consideration be given to the removal of the member from office because of corrupt conduct by the member.

(4) The Chief Commissioner is taken to have vacated office as Chief Commissioner if he or she resigns office by instrument in writing addressed to the Minister or ceases to be a member.

## **6 Filling of vacancy in office of appointed member**

If the office of any appointed member becomes vacant, a person is, subject to this Act and the regulations, to be appointed to fill the vacancy.

## **7 Disclosure of pecuniary interests**

(1) If:

- (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Commission, and
- (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter, the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Commission.

(2) A member has a pecuniary interest in a matter if the pecuniary interest is the interest of:

- (a) the member, or
- (b) the member's spouse or de facto partner or a relative of the member, or a partner or employer of the member, or
- (c) a company or other body of which the member, or a nominee, partner or employer of the member, is a member.

(3) However, a member is not taken to have a pecuniary interest in a matter as referred to in subclause (2) (b) or (c):

- (a) if the member is unaware of the relevant pecuniary interest of the spouse, de facto partner, relative, partner, employer or company or other body, or
- (b) just because the member is a member of, or is employed by, a local council or a statutory body or is employed by the Crown, or
- (c) just because the member is a member of, or a delegate of a local council, a company or other body that has a pecuniary interest in the matter, so long as the member has no beneficial interest in any shares of the company or body.

(4) A disclosure by a member at a meeting of the Commission that the member, or a spouse, de facto partner, relative, partner or employer of the member:

- (a) is a member, or is in the employment, of a specified company or other body, or
- (b) is a partner, or is in the employment, of a specified person, or
- (c) has some other specified interest relating to a specified company or other body or to a specified person, is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person that may arise after the date of the disclosure and that is required to be disclosed under subclause (1).

(5) Particulars of any disclosure made under this clause must be recorded by the Commission in a book kept for the purpose and that book must be made available for inspection by any person at any reasonable time for no charge.

(6) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Commission otherwise determines:

- (a) be present during any deliberation of the Commission with respect to the matter, or
- (b) take part in any decision of the Commission with respect to the matter.

(7) For the purposes of the making of a determination by the Commission under subclause (6), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:

- (a) be present during any deliberation of the Commission for the purpose of making the determination, or
- (b) take part in the making by the Commission of the determination.

(8) A contravention of this clause does not invalidate any decision of the Commission.

(9) This clause applies to a member of a committee of the Commission and the committee in the same way as it applies to a member of the Commission and the Commission.

## **8 Effect of certain other Acts**

(1) The provisions of the *Government Sector Employment Act 2013* relating to the employment of Public Service employees do not apply to an appointed member.

(2) If by or under any Act provision is made:

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
- (b) prohibiting the person from engaging in employment outside the duties of that office, the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

## **9 General procedure**

The procedure for the calling of meetings of the Commission and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Commission.

## **10 Quorum**

The quorum for a meeting of the Commission is a majority of the members for the time being and must include:

- (a) at least one Greater Sydney Commissioner,
- (b) at least 2 District Commissioners, and
- (c) at least one ex-officio member.

## **11 Presiding member**

(1) The Chief Commissioner (or, in the absence of the Chief Commissioner, a member elected by the members who are present at a meeting of the Commission) is to preside at a meeting of the Commission.

(2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

## **12 Voting**

A decision supported by a majority of the votes cast at a meeting of the Commission at which a quorum is present is the decision of the Commission.

## **13 Public meetings**

The Commission may (unless the Minister otherwise directs) conduct its meetings in public, and is required to do so if the Minister directs.

## **14 Transaction of business outside meetings or by electronic means**

(1) The Commission may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Commission for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Commission made at a meeting of the Commission.

(2) The Commission may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone or other electronic means, but only if any member who speaks on a matter before the meeting can be heard by the other members.

(3) For the purposes of:

- (a) the approval of a resolution under subclause (1), or
- (b) a meeting held in accordance with subclause (2), the Chief Commissioner and each other member have the same voting rights as they have at an ordinary meeting of the Commission.

(4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Commission.

(5) Papers may be circulated among the members for the purposes of subclause (1) by electronic means.

**15 Minutes of meetings**

(1) The member presiding at a meeting of the Commission must cause minutes to be kept of the proceedings of the meeting.

(2) The Chief Executive Officer must cause the minutes of each meeting of the Commission to be published on an appropriate government website within 3 months of the meeting.

**16 First meeting**

The Minister may call the first meeting of the Commission in such manner as the Minister thinks fit.

## Schedule 3 Sydney planning panels

(Section 18 (7))

### 1 Definitions

In this Schedule:

**applicable council** means the council of an area that is situated (wholly or partly) in a part of the Greater Sydney Region for which a Sydney planning panel is constituted.

**chairperson** means the person appointed by the Minister as chairperson of a Sydney planning panel.

**member** means a member of a Sydney planning panel.

### 2 Members of Sydney planning panels

(1) A Sydney planning panel is to consist of the following 5 members:

- (a) 3 members appointed by the Minister (the State members), one of whom is to be a District Commissioner,
- (b) 2 nominees of an applicable council (the council nominees) who are councillors, members of council staff or other persons nominated by the council.

(2) The State members of a Sydney planning panel are to be persons who have expertise in at least one area of planning, architecture, heritage, the environment, urban design, land economics, traffic and transport, law, engineering, tourism or government and public administration. In appointing State members, the Minister is to have regard to the need to have a range of expertise represented among the panel's members.

(3) At least one of the council nominees of a Sydney planning panel is to be a person who has expertise in at least one area of planning, architecture, heritage, the environment, urban design, land economics, traffic and transport, law, engineering or tourism.

(4) The State member who is a District Commissioner is to be appointed by the Minister as chairperson of the Sydney planning panel.

(5) Each applicable council is to nominate 2 persons as council nominees for the purposes of the Sydney planning panel. If an applicable council fails to nominate one or more council nominees, a Sydney planning panel is not required to include 2 council nominees for the purposes of exercising its functions in relation to the area of the council concerned.

### 3 Rotation of council nominees

(1) For the purposes of exercising the functions of a Sydney planning panel in relation to a matter, the council nominees are to be those nominated by the applicable council for the land to which the matter relates.

(2) Subject to this Schedule, a council nominee remains eligible to participate as a member of a Sydney planning panel for such period (not exceeding 4 years) as is specified in the nominee's instrument of nomination, but is eligible (if otherwise qualified) for re-nomination.

### 4 Rotation of chairperson of planning panel

For the purposes of exercising the functions of a Sydney planning panel in relation to a matter, the chairperson of the planning panel is to be the District Commissioner appointed under section 6 (1) (b) to represent the district in which the land to which the matter relates is situated.

### 5 Term of office of State members

(1) Subject to this Schedule, a State member holds office for such period (not exceeding 4 years) as is specified in the member's instrument of appointment.

(2) That period may be determined by reference to the occurrence of a specified event or completion of the exercise of particular functions of a Sydney planning panel.

(3) A State member is eligible (if otherwise qualified) for re-appointment.

(4) A person may not hold office as a State member of a Sydney planning panel for more than 8 years in total.

## **6 Basis of office**

The office of a member is a part-time office.

## **7 Remuneration**

A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

## **8 Deputy chairperson**

(1) The members of a Sydney planning panel may elect a State member to be the deputy chairperson of the planning panel.

(2) The person may be elected for the duration of the person's term of office as a member or for a shorter term.

## **9 Alternates**

(1) The Minister may, from time to time, appoint a person to be the alternate of a State member, and may revoke any such appointment.

(2) An applicable council may, from time to time, appoint a person to be the alternate of a member nominated by the council, and may revoke any such appointment.

(3) In the absence of a member, the member's alternate may, if available, act in the place of the member.

(4) While acting in the place of a member, a person has all the functions of the member and is taken to be a member.

(5) A person while acting in the place of a member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

(6) A person may be appointed as the alternate of 2 or more members, but has only one vote at any meeting of the Sydney planning panel.

## **10 Vacancy in office of member**

(1) The office of a member becomes vacant if the member:

- (a) dies, or
- (b) completes a term of office and is not re-appointed, or
- (c) resigns the office by instrument in writing addressed to the Minister or applicable council, as the case requires, or
- (d) in the case of a council nominee, is removed from office by an applicable council under this clause or by the Minister under subclause (2), or
- (e) in the case of a State member, is removed from office by the Minister or by the Governor under Part 6 of the Government Sector Employment Act 2013, or
- (f) is absent from 3 consecutive meetings of the Sydney planning panel of which reasonable notice has been given to the member personally or by post, except on leave granted by the panel or unless the member is excused by the planning panel for having been absent from those meetings, or
- (g) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or

- (h) becomes a mentally incapacitated person, or
- (i) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

(2) The Minister may remove a member from office if the Independent Commission Against Corruption, in a report referred to in section 74C of the *Independent Commission Against Corruption Act 1988*, recommends that consideration be given to the removal of the member from office because of corrupt conduct by the member.

(3) The Minister may remove a State member from office at any time for any or no stated reason and without notice.

(4) An applicable council may remove any of its council nominees from office at any time for any or no stated reason and without notice.

### **11 Filling of vacancy in office of member**

If the office of a member becomes vacant, a person may, subject to this Act and the regulations, be appointed to fill the vacancy.

### **12 Chairperson**

(1) The chairperson vacates office as chairperson if he or she:

- (a) is removed from that office by the Minister, or
- (b) resigns that office by instrument in writing addressed to the Minister, or
- (c) ceases to be a member of the Sydney planning panel or the Commission.

(2) The Minister may at any time remove the chairperson from office as chairperson for any or no stated reason and without notice.

### **13 Disclosure of pecuniary interests**

(1) If:

- (a) a member has a pecuniary interest in a matter being considered or about to be considered at a meeting of the Sydney planning panel, and (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter, the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the planning panel.

(2) A member has a pecuniary interest in a matter if the pecuniary interest is the interest of:

- (a) the member, or
- (b) the member's spouse or de facto partner or a relative of the member, or a partner or employer of the member, or
- (c) a company or other body of which the member, or a nominee, partner or employer of the member, is a member.

(3) However, a member is not taken to have a pecuniary interest in a matter as referred to in subclause (2) (b) or (c):

- (a) if the member is unaware of the relevant pecuniary interest of the spouse, de facto partner, relative, partner, employer or company or other body, or
- (b) just because the member is a member of, or is employed by, a council or a statutory body or is employed by the Crown, or
- (c) just because the member is a member of, or a delegate of a council, a company or other body that has a pecuniary interest in the matter, so long as the member has no beneficial interest in any shares of the company or body.



- (4) A disclosure by a member at a meeting of the Sydney planning panel that the member, or a spouse, de facto partner, relative, partner or employer of the member:
- (a) is a member, or is in the employment, of a specified company or other body, or
  - (b) is a partner, or is in the employment, of a specified person, or
  - (c) has some other specified interest relating to a specified company or other body or to a specified person, is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).
- (5) Particulars of any disclosure made under this clause must be recorded by the Sydney planning panel in a book kept for the purpose and that book must be made available for inspection by any person at any reasonable time for no charge.
- (6) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Sydney planning panel otherwise determines:
- (a) be present during any deliberation of the planning panel with respect to the matter, or
  - (b) take part in any decision of the planning panel with respect to the matter.
- (7) For the purposes of the making of a determination by the Sydney planning panel under subclause (6), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
- (a) be present during any deliberation of the planning panel for the purpose of making the determination, or
  - (b) take part in the making by the planning panel of the determination.
- (8) A contravention of this clause does not invalidate any decision of the Sydney planning panel.

#### **14 Effect of certain other Acts**

- (1) The provisions of the *Government Sector Employment Act 2013* relating to the employment of Public Service employees do not apply to a member.
- (2) If by or under any Act provision is made:
- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
  - (b) prohibiting the person from engaging in employment outside the duties of that office, the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

### **Schedule 4 Savings, transitional and other provisions**

#### **Part 1 General**

##### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

## **Schedule 5 Amendment of Environmental Planning and Assessment Act 1979 No 203**

### **[1] Section 4 Definitions**

Insert “the Greater Sydney Commission,” after “a Minister,” in paragraph (b) of the definition of **consent authority** in section 4 (1).

### **[2] Section 4 (1), definition of “consent authority”**

Omit “that Minister, Commission, panel or authority, as the case may be” from paragraph (b).

Insert instead “that Minister or the Greater Sydney Commission, Planning Assessment Commission, panel or authority, as the case requires”.

### **[3] Section 4 (1)**

Insert in alphabetical order:

**Greater Sydney Region** has the same meaning it has in the *Greater Sydney Commission Act 2015*.

### **[4] Section 4 (1), definition of “joint regional planning panel”**

Insert at the end of the definition:

**Note.** See also Part 3 of the *Greater Sydney Commission Act 2015* which provides that a Sydney planning panel constituted under that Part is taken to be a joint regional planning panel under and for the purposes of this Act and the instruments made under this Act.

### **[5] Section 23 Delegation**

Insert after section 23 (1) (e):

(e1) the Greater Sydney Commission,

### **[6] Section 23D Functions of Commission**

Omit “this Act” from section 23D (1) (a). Insert instead “this or any other Act”.

### **[7] Section 23G Joint regional planning panels**

Insert after section 23G (3):

(3A) Without limiting subsection (3), a regional panel may exercise functions delegated to it under this or any other Act.

### **[8] Section 24 Making of environmental planning instruments**

Insert “, or by the Greater Sydney Commission in the case of the Greater Sydney Region,” after “(or delegate)” in section 24 (2) (b).

### **[9] Section 37 Governor may make environmental planning instruments (SEPPs)**

Insert “or of environmental planning significance to a district within the meaning of Part 3B” after “significance” in section 37 (2).

### **[10] Section 53 Minister may make environmental planning instruments for local areas (LEPs)**

Insert after section 53 (2):

(3) Despite subsection (1), the Minister may not make a local environmental plan in respect of any local government area in the Greater Sydney Region. However, this subsection does not prevent the Minister from giving directions under section 117 to a council or other public authority on any matter relating to the Greater Sydney Region.

### **[11] Section 53A**

Insert after section 53:

### **53A Greater Sydney Commission may make LEPs for local areas in Greater Sydney Region**

(1) The Greater Sydney Commission may make environmental planning instruments for the purposes of environmental planning in each local government area in the Greater Sydney Region. Any such instrument may be called a local environmental plan (or LEP).

(2) For the purposes of the making of LEPs that apply to local government areas in the Greater Sydney Region, a reference to the Minister in section 15, 33B (4) or (5), 54 (1), (2) (a), (c) or (d) or (4), 56, 58, 59, 73A (1) (c), 74D (5) (b) or 74F is to be construed as a reference to the Greater Sydney Commission.

### **[12] Section 54 Relevant planning authority**

Insert “or of environmental planning significance to a district within the meaning of Part 3B” after “significance” in section 54 (2) (a).

### **[13] Section 54 (2) (c1)**

Insert after section 54 (2) (c):

(c1) a recommendation has been provided under section 15 (b) that the proposed instrument should be submitted for a determination under section 56 or that the proposed instrument should be made,

### **[14] Part 3B**

Insert before Part 4:

## **Part 3B Strategic planning**

### **75AA Interpretation**

(1) In this Part:

**district** means a part of a region declared to be a district under section 75AB (b).

**district plan** means a district plan made under this Part.

**region** means:

(a) the Greater Sydney Region, or

(b) any other area declared to be a region under section 75AB (a).

**regional plan** means a plan made under this Part.

**relevant strategic planning authority** means:

(a) in the case of the Greater Sydney Region—the Greater Sydney Commission, or

(b) in the case of any other region—the Secretary or any other person or body prescribed by the regulations for the purposes of this paragraph.

**strategic plan** means a regional plan or a district plan.

(2) For the purposes of this Part, preparing or making a strategic plan includes preparing or making a strategic plan to amend, replace or repeal a strategic plan.

### **75AB Declaration of regions and districts**

The Minister may, by order published on the NSW planning portal, declare:

(a) any area of the State (other than the Greater Sydney Region) to be a region for the purposes of this Part, and

(b) any part of the Greater Sydney Region or other region to be a district for the purposes of this Part.

### **75AC Regional plans—preparation and content**

(1) The relevant strategic planning authority for a region may, or must if directed to do so by the Minister, prepare a draft regional plan for the region.

(2) A draft regional plan must include or identify the following:

- (a) the basis for strategic planning in the region, having regard to economic, social and environmental matters,
- (b) a vision statement and objectives consistent with the vision statement,
- (c) strategies and actions for achieving those objectives,
- (d) the basis on which the relevant strategic planning authority is to monitor and report on the implementation of those actions,
- (e) such other matters as the relevant strategic planning authority considers relevant to planning for the region.

(3) In preparing a draft regional plan, the relevant strategic planning authority is to have regard to the following:

- (a) State environmental planning policies that apply to the region,
- (b) any other strategic plan that applies to the region,
- (c) any 20-year State infrastructure strategy, 5-year infrastructure plan and sectoral State infrastructure strategy statement under Part 4 of the Infrastructure NSW Act 2011,
- (d) any other relevant government policies and plans in force at the time the draft plan is prepared,
- (e) in the case of a draft plan that applies to the Greater Sydney Region—any report prepared by the Strategic Planning Committee constituted under the Greater Sydney Commission Act 2015,
- (f) any matter that the Minister directs the relevant strategic planning authority to have regard to in preparing the draft plan,
- (g) any other matters the relevant strategic planning authority considers relevant.

(4) If there is no district plan for any part of the region, the draft regional plan may identify for that part of the region matters that may be identified in a district plan (until there is a district plan).

### **75AD District plans—preparation and content**

(1) The relevant strategic planning authority for a region (other than the Greater Sydney Region) may, or must if directed to do so by the Minister, prepare a draft district plan for a district in the region.

(2) If a district is declared for the Greater Sydney Region, the Greater Sydney Commission is to prepare a draft district plan for the district, and ensure that the public exhibition of the draft plan commences, within the period of 12 months after the district is declared.

(3) A draft district plan must include or identify the following:

- (a) the basis for strategic planning in the district, having regard to economic, social and environmental matters,
- (b) the planning priorities for the district that are consistent with the objectives, strategies and actions specified in the regional plan for the region in respect of which the district is part,
- (c) the actions required for achieving those planning priorities,
- (d) the basis on which the relevant strategic planning authority is to monitor and report on the implementation of those actions,
- (e) areas of State, regional or district significance, including priority growth areas,
- (f) such other matters as the relevant strategic planning authority considers relevant to planning for the district.

(4) In preparing a draft district plan, the relevant strategic planning authority is to have regard to the following:

- (a) any environmental planning instrument applying to the district,
- (b) any other strategic plan that applies to the district (including areas adjoining the district),
- (c) any 20-year State infrastructure strategy, 5-year infrastructure plan and sectoral State infrastructure strategy statement under Part 4 of the Infrastructure NSW Act 2011,
- (d) any other relevant government policies and plans in force at the time the draft plan is prepared,
- (e) in the case of a draft plan that applies to a district in the Greater Sydney Region—any report prepared by the Strategic Planning Committee constituted under the Greater Sydney Commission Act 2015,
- (f) any matter that the Minister directs the relevant strategic planning authority to have regard to in preparing the draft plan,
- (g) any other matters the relevant strategic planning authority considers relevant.

(5) If there is no regional plan for any part of the district concerned, the draft district plan may identify for that part of the district matters that may be identified in a regional plan (until there is a regional plan).

#### **75AE Making and review of regional plans**

(1) The relevant strategic planning authority for a region may, or must if directed to do so by the Minister, submit a draft regional plan it has prepared to the Minister.

(2) The Minister may make a regional plan in the form in which it is submitted or with such modifications as the Minister considers appropriate. The Minister may decide not to make the draft plan.

(3) The document entitled *A Plan for Growing Sydney*, published on the website of the Department and in force as at the commencement of this Part, is taken to be the regional plan made under this Part for the Greater Sydney Region (the **initial GSR plan**).

(4) The Greater Sydney Commission is to review the initial GSR plan before the end of 2017 and at the end of every subsequent period of 5 years.

(5) The relevant strategic planning authority for a region other than the Greater Sydney Region is to review any regional plan for the region at such times and in such manner as the Minister may direct.

(6) Following any review under subsection (4) or (5), the Minister may make a regional plan for the region concerned.

#### **75AF Making of district plans**

(1) The relevant strategic planning authority for a region other than the Greater Sydney Region may, or must if directed to do so by the Minister, submit a draft district plan it has prepared to the Minister.

(2) The Minister may make a district plan in the form in which it is submitted or with such modifications as the Minister considers appropriate. The Minister may decide not to make the draft plan.

(3) A district plan for a district in the Greater Sydney Region may be made by the Greater Sydney Commission.

(4) The Greater Sydney Commission is to review a district plan every 5 years after it is made by the Commission.

### **75AG Publication and commencement of strategic plans**

A strategic plan:

- (a) must be published on the NSW planning portal, and
- (b) commences on the date of publication or a later date specified in the plan.

### **75AH Mandatory public exhibition requirements**

(1) A draft strategic plan must be publicly exhibited for a period of at least 45 days.

(2) Before a proposed strategic plan is prepared for public exhibition, the relevant strategic planning authority is to give public notice of the ways in which the community can participate in the preparation of the draft plan.

(3) In making a strategic plan, the Minister or, in the case of a district plan for a district in the Greater Sydney Region, the Greater Sydney Commission is to have regard to any submissions (or summary of submissions) that have been made about the draft strategic plan.

### **75AI Implementation of strategic plans**

(1) In preparing a draft district plan, the relevant strategic planning authority is to give effect to any regional plan applying to the region in respect of which the district is part.

(2) In preparing a planning proposal under section 55, the relevant planning authority is to give effect:

- (a) to any district plan applying to the local government area to which the planning proposal relates (including any adjoining local government area), or
- (b) if there is no district plan applying to the local government area—to any regional plan applying to the region in respect of which the local government area is part.

(3) As soon as practicable after a district plan is made, the council for each local government area in the district to which the plan applies must review the local environmental plans for the area and prepare such planning proposals under section 55 as are necessary to give effect to the district plan.

(4) In addition to the requirement under subsection (3), the council for each local government area in the Greater Sydney Region must, on the making of a district plan that applies to that area, report to the Greater Sydney Commission:

- (a) on the review by the council of the local environmental plans for the area, and
- (b) on the preparation of planning proposals under section 55 to give effect to the district plan.

### **75AJ Dispensing with conditions precedent to making strategic plans**

(1) For the purposes of doing any one or more of the following, a strategic plan may be made without compliance with the conditions precedent under this Part to the making of strategic plans:

- (a) to correct an obvious error or misdescription,
- (b) to make changes that will not have any significant adverse impact on the environment or adjoining land,
- (c) to make provision for matters that are, in the opinion of the Minister, of State or regional significance or of significance to a district (but only if the proposed plan has been publicly exhibited for the period determined by the Minister).

(2) The publication of a strategic plan made in reliance on subsection (1) is to contain a statement that it is so made.

### **75AK Legal proceedings relating to strategic planning**

(1) In this section:

**legal proceedings** means proceedings for an order under Division 3 of Part 6 or any other kind of legal proceedings (other than criminal proceedings).

(2) Legal proceedings (other than those instituted by or with the approval of the Minister) in relation to the validity of a strategic plan cannot be instituted after the period of 3 months following the publication of the strategic plan on the NSW planning portal.

(3) The only requirement of or made under this Part in relation to a strategic plan that is mandatory is the requirement to publicly exhibit the draft plan for a period of 45 days.

(4) Nothing in this Part prevents a local environmental plan from being made or invalidates the plan once it is made.

(5) This section applies despite any other provision of this Act or any other Act or law.

### **75AL Regulations relating to strategic planning**

The regulations may make provision for or with respect to the following:

- (a) the review of strategic plans,
- (b) the appointment and functions of relevant strategic planning authorities for regions other than the Greater Sydney Region,
- (c) the form and content of strategic plans (including the standardisation of the provisions of strategic plans),
- (d) requirements for the submission of reports and documents relating to the preparation and review of strategic plans,
- (e) the public exhibition and notice requirements for proposed strategic plans,
- (f) any other matter relating to the strategic planning framework under this Part (including, without limitation, the preparation, making and online delivery of strategic plans).

## **Schedule 6 Amendment of other Acts**

### **6.1 Public Finance and Audit Act 1983 No 152**

#### **Schedule 2 Statutory bodies**

Insert in alphabetical order:

Greater Sydney Commission

### **6.2 Statutory and Other Offices Remuneration Act 1975 (1976 No 4)**

#### **Schedule 2 Public offices**

Insert at the end of Part 1:

Full-time appointed member of the Greater Sydney Commission



AMNS (Australia)  
 Council: 02 9970 1111  
 Council: 02 9970 1300  
 Council: 02 9970 1300  
 PO Box 888  
 Mona Vale NSW 1600  
 DX 9818 Mona Vale

Andrew Pigott - Manager Planning and Assessment  
 8:00am to 5:30pm Monday - Thursday, 8:00am to 5:00pm Friday  
 Phone 9970 1164

16 November 2015

Ms Elizabeth Kinkade  
 Executive Director, Planning Policy  
 Department of Planning and Environment  
 GPO Box 39  
 SYDNEY NSW 2001

Dear Elizabeth

**Re: Greater Sydney Commission Bill 2015**

Pittwater Council has reviewed the Greater Sydney Commission Bill 2015 (the Bill) and welcomes the establishment of a formal framework and organisation responsible for metropolitan planning in Sydney.

The principal objectives of the Greater Sydney Commission are laudable and supported by Council. The Commission will provide the crucial leadership, vision and direction for Sydney's future and provide the collaboration and coordination required to deliver timely infrastructure vital for our growing city in a partnership approach between councils and government departments.

However some concerns have been identified regarding the following requirements, will impact on Council and the Pittwater community. Specifically Council seeks further clarification on the implications of the following requirements as outlined in the Bill:

- Section 20(b) provision of staff and facilities required to assist the Commission in exercising its functions. This creates uncertain budget and resource implications for Council.
- Section 75A power to direct and require councils to review, report and prepare planning proposals to give effect to the District Plan. We seek greater clarification regarding this requirement.

We look forward to your advice and additional information on the issues outlined above.

Yours sincerely

Andrew Pigott  
**MANAGER- PLANNING AND ASSESSMENT**

Email: [pittwater\\_council@pittwater.nsw.gov.au](mailto:pittwater_council@pittwater.nsw.gov.au) / [pittwater@pittwater.nsw.gov.au](mailto:pittwater@pittwater.nsw.gov.au)

Mona Vale Customer Service Centre  
 Village Park, 1 Park Street, Mona Vale

Andrew Pigott & Services Centre  
 25A Old Somersby Road, Avalon

Local Councils  
 Units 11, 12, 13 & 14/5 Widdowson Way, Winkwood

Planning & Design  
 1 Balmah Road, Winkwood



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<b>C12.2</b>	<b>N0201/15 - 66 Shearwater Drive Warriewood - Proposed home office addition above existing garage and replace existing pergola</b>
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**Meeting:** Sustainable Towns & Villages Committee

**Date:** 16 November 2015

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

**COMMUNITY STRATEGIC PLAN OBJECTIVE:**

- To deliver a comprehensive suite of development controls that improve the liveability of the area

**DELIVERY PROGRAM ACTION:**

- To provide an effective development assessment and determination process
- 

## **1.0 EXECUTIVE SUMMARY**

### **1.1 SUMMARY**

The Development Unit at its meeting held on the 15 October 2015 considered the Assessing Officers report (refer **Attachment 1**) for determination of N0201/15 - 66 Shearwater Drive, Warriewood NSW 2102 - Proposed home office addition above existing garage and replace existing pergola.

- 1.2 This application has been called to Council by Cr Millar.
  - 1.3 Discussion in relation to these variations is contained within Section 8.0 (Discussion of Issues) of the Assessing Officer's report.
  - 1.4 Five objectors were present at the meeting. The applicant was not present. The Development Unit considered the issues raised by the objectors as well as the issues addressed in the Assessing Officer's report and supported the Officer's recommendation for approval subject to the conditions contained in the draft consent.
- 

## **2.0 RECOMMENDATION**

*That the recommendation of the Development Officer be endorsed and Development Application N0201/15 - 66 Shearwater Drive, Warriewood NSW 2102 - Proposed home office addition above existing garage and replace existing pergola be granted development consent subject to the draft conditions of consent attached.*

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## **3.0 BACKGROUND**

### **3.1 PURPOSE**

To seek endorsement of the Development Unit's recommendation following consideration of Development Application N0201/15 - 66 Shearwater Drive Warriewood NSW 2102.

### 3.2 BACKGROUND

The Development Unit at its meeting held on the 15 October 2015 considered the Development Officer's report (refer **Attachment 1**) for determination of Development Application N0201/15 - 66 Shearwater Drive Warriewood NSW 2102.

The objectors raised their concerns relating to bulk and scale, solar access, loss of views, over shadowing, setback non-compliance, the possible use of the addition as a dual occupancy and the lack of consultation by the owner.

The DU considered all these issues and the conditions imposed by the Assessing Officer and resolved to support the Assessing Officer's recommendation for approval.

### 3.3 POLICY IMPLICATIONS

Cr Millar has called this matter to Council in accordance with Council policy.

### 3.4 RELATED LEGISLATION

Council are the consent authority pursuant to Section 80 of the Environmental Planning and Assessment Act 1979.

### 3.5 FINANCIAL ISSUES

#### 3.5.1 Budget

No implications unless Council's decision is challenged in the Land and Environment Court.

#### 3.5.2 Resources Implications

No implications.

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## 4.0 KEY ISSUES

The key issues are as raised by the objectors and as addressed within Section 8 of the assessing officer's report

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## 5.0 ATTACHMENTS

**Attachment 1:** Assessing Officer's report to the Development Unit meeting of 15 October 2015.

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## 6.0 SUSTAINABILITY ASSESSMENT

The relevant sustainability assessments have been addressed in the attached assessing officer's report.

Report prepared by

Warwick Lawrence  
**MANAGER, ADMINISTRATION & GOVERNANCE**

**SUBJECT: N0201/15 - 66 Shearwater Drive, Warriewood NSW 2102 - Proposed home office addition above existing garage and replace existing pergola**

**Meeting:** Development Unit

**Date:** 15 October 2015

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**SUMMARY OF RECOMMENDATION**

**Consent with Conditions**

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<b>REPORT PREPARED BY:</b>	<b>Nick Armstrong</b>
<b>APPLICATION SUBMITTED ON:</b>	<b>10/06/2015</b>
<b>APPLICATION SUBMITTED BY:</b>	<b>GREGORY EDWARD SNOWDEN</b>
<b>OWNER(S):</b>	<b>GREGORY E SNOWDEN</b>

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**RECOMMENDATION OF DEVELOPMENT OFFICER / PLANNER**

That Council as the consent authority pursuant to Section 80 of the Environmental Planning and Assessment Act 1979 grant consent to Development Application N0201/15 for Proposed home office addition above existing garage and replace existing pergola at 66 SHEARWATER DRIVE WARRIEWOOD NSW 2102 subject to the draft conditions of consent attached.

Report prepared by  
Nick Armstrong, Planner

Andrew Pigott  
**MANAGER, PLANNING & ASSESSMENT**

**N0201/15 – 66 SHEARWATER DRIVE, WARRIEWOOD NSW 2102**

**Proposed home office addition above existing garage and replace existing pergola**

<b>Determination Level:</b>	<b>Development Unit</b>
<b>SUMMARY OF RECOMMENDATION:</b>	<b>CONSENT WITH CONDITIONS</b>
<b>REPORT PREPARED BY:</b>	Nick Armstrong
<b>APPLICATION SUBMITTED ON:</b>	10 June 2015
<b>APPLICATION SUBMITTED BY:</b>	Greg Snowden 66 Shearwater Drive Warriewood NSW 2102
<b>OWNER(S):</b>	MR GREGORY EDWARD SNOWDEN

### **1.0 SITE DETAILS**

The site is known as 66 Shearwater Drive, Warriewood and legally referred to as Lot 122 DP 270385. The site is irregular in shape and the total area of the site is 315.17m<sup>2</sup> with a primary frontage of 27.455m, facing the western side of Shearwater Drive and a secondary frontage of 7.5m, facing the southern side of Melaleuca Place. The site contains a two storey residence and detached garage that is located centrally on the site. Adjoining the site are similar two storey residential dwellings. The site is relatively flat with no distinguishable fall.

### **2.0 PROPOSAL IN DETAIL**

The application seeks consent for alterations and additions to the existing dwelling. In particular the application seeks to construct a new home office above the existing garage and replace the existing flat pergola roof with a pitched roof.

### **3.0 STATUTORY AND POLICY CONSIDERATIONS**

The site is zoned R3 Medium Density Residential under Pittwater Local Environmental Plan 2014. Pursuant to the land use table in Part 2 of this instrument, alterations and additions to dwellings are permissible with consent.

The following relevant state, regional and local policies and instruments apply:

- o Environmental Planning and Assessment Act, 1979 (the Act)
- o Environmental Planning and Assessment Regulation 2000 (the Regulation)
- o State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (SEPP BASIX)
- o Pittwater Local Environmental Plan 2014 (PLEP 2014)
  - o Acid Sulphate Soils Map - Area 2
  - o Height of Buildings Map - I ~ 8.5m
  - o Urban Release Area Map - Sector 12
- o Pittwater 21 Development Control Plan (P21 DCP)
  - o Warriewood Valley Locality
  - o Bushfire Prone Property
  - o Flood Risk Management Policy for Development in Pittwater:  
Category 1 - Low Hazard Flood Risk H3
  - o Areas of Habitat Marked as Flora and Fauna Conservation  
Area: Category 2

**Variation to development standards:**

The application of Clause 4.6 is not required.

**4.0 BACKGROUND**

N0201/15 was lodged at council at 10/06/2015 and referred to Council's Development Engineer, Natural Resources Officer and Catchment Management Department.

**Property History**

08/04/2010

Development Application N0034/10 for a new dwelling was granted consent.

24/07/2010

Section 96 Modification Application N0034/10/S96/1 for a new dwelling was granted modified consent.

**Amended Plans**

07/08/2015

Amended were requested due to non-compliances with Council's DCP and objections from surrounding residents.

21/08/2015

Amended plans received.

27/08/2015

Application was re-notified for a period 14 days.

**5.0 NOTIFICATION**

N0201/15 was notified from 15/06/2015 to 29/06/2015 to adjoining property owners in accordance with Council's notification policy. The site inspection on the 24/06/2015 confirmed the placement of the notification sign. During the notification period, five (5) submissions were received.

One (1) submission was received on the 12/08/2015 due to the submission being lodged and registered under an incorrect DA number (N0177/15) and property address (18 Macpherson Street, Warriewood). See below for the issues raised in the submissions.

Objector Issues

8 Melaleuca Place:

- Building Envelope (does not apply to this type of development) Overshadowing (during summer months)
- Bulk and Scale
- View Loss
- Side and Rear Building Lines
- Intended Use (secondary dwelling)



68 Shearwater Drive:

- Bulk and Scale
- Setbacks (front, side and rear)
- Site Coverage
- Overshadowing

85 Shearwater Drive:

- Site Coverage
- Bulk and Scale Setbacks Overshadowing
- Intended Use (secondary dwelling)

3 Melaleuca Place:

- Intended
- Use Setbacks Privacy
- Site Coverage

6 Melaleuca Place:

- Bulk and Scale
- Intended Use (Dual Occupancy)
- Site Coverage
- Setbacks
- Character
- View Loss

24 Melaleuca Place:

- Intended Use (Rentable Accommodation)  
Off-Street Parking
- Not in Accordance with Community Association  
By-laws

### **Amended Plans**

N0201/15 was re-notified from 27/08/2015 to 10/09/2015 to adjoining property owners in accordance with council's notification policy. The site inspection on the 08/09/2015 confirmed

the placement of the notification sign. During the re-notification period, four (4) submissions were received. Two (2) additional submissions were received after the notification period ended.

### **Objector Issues**

8 Melaleuca Place:

- Building Envelope (does not apply to current application)
- Side Setbacks
- Bulk and Scale
- Overshadowing in Summer Months
- View/Outlook Loss

68 Shearwater Drive:

- Front Setbacks
- Site Coverage
- Building Envelope (does not apply to current application)
- Overshadowing

6 Melaleuca Place:

- Minimum Lot Size for Dual Occupancies (not applicable to current application)
- Height of Buildings
- Setbacks

3 Melaleuca Place:

- Bulk and Scale
- Inconsistent Character
- Side Setbacks

85 Shearwater Drive:

- Site Coverage
- Bulk and Scale
- Setbacks
- Construction of a Secondary Dwelling

72 Shearwater Drive (speaking in regards of 68 Shearwater Drive):

- Overshadowing
- Site Coverage
- Bulk and Scale
- Front Setback

## **6.0 ISSUES**

- 7.1 Acid sulfate soils
- B3.2 Bushfire Hazard
- B4.3 Flora and Fauna Habitat Enhancement Category 2 Land
- C1.3 View Sharing
- C1.14 Separately Accessible Structures
- D16.1 Character as viewed from a public place
- D16.2 Building colours and materials
- D16.3 Front building lines
- D16.4 Side and rear building lines - Warriewood Valley Residential Sectors
- D16.6 Landscaped Area - Warriewood Valley Residential Sectors
- D16.13 Solar access - Warriewood Valley Residential Sectors

## 7.0 COMPLIANCE TABLE

- T - Can the proposal satisfy the technical requirements of the control?
- O - Can the proposal achieve the control outcomes?
- N - Is the control free from objection?

Control	Standard	Proposal	T	O	N
<b>Pittwater Local Environmental Plan 2014</b>					
1.9A Suspension of covenants, agreements and instruments			Y	Y	Y
Zone R3 Medium Density Residential			Y	Y	Y
4.3 Height of buildings	8.5m	7.145m	Y	Y	N
5.10 Heritage conservation			Y	Y	Y
7.1 Acid sulfate soils			Y	Y	Y
7.3 Flood planning			Y	Y	Y
7.10 Essential services			Y	Y	Y
<b>Pittwater 21 Development Control Plan 2014</b>					
3.1 Submission of a Development Application and payment of appropriate fee			Y	Y	Y
3.2 Submission of a Statement of Environmental Effects			Y	Y	Y
3.3 Submission of supporting documentation - Site Plan / Survey Plan / Development Drawings			Y	Y	Y



Control	Standard	Proposal	T	O	N
3.4 Notification			Y	Y	Y
3.5 Building Code of Australia			Y	Y	Y
A1.7 Considerations before consent is granted			Y	Y	Y
A4.16 Warriewood Valley Release Area			Y	Y	Y
B1.3 Heritage Conservation - General			Y	Y	Y
B1.4 Aboriginal Heritage Significance			Y	Y	Y
B3.2 Bushfire Hazard		See section 8.0	Y	Y	Y
B3.6 Contaminated Land and Potentially Contaminated			Y	Y	Y
B3.11 Flood Hazard - Flood Category 1 - Low Hazard - Low Density			Y	Y	Y
B3.25 Flood Hazard - Flood Emergency Response planning			Y	Y	Y
B4.3 Flora and Fauna Habitat Enhancement Category 2 Land		See section 8.0	Y	Y	Y
B5.2 Wastewater Disposal			Y	Y	Y
B8.2 Construction and Demolition - Erosion and Sediment Management			Y	Y	Y
B8.5 Construction and Demolition - Works in the Public Domain			Y	Y	Y
C1.2 Safety and Security			Y	Y	Y

C1.3 View Sharing		See section 8.0	Y	Y	N
C1.12 Waste and Recycling Facilities			Y	Y	Y
C1.13 Pollution Control			Y	Y	Y
C1.14 Separately Accessible Structures		See section 8.0.	N	Y	N
C1.23 Eaves			Y	Y	Y
D16.1 Character as viewed from a public place		See section 8.0.	Y	Y	N
D16.2 Building colours and materials		See section 8.0.	N	Y	Y
D16.3 Front building lines		See section 8.0.	N	Y	N
D16.4 Side and rear building lines - Warriewood Valley Residential Sectors		See section 8.0.	N	Y	N
D16.6 Landscaped Area - Warriewood Valley		See section 8.0.	N	Y	N
D16.8 Construction, Retaining walls, terracing and undercroft areas			Y	Y	Y
D16.10 Pets and companion animals			Y	Y	Y
D16.13 Solar access - Warriewood Valley Residential Sectors		See section 8.0.	Y	Y	N
D16.15 Scenic protection - General			Y	Y	Y
<b>State Environmental Planning Policies and other</b>					
SEPP (Building Sustainability Index: BASIX) 2004			Y	Y	Y

Control	Standard	Proposal	T	O	N
EPA Act 1979 No 203 section 147 Disclosure of political donations and gifts			Y	Y	Y

## 8.0 DISCUSSION OF ISSUES

### • 7.1 Acid sulfate soils

Council's Natural Resources Officer provided the following comments;

*Acid Sulphate Region 2. Works which involve excavation will need acid sulphate soil testing carried out.*

### • B3.2 Bushfire Hazard

The application is supported by a Bushfire Risk Assessment Report, prepared by Building Code & Bushfire Hazard Solutions, dated 1 June 2015 and the applicant has submitted a Bushfire Risk Assessment Certificate.

The report and certificate both identify that the subject site has a BAL rating of BAL-12.5. Referral to the NSW RFS is not required.

Conditions requiring compliance with the recommendations from the Bushfire Assessment Report will be imposed.

### • B4.3 Flora and Fauna Habitat Enhancement Category 2 Land

Council's Natural Resources Officer provided the following comments;

*The property contains a modified landscape typical of a suburban garden. The proposed works include construction of a first floor addition to the garage. All works are within the existing building footprint and no ground work has been proposed. No trees or bushland vegetation are present within the subject property that will be impacted. There are no further natural environment issues.*

### • C1.3 View Sharing

Three objections were received from 68 Shearwater Drive, 6 Melaleuca Place and 8 Melaleuca Place with concerns regarding the impact of the proposed works on the views/outlook that they currently enjoy. 68 Shearwater Drive is directly south of the subject site whilst, 6 and 8 Melaleuca Drive are directly west of the subject site. There is considered to be a view obtained towards the east from the surrounding properties, looking towards the Warriewood Wetlands. This view is best observed from the rear yards of the properties at Melaleuca Drive and the first floor living room and balcony at 68 Shearwater Drive.

As per control C1.3, the proposal must be able to demonstrate a reasonable level of view sharing is achieved in relation to *Tenacity Consulting v Warringah [2004] NSWLEC 140* where the planning principle for view sharing is defined under a four-step assessment process.



#### Step 1: Assessment of views to be affected

The properties that are considered to be impacted by the proposed works are 6 and 8 Melaleuca Place. 68 Shearwater Drive is not considered to be impacted under view loss grounds. The view loss is in relation to bushland views of the Warriewood Wetlands.

The assessment of views in relation to *Tenacity Consulting v Warringah [2004] NSWLEC 140* places greater value on water views as opposed to land views. In this case, views experienced from the neighbouring sites, particularly 8 Melaleuca Place and 68 Shearwater Drive are of bushland views. Further to this, the planning principle points to the importance of whole views rather than partial views. In this case, the views in question are partial views of the Warriewood Wetlands with houses obstructing the views in question.

#### Step 2: Consideration of the part of the property where the views are obtained

6 and 8 Melaleuca Place are considered to obtain views of the Warriewood Wetlands towards the east from their rear yards.

The views in question are obtained across side boundaries which are considered to be more difficult to protect in a typical residential area such as this. Given the reasonableness of the development proposal in the level of compliance with development controls, the retention of these bushland views is considered to be unrealistic.

#### Step 3: Extent of the impact

It has been considered that the proposed development will result in a portion of the views obtained from 6 and 8 Melaleuca Place to be lost when viewed from the rear yards of the properties from both a seated and standing position. The views which will be impacted by the development are made up entirely of bushland views as indicated in the images provided above.

#### Step 4: Reasonableness of the impact

The amended application largely complies with Council's built form controls, including building height and setbacks as referenced further within this report.

It is acknowledged that the proposed works may result in a loss of a portion of the existing views to the Warriewood Wetlands, of which only vegetation is impacted. Given the moderate size of the proposal and considering what views are perceived to be lost, the impact to the neighbouring properties is considered to be negligible to minor and therefore acceptable in the circumstances of this case. As the proposal is largely compliant with Council's built form controls, the proposal is considered to be acceptable on view loss grounds.

#### • **C1.14 Separately Accessible Structures**

The application has been lodged with the intention to create a home office above the existing garage. Upon the assessment of the plans the office is proposed to incorporate bathroom facilities in the form of a sink, toilet and shower and a kitchenette. The toilet and sink are considered to be acceptable, however the inclusion of the kitchenette and shower raise questions regarding the intended use of the development for the purposes of a home office, as the provision of these facilities could potentially create an area suitable for separate habitation. Therefore if any consent is to be granted it is recommended that cooking facilities are not to be incorporated within the home office for the life of the development so that the structure cannot be used for the purposes of a secondary dwelling, dual occupancy or any other form of separate habitation. The shower does not form a part of this consent and is to be deleted from the plans prior to the lodgement of the Construction Certificate.

- **D16.1 Character as viewed from a public place**

The amended application is considered to create additional spatial separation between the surrounding properties and the conditioning of the balcony to have an increased setback of 2m from the Shearwater Drive frontage is considered to appropriately reduce the bulk and scale of the development within the Shearwater Drive setback area and result in a consistent character with the surrounding area being achieved.

- **D16.2 Building colours and materials**

The application intends to use the colours of the existing dwelling for the proposed home office above the garage. The external wall colours of the existing residence are non-compliant with Council's requirements for dark and earthy tones as the proposal intends to use light, creamy colour for the external walls. However, there are multiple instances within the surrounding area of dwellings incorporating lighter tones and materials on the external walls. The development is not considered to be out of character for the surrounding area and in this instance a variation is considered to be acceptable.

- **D16.3 Front building lines**

P21 DCP Requirement = 4m

P21 DCP Requirement with variation subject to outcomes = 2m

Existing front setback (Shearwater Drive) = 2.45m

Proposed front setback (Shearwater Drive) = 1.25m (balcony), 2.45m (external wall)

The proposed front balcony of the development will be non-compliant with the minimum secondary street setback requirement of 2m from the Shearwater Drive frontage. Whilst the balcony is considered to provide some articulation and architectural interest to the development, the non-compliance with the control applied variation is not considered to be a reasonable outcome for the surrounding area. Additionally the variation for the secondary street frontage can only be applied if the development is considered to be within the character of the surrounding area, the predominant setbacks along the street and the provision of canopy trees and landscaping within the setback. Minimal landscaping has been and can be provided within this setback area due to the siting of the existing structures and lack of landscaped open space. The predominant setbacks of Shearwater Drive is approx. 4m for two storey development. The existing garage was granted a variation to this requirement due to the single storey nature of the development.

The applicant seeks to apply for the secondary street frontage variation that is applicable for corner allotments. The applicant states that the setbacks of the existing house and garage range from 2.45m (garage), 2.01m (dwelling) and 1.17m (balcony). The applicant additionally states that the average setback for secondary streets in the Shearwater Estate is approx. 2.12m as further reason for suggesting that a variation should be applicable in the instance of this case. However, the balcony being measured at 1.25m represents a further variation to the minimum 2m secondary street frontage setback and inconsistency with the average setback in the surrounding area. Whilst it is acknowledged that the balcony can create an element of visual interest to the building facade, it is still thought to create an unreasonable amount of bulk within the secondary street setback area. Several objections have also raised concern about this issue. In light of the applicant's comments seeking a variation based on the average setback in the Shearwater Estate, it is recommended that the secondary setback to the balcony be increased from 1.25m to 2m to achieve compliance with the permitted variation and greater consistency with the setbacks of the surrounding area.



- **D16.4 Side and rear building lines - Warriewood Valley Residential Sectors**

As the application relates to a corner allotment with no true rear boundary, the southern and western boundaries adjacent to the adjoining properties have been considered as side boundaries for the purpose of this assessment.

P21 DCP Requirements = 2.5m to at least one side boundary, 900mm to the other side boundary.

Proposed Southern Side Boundary = 2.5m (external wall) Proposed

Western Side Boundary = 0.95m (external wall)

The proposal has been amended in order to comply with the minimum side setback requirements of 2.5m to at least one side. Other than a minor parapet adjacent to the Shearwater Drive frontage the southern external wall now achieves compliance with the minimum side setback requirements. The western side boundary, being measured at a minimum of 900mm, already meets the requirements. There is a reasonable spatial separation and reduction in bulk and scale to the adjoining properties consistent with the character of the locality.

- **D16.6 Landscaped Area - Warriewood Valley Residential Sectors**

Existing Landscaped Area = 128.9m<sup>2</sup> or 41.0% of the total site area

Proposed Landscaped Area = 128.9m<sup>2</sup> of 41.0% of the total site area

The proposal will be unable to comply with the minimum landscaped area of 45%. However, the control incorporates variations for impervious areas <1m in width, uncovered decks no high than 1m, 5% of the site to be counted as impervious landscaping provided the areas are used for outdoor recreation and rainwater tanks. With these variations applied the total landscaped area would be measured at 149.1m<sup>2</sup> or 47.3% which would be compliant with the control. The proposed works are entirely above existing hard surface areas and as a result no landscaped area or natural vegetation is lost with the implementation of the works.

- **D16.13 Solar access - Warriewood Valley Residential Sectors**

The home office addition will create additional overshadowing to the property at 68 Shearwater Drive and an objection has been received which relates to this impact. The shadows impact windows adjacent to a ground floor bedroom and office and a first floor study. The control requires a minimum of 4 hours solar access during mid-winter to primary living areas and private open space to be retained. Bedrooms, offices and studies are not considered to be under the definition of a primary living area and the proposal will not impact upon any outdoor living areas of the adjoining properties. As a result, it is considered that the proposal complies with the control. An objection has been received from 8 Melaleuca Place regarding the potential for early morning overshadowing during the summer months. Whilst the proposal may impact early morning sun obtained by this property, Council's policy does not protect the hindrance of early morning sunlight during mid-summer.

Elevational overshadowing diagrams were additionally submitted to Council with the amended application. The plans reveal that the proposal will not impact the first floor windows adjoining the principal living area of the dwelling at 68 Shearwater Drive at 9am-12pm during mid-winter. There will be an impact to the ground floor windows, however these windows adjoin a bedroom and a small study and are not considered to be principal living areas. Despite 8 Melaleuca Place receiving additional overshadowing in the morning period during mid-season and the summer months, there remains a reasonable amount of solar access to this property.

## **9.0 CONCLUSION**

The Development Application has been assessed in accordance with the provisions of Section 79C of the Environmental Planning and Assessment Act 1979, Pittwater Local Environmental Plan, Pittwater 21 Development Control Plan and other relevant policies as listed at item 3.0.

The proposal has been found to be consistent with the outcomes of the relevant controls of P21 DCP. The proposal is considered to be consistent with the existing character of Warriewood Valley and the desired future character of the Warriewood Valley Locality and will not have an impact upon the character of Shearwater Drive or the amenity of adjoining and adjacent residential properties. As a result of these considerations the proposal is recommended for approval.

## **RECOMMENDATION OF DEVELOPMENT OFFICER/PLANNER**

That Council as the consent authority pursuant to Section 80 of the Environmental Planning and Assessment Act 1979 grant consent to Development Application N0201/15 for the construction of a home office above the existing garage, internal stairs within the garage and a new roofed pergola above the existing paved courtyard at 66 Shearwater Drive, Warriewood subject to the conditions of consent.

Report prepared by

Nick Armstrong

**PLANNER**

Date: 7 October 2015



**CONSENT NO: N0201/15**  
**ENVIRONMENTAL PLANNING & ASSESSMENT ACT, 1979 (AS AMENDED)**  
**NOTICE TO APPLICANT OF DETERMINATION**  
**OF A DEVELOPMENT APPLICATION**

Applicant's Name and Address:

Greg Snowden

66 Shearwater Drive

Warriewood NSW 2102

Being the applicant in respect of Development Application No N0201/15

Pursuant to section 80(1) of the Act, notice is hereby given of the determination by Pittwater Council, as the consent authority, of Development Application No **N0201/15** for:

**Proposed home office addition above existing garage and replace existing pergola**

**At: 66 SHEARWATER DRIVE, WARRIEWOOD NSW 2102 (Lot 122 DP 270385)**

**Decision:**

The Development Application has been determined by the granting of consent based on information provided by the applicant in support of the application, including the Statement of Environmental Effects, and in accordance with

**Architectural Drawings 14071 - 01 through to 01, Issue C, prepared by Designiche Building Designers, all dated 19 August 2015;**  
**BASIX Certificate, A214322, dated 20 March 2015; Bushfire**  
**Risk Assessment Report, 01 June 2015;**  
**Flood Risk Assessment Report, 66 Shearwater Drive, prepared by C.K. Engineering Services, dated May 2015.**

as amended in red (shown clouded) or as modified by any conditions of this consent.

The reason for the imposition of the attached conditions is to ensure that the development consented to is carried out in such a manner as to achieve the objectives of the Environmental Planning and Assessment Act 1979 (as amended), pursuant to section 5(a) of the Act, having regard to the relevant matters for consideration contained in section 79C of the Act and the Environmental Planning Instruments applying to the land, as well as section 80A of the Act which authorises the imposing of the consent conditions.

Endorsement of date of consent TBA

Mark Ferguson

GENERAL MANAGER

Per:



## Conditions of Approval

This consent is not an approval to commence building work. The works associated with this consent can only commence following the issue of the Construction Certificate.

Note: Persons having the benefit of development consent may appoint either a council or an independent certifier as the principal certifying authority for the development or for the purpose of issuing certificates under Part 4A of the Environmental Planning and Assessment Act. When considering engaging an accredited certifier a person should contact the relevant accreditation body to ensure that the person is appropriately certified and authorised to act in respect of the development.

### A. Prescribed Conditions:

1. All works are to be carried out in accordance with the requirements of the Building Code of Australia.
2. In the case of residential building work for which the Home Building Act 1989 requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.
3. A sign must be erected in a prominent position onsite only showing:
  - a. the name, address and telephone number of the Principal Certifying Authority for the work, and
  - b. the name of the principal contractor or the person responsible for the works and a telephone number on which that person may be contacted outside working hours, and
  - c. that unauthorised entry to the work site is prohibited.
  - d. The sign must to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
4. Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
  1. In the case of work for which a principal contractor is required to be appointed:
    - i. The name and licence number of the principal contractor, and
    - ii. The name of the insurer by which the work is insured under Part 6 of that Act.
  2. In the case of work to be done by an owner-builder:
    - iii. The name of the owner-builder, and
    - iv. If the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
  3. If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under a or b above becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information
5. If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (2) becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

6. This approval/consent relates only to the new work nominated on the approved consent plans and does not approve or regularise any existing buildings or structures within the property boundaries or within Council's road reserve.
7. Any building work in relation to the development consent is to be carried out in accordance with the requirements of the Building Code of Australia.

**B. Matters to be incorporated into the development and maintained over the life of the development:**

1. If any Aboriginal Engravings or Relics are unearthed all work is to cease immediately and the Aboriginal Heritage Office (AHO) and Office of Environment and Heritage (OEH) are to be notified.
2. At the commencement of building works and in perpetuity the entire property shall be managed in accordance with requirements of the Bushfire Assessment Report, prepared by Building Code & Hazard Solutions, dated 1 June 2015.
3. The Flood Emergency Response Plan or its subsequent update as contained within the 'Flood Risk Assessment Report for 66 Shearwater Drive, Warriewood May 2015 by C.K. Engineering Services' to be implemented by the occupants of the dwelling and the practice of flood evacuation procedures are to be undertaken annually.
4. A current (and regularly updated) version of the SES Home Emergency Plan available from  <http://www.floodsafe.com.au/home-emergency-plan> is to be compiled and printed, and kept on the premises at all times. All occupants are to be made aware of the Home Emergency Plan.
5. The 'Flood Risk Assessment Report for 66 Shearwater Drive, Warriewood May 2015 by C.K. Engineering Services' or its subsequent update shall apply for the life of the development.
6. The Flood Planning Level is 3.54mAHD
7. The 1% AEP level is 3.04mAHD and the Probable Maximum Flood level is 4.87mAHD
8. At least two (2) canopy trees are to be provided in the front yard area and one (1) in the rear yard area, which at maturity will achieve a canopy height greater than 8.5 metres, to visually reduce the height, bulk and scale effect of the dwelling. Species selection is to incorporate locally native species. These canopy trees are to be retained over the life of the development and replaced if they should die or be destroyed or removed.
9. Prior to the completion of works, all declared noxious weeds are to be removed/controlled in accordance with the Noxious Weeds Act 1993. Environmental weeds are to be removed and controlled. Refer to Pittwater Council website [http://www.pittwater.nsw.gov.au/environment/noxious\\_weeds](http://www.pittwater.nsw.gov.au/environment/noxious_weeds) for noxious/environmental weed lists.
10. No environmental weeds are to be planted on the site. Refer to Pittwater Council website [http://www.pittwater.nsw.gov.au/environment/noxious\\_weeds](http://www.pittwater.nsw.gov.au/environment/noxious_weeds) for environmental weed lists.



11. In accordance with Pittwater Council's DCP Control B4.22 Protection of Trees and Bushland Vegetation, all existing trees as indicated in the Survey Plan and/or approved Landscape Plan shall be retained except where Council's prior written consent has been obtained, for trees that stand within the envelope of approved development areas and removal is approved through an arborist report. For all other tree issues not related to a development application, applications must be made to Council's Tree Management Officers.
12. Any new fencing (with the exception of swimming pool fencing) is to be made passable to native wildlife. Hole dimensions are to be a minimum of 150mm wide x 100mm high at ground level spaced at 6 metre intervals.
13. Domestic pet animals are to be kept from entering wildlife habitat areas at all times. Dogs and cats are to be kept in an enclosed area or on a leash such that they cannot enter areas of bushland or foreshore, unrestrained, on the site or on surrounding properties or reserves. Ferrets and rabbits are to be kept in a locked hutch/run at all times.
14. Any vegetation planted onsite outside approved landscape zones is to be consistent with locally native species growing onsite and/or selected from the list pertaining to the vegetation community growing in the locality as per the vegetation mapping and Native Plants for Your Garden available on the Pittwater Council website [http://www.pittwater.nsw.gov.au/environment/species\\_lists](http://www.pittwater.nsw.gov.au/environment/species_lists)
15. No building materials or other materials are to be placed on Bushland vegetation. Sediment is not to leave the site or enter areas of Bushland vegetation, and the appropriate sediment fencing is to be installed.
16. No cooking facilities are to be provided within the area of the proposed works so that the structure cannot be used for the purposes of separate habitation.
17. The shower does not form a part of this consent, and is to be deleted from the plans prior to the Construction Certificate being issued.
18. The use of this structure for the purposes of a secondary dwelling is prohibited.
19. The setback to the proposed balcony adjacent to Shearwater Drive is to be increased to a minimum of 2m from the boundary.
20. The commitments identified in the BASIX Certificate and on the plans or specifications are to be fulfilled and maintained for the life of the development.

### **C. Matters to be satisfied prior to the issue of the Construction Certificate:**

Note: All outstanding matters referred to in this section are to be submitted to the accredited certifier together. Incomplete Construction Certificate applications / details cannot be accepted.

1. If works involve excavation then prior to the issue of the Construction Certificate the applicant is to carry out an investigation to determine whether acid sulphate soils are present in the area to be excavated. If the investigation reveals acid sulphate soils are present, an acid sulphate soils management plan addressing management of acid sulphate soils during and following excavation is to be prepared by a suitably qualified consultant and submitted for approval prior to the release of the construction certificate.
2. Submission of construction plans and specifications and documentation which are consistent with the approved Development Consent plans, the requirements of Building Code of Australia and satisfy all conditions shown in Part B above are to be submitted to the Principal Certifying Authority.
3. The Principal Certifying Authority must be provided with a copy of plans that a Quick Check agent/Sydney Water has stamped before the issue of any Construction Certificate.
4. The person having the benefit of this consent is required to notify the Principal Certifying Authority to ensure that the following critical stage inspections are undertaken, as required under clause 162A(4) of the Environmental Planning and Assessment Regulation 2000:
  - a. after excavation for, and prior to the placement of, any footings, and
  - b. prior to pouring any in-situ reinforced concrete building element, and
  - c. prior to covering of the framework for any floor, wall, roof or other building element, and
  - d. prior to covering waterproofing in any wet areas, and
  - e. prior to covering any stormwater drainage connections, and
  - f. after building work has been completed and prior to any occupation certificate being issued in relation to the building.

To allow a Principal Certifying Authority to carry out critical stage inspections, at least 48 hours notice must be given before building work is commenced and prior to further work being undertaken.

5. Construction works approved by this consent must not commence until:
  - a. Construction Certificate has been issued by a Principal Certifying Authority
  - b. A Principal Certifying Authority has been appointed and Council has been notified in writing of the appointment, and
  - c. at least 2 days notice, in writing has been given to Council of the intention to commence work.
6. Dwellings in bushfire prone areas are to be designed and constructed in accordance with AS 3959 Construction of Buildings in Bush Fire Prone Areas. Construction specification to achieve this are to be provided to Principal Certifying Authority with the Construction Certificate application



7. Details in the Construction Certificate are to reflect the recommendations/requirements of the Bushfire Risk Assessment Report prepared by Building Code & Hazard Solutions dated 1 June 2015.
8. Plans and details demonstrating that the commitments identified in the BASIX Certificate that apply to the construction certificate or complying development plans and specifications are fulfilled.

**D. Matters to be satisfied prior to the commencement of works and maintained during the works:**

Note: It is an offence to commence works prior to issue of a Construction Certificate.

1. The hours of construction are restricted to between the hours of 7.00am and 5.00pm Monday - Friday and 7.00am to 1.00pm on Saturdays. No works are to be carried out on Sundays or Public Holidays. Internal building work may be carried out at any time outside these hours, subject to noise emissions from the building or works not being audible at any adjoining boundary.

Note: This condition does not apply in relation to Crown building work that is certified, in accordance with Section 116G of the Act, to comply with the technical provisions of the States building laws.

2. Any proposed demolition works shall be carried out in accordance with the requirements of AS2601-2001 The Demolition of Structures.

Amongst others, precautions to be taken shall include compliance with the requirements of the WorkCover Authority of New South Wales, including but not limited to:

- a. Protection of site workers and the general public.
- b. Erection of hoardings where appropriate.
- c. Asbestos handling and disposal where applicable.
- d. Any disused service connections shall be capped off.

Council is to be given 48 hours written notice of the destination/s of any excavation or demolition material. The disposal of refuse is to be to an approved waste disposal depot.

3. A stamped copy of the approved plans is to be kept on the site at all times, during construction.
4. Temporary sedimentation and erosion controls are to be constructed prior to commencement of any work to eliminate the discharge of sediment from the site.
5. Sedimentation and erosion controls are to be effectively maintained at all times during the course of construction and shall not be removed until the site has been stabilised or landscaped to the Principal Certifying Authority's satisfaction.
6. Adequate measures shall be undertaken to remove clay from vehicles leaving the site so as to maintain public roads in a clean condition.

7. Personnel with appropriate training, or demonstrated knowledge and experience in erosion and sediment control shall be responsible for supervising the installation and maintenance of approved erosion and sediment control measures – during and after construction and until the site has been restored to the satisfaction of council.
8. A clearly legible *Site Management Sign* is to be erected and maintained throughout the course of the works. The sign is to be centrally located on the main street frontage of the site and is to clearly state in legible lettering the following:
- a. The builder's name, builder's telephone contact number both during work hours and after hours.
  - b. That no works are to be carried out in Council's Road Reserve without prior application and approval of a Road Opening Permit from Council.
  - c. That a Road Opening Permit issued by Council must be obtained for any road openings
    - i. or excavation within Council's Road Reserve associated with development of the site, including stormwater drainage, water, sewer, electricity, gas and communication connections. During the course of the road opening works the Road Opening Permit must be visibly displayed at the site.
9. That no skip bins or materials are to be stored on Council's Road Reserve.
10. That the contact number for Pittwater Council for permits is 9970 1111.

**E. Matters to be satisfied prior to the issue of Occupation Certificate:**

Note: Prior to the issue of an Occupation Certificate the principal certifying authority is to ensure that Council's assets, including road, kerb and gutter and drainage facilities adjacent or near to the site have not been damaged as a result of the works. Where such damage has occurred, it is to be repaired to Council's written satisfaction prior to the issue of an Occupation Certificate or suitable arrangements put in place to effect those repairs at a future date to Council's written satisfaction. Should this process not be followed, Council will pursue action against the principal accredited certifier in relation to the recovery of costs to effect such works.

Note: It is an offence to occupy the building or part thereof to which this consent relates prior to the issue of an Occupation Certificate.

1. An Occupation Certificate application stating that the development complies with the Development Consent, the requirements of the Building Code of Australia and that a Construction Certificate has been issued must be obtained before the building is occupied or on completion of the construction work approved by this Development Consent.
2. All existing and /or proposed dwellings/sole occupancy units are to have approved hard-wired smoke alarms installed and maintained over the life of the development. All hard-wired smoke alarms are to be Australian Standard compliant and must be installed and certified by any appropriately qualified electrician prior to the issue of any Occupation Certificate.
3. Prior to the issue of an Occupation Certificate, a suitably qualified professional is to certify that the as-built development is consistent with the recommendations/requirements of the Bushfire Risk Assessment Report prepared by Building Code & Hazard Solutions dated 1 June 2015.
4. Completion of the SES Home Emergency Plan available from <http://www.floodsafe.com.au/home-emergency-plan>
5. Prior to issuing an occupation certificate, the structural integrity of the building/ dwelling to withstand immersion and impact of velocity and debris up to the level of the 1% AEP needs to be provided to Council by an appropriately qualified engineer.
6. Street numbers are to be affixed so that they are clearly displayed and visible from a public place.
7. Certification is to be provided that the commitments identified in the BASIX Certificate have been fulfilled.



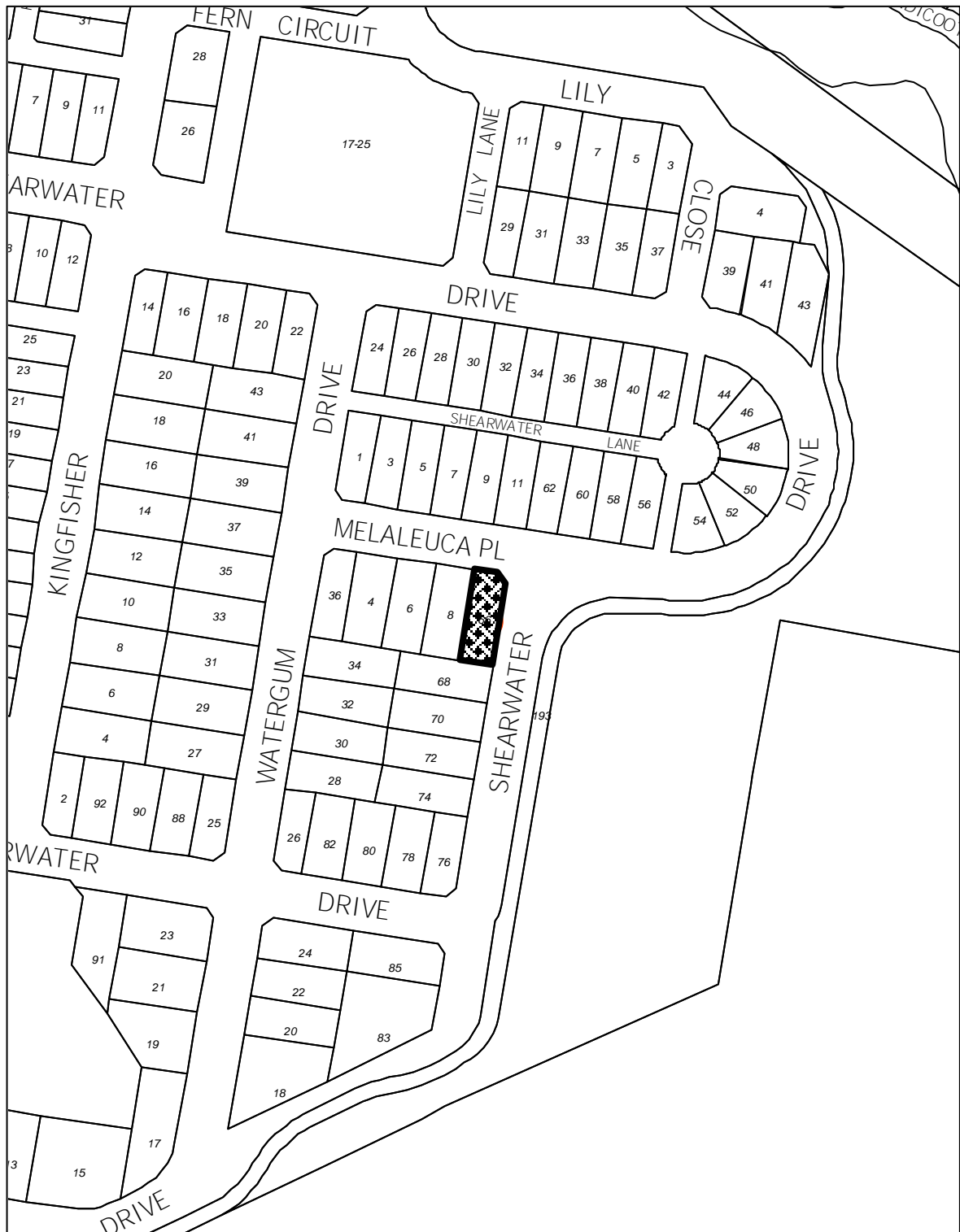
## **F. Advice**

Failure to comply with the relevant provisions of the *Environmental Planning and Assessment Act, 1979* (as amended) and/or the conditions of this Development Consent may result in the serving of penalty notices (on-the-spot fines) under the summary offences provisions of the above legislation or legal action through the Land and Environment Court, again pursuant to the above legislation.

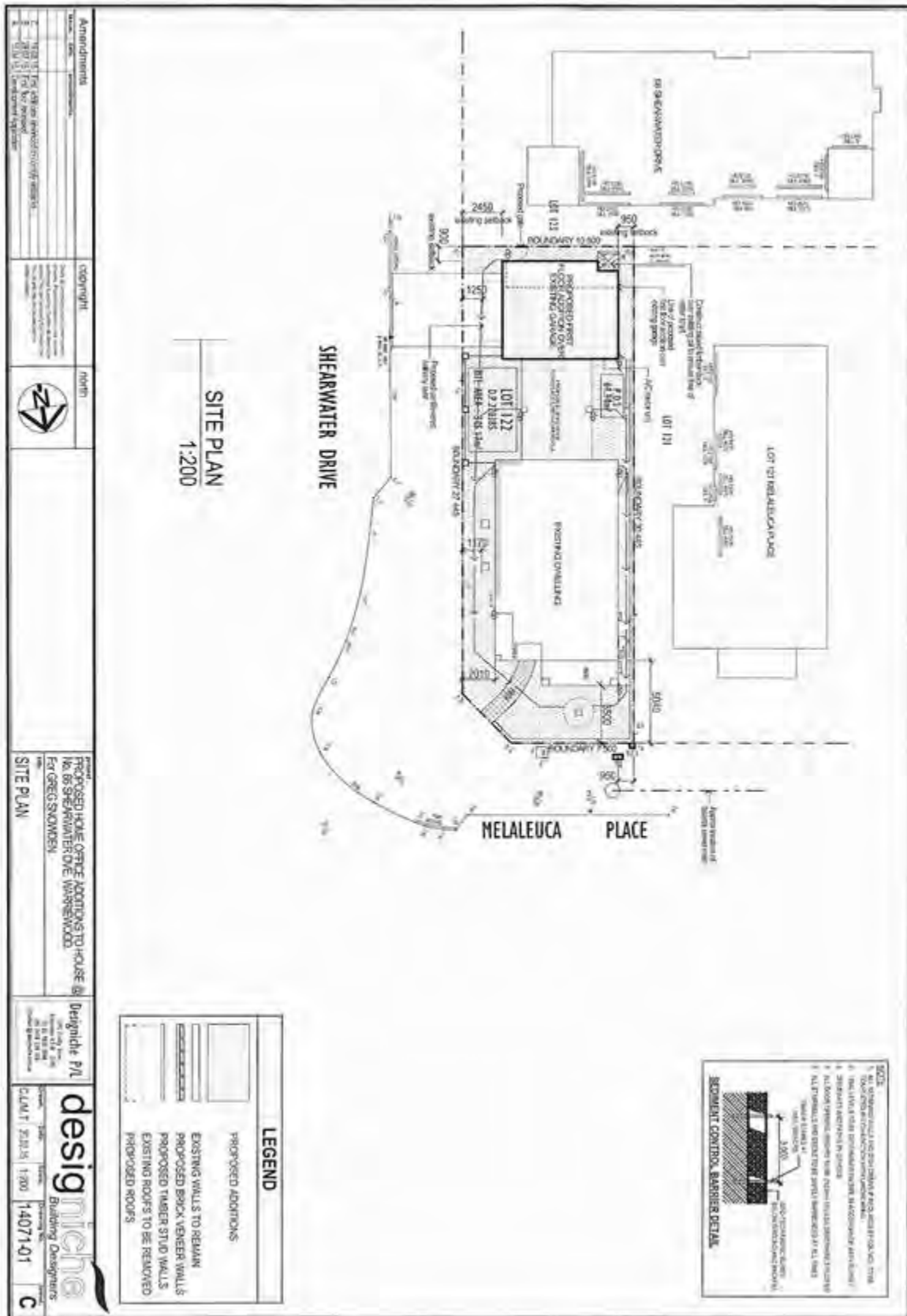
1. Dial before you dig: Prior to excavation the applicant is advised to contact Australia's National Referral Service for Information on Underground Pipes and Cables telephone 1100 or [www.1100.com.au](http://www.1100.com.au)
2. It is the Project Managers responsibility to ensure that all of the Component Certificates/certification issued during the course of the project are lodged with the Principal Certifying Authority. Failure to comply with the conditions of approval or lodge the Component Certificates/certification will prevent the Principal Certifying Authority issuing an Occupation Certificate.
3. In accordance with Section 95(1) of the EPA Act 1979, this development consent lapses 5 years after the date from which this consent operates if the development is not commenced.
4. To ascertain the date upon which a consent operates, refer to Section 83 of the *Environmental Planning and Assessment Act, 1979* (as amended).
5. Should any of the determination not be acceptable, you are entitled to request reconsideration under Section 82A of the Environmental Planning and Assessment Act, 1979. Such request to Council must be made in writing, together with appropriate fees as advised at the time of lodgement of such request, within 6 months of the determination.
6. If you are dissatisfied with this decision, Section 97 of the Environmental Planning and Assessment Act, 1979, gives you a right of appeal to the Land and Environment Court within 6 months of the date of endorsement of this Consent.
7. The approved plans must be submitted to a Sydney Water Quick Check agent or Customer Centre to determine whether the development will affect Sydney Waters sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. The approved plans will be appropriately stamped. For Quick Check agent details please refer to the web site at [www.sydneywater.com.au](http://www.sydneywater.com.au) then see Building Developing and Plumbing then Quick Check, or telephone 13 20 92.
8. Portions of the site may be liable to flooding from the 1% AEP and the PMF (Probable Maximum Flood) and effective precautions should be taken by the owner(s) and/or occupier(s) of the building to reduce any potential risk to personal safety and to minimise any property damage to the structure, its fixtures and contents.

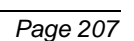


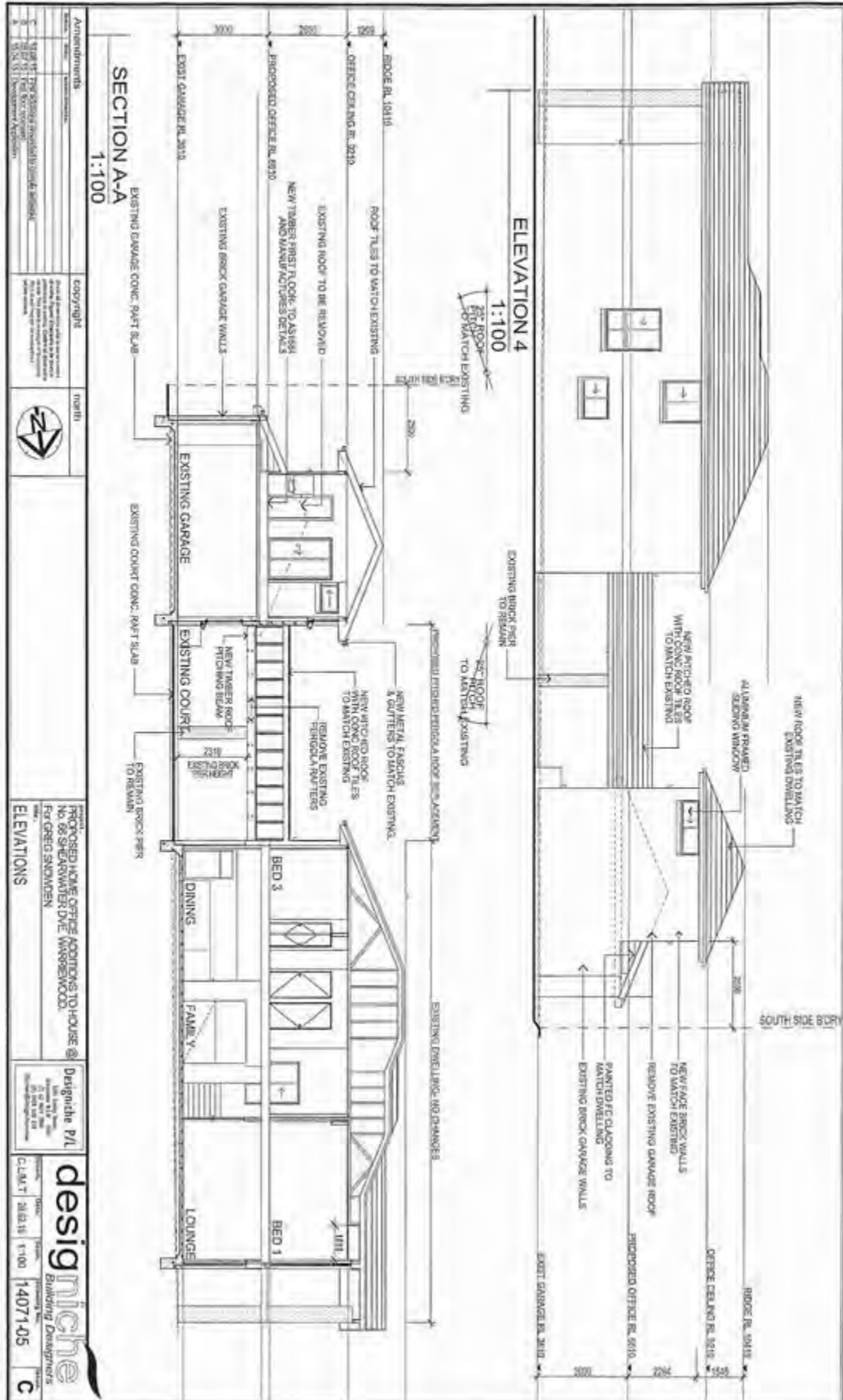
## LOCALITY MAP



## NOTIFICATION PLANS







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## **C12.3      39 Robertson Rd Scotland Island - Drainage Easement**

**Meeting:**      Sustainable Towns & Villages Committee      **Date:**      16 November 2015

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**COMMUNITY STRATEGIC PLAN STRATEGY:**      Catchment Management

**COMMUNITY STRATEGIC PLAN OBJECTIVE:**

To effectively manage stormwater and flooding including the impacts of climate change.

**DELIVERY PROGRAM ACTION:**

Maintain and service Stormwater Infrastructure

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### **1.0      EXECUTIVE SUMMARY**

#### **1.1      SUMMARY**

In 2002, the former owners of 39 Robertson Road, Scotland Island approached Council with a view to improve the local drainage infrastructure.

Council negotiated with the former owners and entered into a “Deed of Undertaking” to carry out the drainage works.

The property has since been resold to new owners and Council staff have negotiated with the new owners for the creation of an easement in favour of Council over the property (subject to Council approval).

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### **2.0      RECOMMENDATION**

- 1.      *That Council consents to acquire a drainage easement over 39 Robertson Road, Scotland Island in favour of Council.***
  - 2.      *That Council authorise the General Manager to execute and to attach the Common Seal of Council to any documentation required to finalise the easement.***
- 

### **3.0      BACKGROUND**

#### **3.1      PURPOSE**

To seek Council's consent to acquire an easement over 39 Robertson Road, Scotland Island that forms part of Council's existing drainage infrastructure.

#### **3.2      BACKGROUND**

In early 1990s the need for drainage works at 37 and 39 Robertson Road, Scotland Island was identified by the property owners due to local flooding issues of the properties (refer to **Attachment 1**).

The project was originally placed on hold due to easement compensation and location issues. In 2002, the owners of 39 and 37 Robertson Road, requested works to be undertaken, however no funds were available for Council to undertake the full scope of the works. Some minor works were undertaken to the inlet pit in Robertson road and an additional length of pipeline through 39 Robertson Road.

In 2007, Council's Urban Infrastructure Unit commissioned Patterson Britton and Partners to design a new drainage system with a purpose of collecting stormwater runoff from the local catchment commencing along Robertson Road and extending through 37 Robertson Road and continuing further into Pittwater. An existing drainage system through 39 Robertson Road was also upgraded and connected to the new drainage system.

The new pipeline (constructed in 2009) varies in size and is between 375mm to 600mm in diameter. Due to the scale and nature of the works, drainage easements (generally 2.5m wide) are required to be created, which traverses over both properties (39 and 37 Robertson Road).

In April 2008, the owners of 39 Robertson Road granted Council Permission to Enter for Construction purposes and gave a Deed of Undertaking for the creation of the drainage easement and sought no compensation. This Deed allowed Council easement rights over their properties, as well as providing consent letter for permission to enter their property for construction purposes (refer **Attachment 4**).

Drainage works were completed in late February 2009. The location of the pipeline and pits are highlight in **Attachment 3** and the proposed easement is identified in **Attachment 2**.

In 2010 the property at 39 Robertson Road was sold and the "Deed of Undertaking" between Council and the former owners became redundant. The Deed is therefore not binding on the new property owners.

Council commenced negotiations with the new property owners in March 2011. There were several concerns from the new property owners and negotiations have been protracted but nevertheless now resolved.

After a long period of negotiations, the new property owners have now agreed in principle to proceed with the granting of the easement in favour of Council.

### 3.3 **POLICY IMPLICATIONS**

The granting of easement process is in line with the Draft Property Management Framework Policy.

### 3.4 **RELATED LEGISLATION**

Local Government Act 1993; Conveyancing Act 1919 for s 88B instrument

### 3.5 **FINANCIAL ISSUES**

#### 3.5.1 **Budget**

Total works for the installation of the Robertson Road drainage infrastructure was in the order of \$156,410 for both 39 and 37 Robertson Road.

Legal costs – Council will bear the cost associated with the preparation, negotiation and registration of the Transfer Granting Easement. In addition, Council will bear the property owners' legal cost (reasonable legal costs and out of pocket expenses in relation to the exercise including necessary consent and production of fees payable to the bank).

Council's solicitors Matthew Folbiggs and Associated have prepared a draft Transfer Granting Easement. This is subject to Council approval to proceed with the proposed easement over 39 Robertson Road (refer to **Attachment 5**).

Survey costs – Council will bear all survey costs as required by the Land & Property Information for registration purposes.

Approximate likely cost to Council is between \$8,000 to \$12,000 (legal, survey, registration).

### **3.5.2 Resources Implications**

The installation of the pipeline assisted in the reduction of ongoing maintenance costs. The new infrastructure was created to deal with the flooding issues being experienced by the property owners. This new infrastructure will be included in Council's future asset register.

## **4.0 KEY ISSUES**

### **Easement creation**

The creation of the drainage easement will provide legal rights for Council over 39 Robertson Road, generally authorising access to and use of the land for drainage purposes. This is required to ensure appropriate management of Council's drainage infrastructure.

To enable creation of the easement, it is proposed that the plan in **Attachment 2** be registered at the Land & Property Information and that an instrument called a "Transfer Granting Easement" be registered which will create the instrument in the standard terms contained in Part 3 of Schedule 8 of the Conveyancing Act 1919 (NSW).

Another report will be coming to Council regarding an easement over 37 Robertson Road at a later stage.

### **Valuations**

No valuation has been carried out, as Council has sought agreement with the new property owners to grant Council the easement over their property in favour of Council (subject to Council approval) at no cost.

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## **5.0 ATTACHMENTS / TABLED DOCUMENTS**

**ATTACHMENT 1** – Location map of 39 Robertson Road, Scotland Island

**ATTACHMENT 2** – Plan showing the proposed easement

**ATTACHMENT 3** – Plan showing the location of the pipe and pits

**ATTACHMENT 4** – Deed of Agreement (between Council and previous owner of 39 Robertson Rd).

**ATTACHMENT 5** – Draft Transfer Granting Easement

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## **6.0 SUSTAINABILITY ASSESSMENT**

### **6.1 GOVERNANCE & RISK**

#### **6.1.1 Community Engagement**

Consultation was undertaken with the affected owners with regards to the proposed easement.

Prior to the installation of the drainage infrastructure, consultation was undertaken with the property owners as well as the Scotland Island Resident Association.

#### **6.1.2 Risk Management**

An easement is required over 39 Robertson Road, to protect Council's interest to maintain its drainage infrastructure asset.

Additionally Council would require the owners of 39 Robertson Road, to enter into a Deed of Release & Settlement to waive all their rights to make future compensation claims.

### **6.2 ENVIRONMENT**

#### **6.2.1 Environmental Impact**

An easement is required to ensure Council's drainage infrastructure is protected and thereby facilitates the effective management of the stormwater.

#### **6.2.2 Mitigation Measures**

The drainage works were mitigation measures to contain stormwater flows and reduce sediment erosion in the area surrounding 39 and 37 Robertson Road.

Council will require an easement to be created in favour of Council over 39 Robertson Road, in order to protect its infrastructure.

### **6.3 SOCIAL**

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

Nil

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

Nil



## 6.4 **ECONOMIC**

### 6.4.1 **Economic Development** Nil

Report prepared by  
Cherry Vardé, Land Dealings Officer

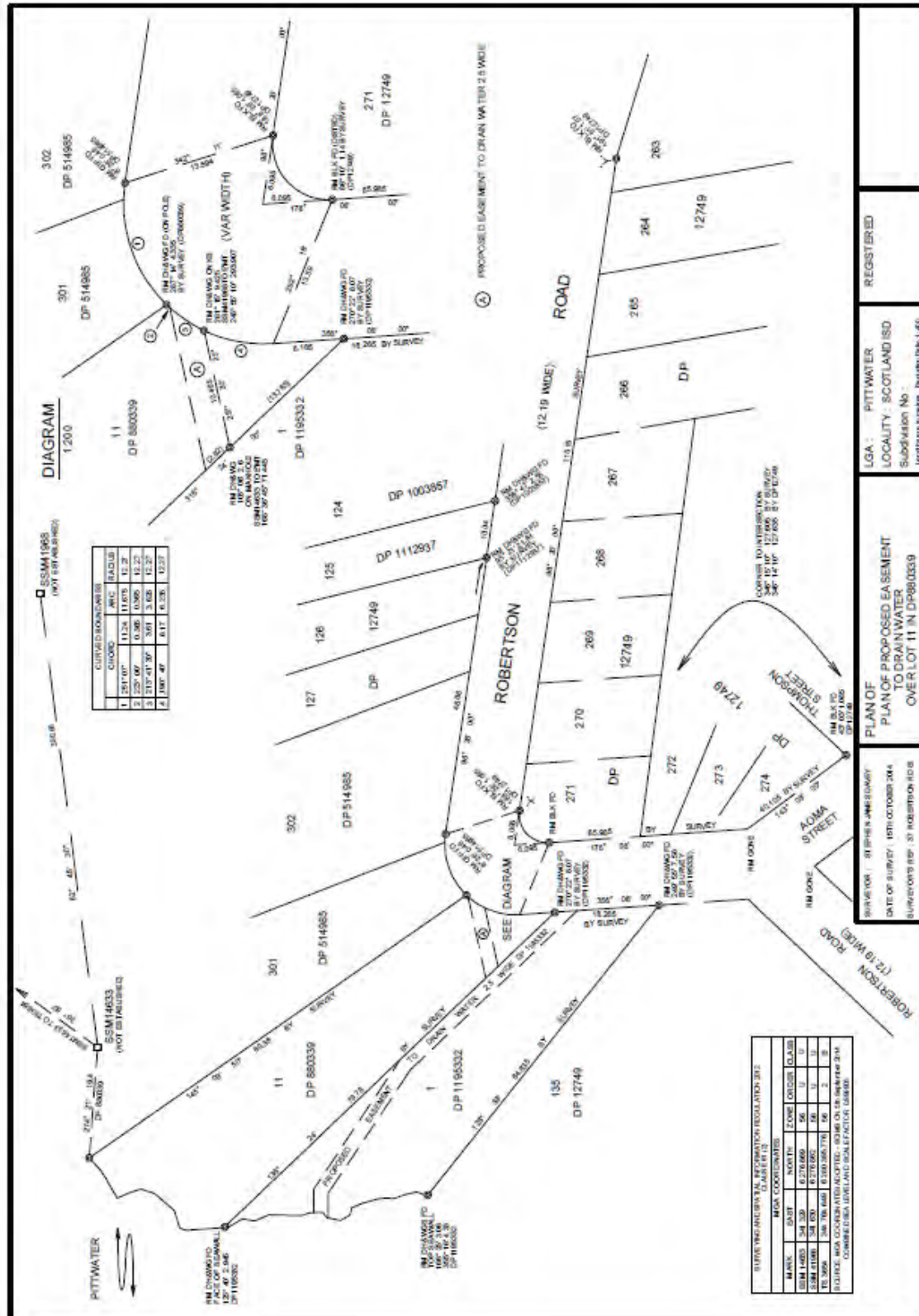
Simonne Johnston  
**A/MANAGER, CORPORATE DEVELOPMENT & COMMERCIAL**

Les Munn  
**A/MANAGER – URBAN INFRASTRUCTURE**

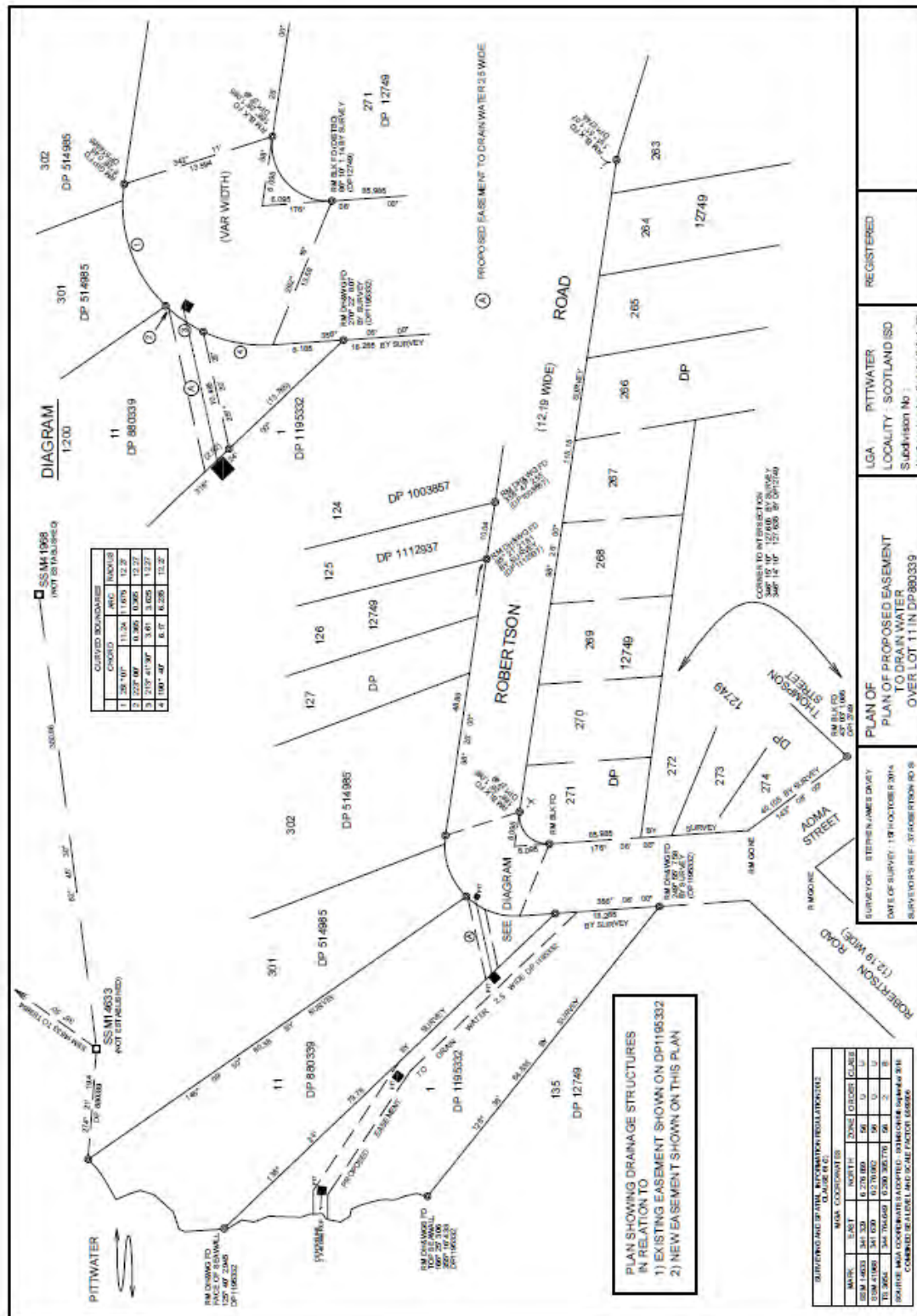
**Location plan – 39 Robertson Road, Scotland Island**



Plan showing the proposed easement over  
39 Robertson Road, Scotland Island



Plan showing the location of drainage infrastructure pipe and pits over  
39 Robertson Road, Scotland Island





**Deed of Undertaking between Council and the former owners of  
39 Robertson Road, Scotland Island**

**DEED OF UNDERTAKING**

THIS DEED made between me Gary John Kearley and Angela Elizabeth Kearley of the registered proprietor(s) for myself and my executors administrators and assigns of 39 Robertson Road, Scotland Island and Pittwater Council whereby we undertake to grant the rights to Council of Drainage Easements over that piece of land being Lot 11 DP 889339 2.5m wide (subject to the final design/construction and generally as shown on the attached Plan No. 7170-03 Issue C) and at the request of Pittwater Council to promptly comply with the following requirements.

- To sign the Transfer documents when so requested by Council's solicitor.
- To arrange production of the relevant Certificate(s) of Title when so requested by Council's solicitor to enable notation to be made by the Registrar General thereon in respect of the easement.
- To use my best endeavours to obtain the consent of the Mortgagee (if any) to the dedication.

I ACKNOWLEDGE that I am aware that the proposed Grant will result in the Council acquiring drainage easement rights over that piece of land.

**THIS UNDERTAKING IS SUBJECT TO THE FOLLOWING CONDITIONS:**

- d. The linen survey plan to be prepared by the Council at its own expense.
- e. All legal expenses to be paid by the Council.
- f. Any disturbance to fences, gardens or property to be restored to the condition that existed prior to construction.

DATED this 24th day of April 2008

SIGNED SEALED AND DELIVERED Angela E. Kearley  
LJK. #

Note: This undertaking must be signed by each of the registered proprietors of the subject land (if more than one) and in the case of a Company it must be executed under Seal.

If the land is mortgaged the following statement should be signed by the Mortgagee or by a responsible officer in the case of a Mortgage Company.

"No objection will be raised to the proposed Grant"

N/A  
Mortgagee

Form to be returned to:  
Pittwater Council  
Attention Mark Salvatore, Project Leader - Stormwater Management  
PO Box 882  
MONA VALE 1660

## Draft Transfer Granting Easement between Council and the new owners of 39 Robertson Rd, Scotland Island

Form: 01TG Licence: 05-11-643 Licensee: Softdocs Matthews Folbigg Pty Limited	<b>TRANSFER GRANTING EASEMENT</b> New South Wales Real Property Act 1900	Leave this space clear. Affix additional pages to the left-hand corner.			
<p><b>PRIVACY NOTE:</b> 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.</p>					
(A) <b>TORRENS TITLE</b>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; vertical-align: top;">           Servient Tenement (land burdened)             11/880339         </td> <td style="width: 50%; vertical-align: top;">           Dominant Tenement (land benefited)             Easement in Gross         </td> </tr> </table>		Servient Tenement (land burdened)  11/880339	Dominant Tenement (land benefited)  Easement in Gross	
Servient Tenement (land burdened)  11/880339	Dominant Tenement (land benefited)  Easement in Gross				
(B) <b>LODGED BY</b>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 15%; vertical-align: top;">           Document Collection Box             307V         </td> <td style="width: 60%; vertical-align: top;">           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:150839         </td> <td style="width: 25%; text-align: center; vertical-align: middle;">           CODE   <b>TG</b> </td> </tr> </table>		Document Collection Box  307V	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:150839	CODE  <b>TG</b>
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(C) <b>TRANSFEROR</b>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="height: 40px; vertical-align: top;">           Registered proprietor of the servient tenement             COAL SOLUTIONS AUSTRALIA PTY LIMITED (ACN 129 630 593)         </td> </tr> </table>		Registered proprietor of the servient tenement  COAL SOLUTIONS AUSTRALIA PTY LIMITED (ACN 129 630 593)		
Registered proprietor of the servient tenement  COAL SOLUTIONS AUSTRALIA PTY LIMITED (ACN 129 630 593)					
(D)	The transferor acknowledges receipt of the consideration of \$ 1.00 and transfers and grants -				
(E) <b>DESCRIPTION OF EASEMENT</b>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="height: 40px; vertical-align: top;">           Refer annexure "A"         </td> </tr> </table>		Refer annexure "A"		
Refer annexure "A"					
	out of the servient tenement and appurtenant to the dominant tenement.				
(F)	Encumbrances (if applicable):				
(G) <b>TRANSFeree</b>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="height: 40px; vertical-align: top;">           Registered proprietor of the dominant tenement             PITTWATER COUNCIL (ABN 61 340 837 871)         </td> </tr> </table>		Registered proprietor of the dominant tenement  PITTWATER COUNCIL (ABN 61 340 837 871)		
Registered proprietor of the dominant tenement  PITTWATER COUNCIL (ABN 61 340 837 871)					
(H)	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; vertical-align: top;">           DATE ..... / ..... / .....             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: COAL SOLUTIONS AUSTRALIA PTY LIMITED            (ACN 129 630 593)            Authority: Section 127(1) of the Corporations Act 2001             Signature of authorised person:            Name of authorised person:            Office held:            I certify I am an eligible witness and that the transferee's            attorney signed this dealing in my presence.            [See note* below]         </td> <td style="width: 50%; vertical-align: top;">           Signature of authorised person:            Name of authorised person:            Office held:            Certified correct for the purposes of the Real Property            Act 1900 by the person(s) named below who signed            this instrument pursuant to the power of attorney specified.             Signature of attorney:             Attorney's name: .            Signing on behalf of: PITTWATER COUNCIL            (ABN 61 340 837 871)            Power of attorney Book: 4548 No: 203         </td> </tr> </table>		DATE ..... / ..... / .....  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: COAL SOLUTIONS AUSTRALIA PTY LIMITED (ACN 129 630 593) Authority: Section 127(1) of the Corporations Act 2001  Signature of authorised person: Name of authorised person: Office held: I certify I am an eligible witness and that the transferee's attorney signed this dealing in my presence. [See note* below]	Signature of authorised person: Name of authorised person: Office held: Certified correct for the purposes of the Real Property Act 1900 by the person(s) named below who signed this instrument pursuant to the power of attorney specified.  Signature of attorney:  Attorney's name: . Signing on behalf of: PITTWATER COUNCIL (ABN 61 340 837 871) Power of attorney Book: 4548 No: 203	
DATE ..... / ..... / .....  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: COAL SOLUTIONS AUSTRALIA PTY LIMITED (ACN 129 630 593) Authority: Section 127(1) of the Corporations Act 2001  Signature of authorised person: Name of authorised person: Office held: I certify I am an eligible witness and that the transferee's attorney signed this dealing in my presence. [See note* below]	Signature of authorised person: Name of authorised person: Office held: Certified correct for the purposes of the Real Property Act 1900 by the person(s) named below who signed this instrument pursuant to the power of attorney specified.  Signature of attorney:  Attorney's name: . Signing on behalf of: PITTWATER COUNCIL (ABN 61 340 837 871) Power of attorney Book: 4548 No: 203				

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

ALL HANDWRITING MUST BE IN BLOCK CAPITALS

Annexure A to TRANSFER GRANTING EASEMENT

Parties: COAL SOLUTIONS AUSTRALIA PTY LIMITED (ACN 129 630 593) (Transferor)  
PITTWATER COUNCIL (ABN 61 340 837 871) (Transferee)

Dated: ..... / ..... / .....

Full and free right for every person who is at any time entitled to an estate or interest in possession in the land herein indicated as the dominant tenement or any part thereof with which the right shall be capable of enjoyment, and every person authorised by that person, from time to time and at all times to drain water (whether rain, storm, spring, soakage, or seepage water) in any quantities across and through the land herein indicated as the servient tenement, together with the right to use, for the purposes of the easement, any line of pipes already laid within the servient tenement for the purpose of draining water or any pipe or pipes in replacement or in substitution therefor and where no such line of pipes exists, to lay, place and maintain a line of pipes of sufficient internal diameter beneath or upon the surface of the servient tenement, and together with the right for the grantee and every person authorised by the grantee, with any tools, implements, or machinery, necessary for the purpose, to enter upon the servient tenement and to remain there for any reasonable time for the purpose of laying, inspecting, cleansing, repairing, maintaining, or renewing such pipe line or any part thereof and for any of the aforesaid purposes to open the soil of the servient tenement to such extent as may be necessary provided that the grantee and the persons authorised by the grantee will take all reasonable precautions to ensure as little disturbance as possible to the surface of the servient tenement and will restore that surface as nearly as practicable to its original condition.

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## **C12.4      316 Hudson Parade, Clareville - Renewal of expired lease**

**Meeting:**            Sustainable Towns & Villages Committee            **Date:**    16 November 2015

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### **COMMUNITY STRATEGIC PLAN STRATEGY:**

Leading an Effective and Collaborative Council

### **STRATEGIC PLAN OBJECTIVE:**

To provide an effective, efficient and courteous customer service in accordance with Council values.

### **DELIVERY PROGRAM ACTION:**

Provide an effective customer service.

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## **1.0      EXECUTIVE SUMMARY**

### **1.1      SUMMARY**

This report seeks approval on behalf of the owners of 316 Hudson Parade, Clareville (Lot 1, DP 827733) to renew an expired lease over an area of land designated as a separate allotment (Lot 2, DP 827733) within Refuge Cove Reserve. The land contains a stairway and a section of their boatshed. It is reasonable to renew the lease, given the said land was transferred to Council with the intention that the residence retain a lease for a section of boatshed and access to the boatshed within Refuge Cove Reserve. The problem stems from an administration oversight in 1998 when the separate lot and lease were not recognised in the associated plan of management.

---

## **2.0      RECOMMENDATIONS**

- 1.      *That the access way and part of the boatshed associated with 316 Hudson Parade, Clareville (Lot 2, DP 8227733 - within Refuge Cove Reserve) be categorised as General Community Use.***
  - 2.      *That the General Manager be authorised to:***
    - (a)      *negotiate the new terms and conditions of the proposed new lease***
    - (b)      *issue the proposed lease subject to the requirements of Section 46 of the Local Government Government Act 1993***
    - ©      *execute all relevant documentation and attach the Common Seal of Council to any lease documentation required to finalise the lease.***
- 

## **3.0      BACKGROUND**

### **3.1      PURPOSE**

To fix an administrative oversight dating from 1998 in regards to Lot 2, DP 8227733.



### 3.2 BACKGROUND

#### Issue

The owners of 316 Hudson Parade, Clareville request the renewal of an expired lease over an area of land in Refuge Cove Reserve. The land (Lot 2, DP 8227733) contains a stairway and a section of a boatshed. See Attachments 1 and 2.

#### Background

The property located at 316 Hudson Parade, Clareville originally extended to the mean high water mark, including a section of the boatshed. In 1993, the then owners transferred a large area of the property including the foreshore, to Council for incorporation into Refuge Cove Reserve. The transfer was conditional that a lease be provided over the access way to the foreshore and the section of the boatshed above the mean high water mark, which is contained within a separate allotment - Lot 2, DP 8227733.

A 20 year lease was provided by Council for the period from 5 March 1993 until 4 March 2013 for the use of the access way and part of the boat shed which would then be within Refuge Cove Reserve. The permitted use under the expired lease is described as “use as a boatshed and such purposes as are incidental thereto”.

The property changed hands in 2002. The new owners requested the lease be renewed at the appropriate time, however it has not been renewed. The property was sold earlier this year and the current owner has requested the lease be renewed.

Renewing the lease is reasonable given it fixes an administration oversight during the preparation of the *Plan of Management Urban Bushland, 1998* which did not recognise the leased area (Lot 2, DP 8227733) and/or a suitable land categorisation for the said portion of land.

The *Plan of Management Urban Bushland, 1998* is a generic plan covering all natural areas with leases permitted in accordance with Section 36(4) of the Act. However a lease cannot be granted for land categorised as a Natural Area. Land must be managed according to core objectives under Section 47B of the Act and the core objectives for Natural Area – Bushland are aimed at preserving and restoring the vegetation and landforms of the land.

Legal advice from Matthews Folbigg, Lawyers dated 18 June 2015, instructs that “Council will need to undertake a process of recategorising the land other than as a Natural Area, for example as General Community Use in order to avoid being caught by the provisions of Section 47B of the Act”.

It is recommended the said area of land be categorised as General Community Use and the General Manager be delegated to negotiate the terms and conditions of the new lease based on the expired lease and direct the execution of the relevant documentation.

The new lease will note that the public cannot be alienated from the leased area. The access stairs will be upgraded where necessary to ensure public safety and meet relevant building standards.

### 3.3 POLICY IMPLICATIONS

- *Plan of Management Urban Bushland, 1998 Volume 1*
- *Urban Bushland Inventory and Action Plan, Volume 1 and Volume 2 North Ward Reserves, June 1998 (p.p.136-139).*

### 3.4 **RELATED LEGISLATION**

*Local Government Act, 1997*

*Environmental Planning and Assessment Act, 1986*

### 3.5 **FINANCIAL ISSUES**

3.5.1 **Budget – N/A**

3.5.2 **Resources Implications – N/A**

### 4.0 **KEY ISSUES**

This report seeks Council's consideration to renew the lease for the access way and part of the boatshed associated with 316 Hudson Parade, Clareville and within Refuge Cove Reserve.

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### 5.0 **ATTACHMENTS / TABLED DOCUMENTS**

Attachment 1 – Maps showing leased area

Attachment 2 – Summary of expired lease

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### 6.0 **SUSTAINABILITY ASSESSMENT**

#### 6.1 **GOVERNANCE & RISK**

**Risk Management** – The lease will note that the public cannot be alienated from the leased area. The access stairs will be upgraded where necessary to ensure public safety and meet relevant Standards.

6.2 **ENVIRONMENT** – The leased land (Lot 2, DP 8227733) currently contains a set of stairs and boat shed. There will be no increase in the current footprints or associated impacts on the environment.

6.3 **SOCIAL** – The public will not be excluded from the area within the reserve containing the access stairs.

6.4 **ECONOMIC** – The lease is to be negotiated with the property owner to ensure appropriate Council requirements are met.

Report prepared by  
Jenny Cronan, Landscape Architect

Mark Beharrell

**MANAGER - NATURAL ENVIRONMENT AND EDUCATION**



Residence: 316 Hudson Parade, Clareville. Lot 1, DP 827733  
Leased area – access path and part of boatshed. Lot 2, DP 827733



Residence and leased area within the context of Refuge Cove Reserve

**Summary of Expired Lease**

- Lease No 321866.
- Leased property – section of Refuge Cove Reserve - Lot 2, DP 827733
- Lessor – The Council of the Municipality of Pittwater.
- Lessee - original owners - G and R Broadhurst
- Second Lessee – from November 2002 until following the sale of the property in Aug 2015.
- Term - 20 years. Commencing 5 March 1993, terminating 4 March 2013.
- Terms – annual rent \$1.00. Public access retained. Upgrades allowed. Injury waver, public liability workers compensation and fire clauses. Lessee and lessor pay their own legal costs and stamp duty (Clause 18).
- Third Lessee pending

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## **C12.5      Mona Vale Golf Course Lease Renewal**

**Meeting:**            Sustainable Towns & Villages Committee            **Date:**    16 November 2015

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COMMUNITY STRATEGIC PLAN STRATEGY:    Corporate Management

### **COMMUNITY STRATEGIC PLAN OBJECTIVE:**

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

### **DELIVERY PROGRAM ACTION:**

Review and manage Council lease portfolio

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## **2.0      EXECUTIVE SUMMARY**

### **1.1      SUMMARY**

Council at its meeting on 13 October 1997 resolved to lease three lots of land (Lot 7092 DP 1051073, Lots 2 and 4 in DP 251053) which forms part of Mona Vale Golf Course to Mona Vale Golf Club (the Club) for a period of twenty (20) years. It should be noted Lot 7092 DP 1051073 is Crown Land while Lots 2 and 4 in DP 251053 are Council owned land.

Further, at the Council meeting held 21 October 2002 Council resolved to grant a separate lease to the Club for occupation of an adjoining lot of land (Lot 1 DP 1033971) which is owned by Council for a term of ten (10) years.

All of the three leases that make up Council's interest in land ownership and management of Mona Vale Golf Course expired on 31 October 2015. Hence the Club is now seeking to renew their leases over all four lots (Lot 7092 DP 1051073, Lots 2 and 4 in DP 251053 and Lot 1 DP 1033971).

Council and the Club have negotiated the following lease terms:

- Lease Term: 5 years.
  - Commencement annual rent: As per valuation at \$76,500 excluding GST
  - Investment by the Club into the public walkway
  - Contribution by Pittwater Council towards the public walkway
- 

## **3.0      RECOMMENDATION**

- 1.      *That the two proposed leases of Mona Vale Golf Course comprising of four lots (Lot 7092 DP 1051073, Lots 2 and 4 in DP 251053 and Lot 1 DP 1033971) be placed on public notice for 28 days.***
- 2.      *That a further report be brought back to Council with the outcomes of the public notice period and necessary Ministerial Consent.***



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## 4.0 BACKGROUND

### 4.1 PURPOSE

To seek Council's approval to enter into a new lease over the Crown land at a portion of Mona Vale Golf Course, 1 Golf Ave, Mona Vale concerning Beeby Park (R45244) Reserve Trust being described as Lot 7092 DP 1051073 which Council as the Reserve Trust Manager.

In addition, to seek Council's approval for a separate new lease for the adjoining land lots under the ownership of Council at a portion of Mona Vale Golf Course being Lots 2 and 4 in DP 251053 and Lot 1 DP 1033971, and to place the lease on public notice.

### 4.2 BACKGROUND

4.2.1 Mona Vale Golf Course site and Mona Vale Golf Club comprises seven (7) separate land lots including Lot 7092 DP 1051073, Lots 2 and 4 in DP 251053, Lot 1 DP 1033971, Lot 249 DP 752046, Lot 323 DP 824000 and Lot 1 DP 439092 (refer **Attachment 1**), of which Council holds interest in four (4) lots.

Please see below table indicating the land ownership;

No.	Land	Registered Proprietor
A	Lot 7092 DP 1051073, Beeby Park (R45244) Reserve Trust	Council, as Reserve Trust Manager of the Crown
B	Lots 2 DP 251053	Council
C	Lots 4 DP 251053	Council
D	Lot 1 DP 1033971	Council
E	Lot 249 DP 752046	NSW Department of Crown Lands
F	Lot 323 DP 824000	NSW Department of Crown Lands
G	Lot 1 DP 439092	NSW Department of Health

4.2.2 Council at its meeting on 13 October 1997 resolved to authorise two leases to the Club over Lot 7092 DP 1051073 and Lots 2 and 4 in DP 251053 for twenty (20) years expiring 31 October 2015 (refer **Attachment 2**).

4.2.3 At its meeting of 21 October 2002, Council resolved to lease the Club an extra area of Lot 1 in DP 1033971 (refer **Attachment 3**) for a period of ten (10) years expiring on 31 October 2015.

4.2.4 In total, Mona Vale Golf Club had three leases over four lots of land and all of the leases have expired on 31 October 2015.

4.2.5 The Club is now seeking to renew their lease agreements from 1 November 2015 concerning both the Crown land being Lot 7092 DP 1051073 also known as Beeby Park (R45244) Reserve, and Council land of Lots 2 and 4 in DP 251053 and Lot 1 DP 1033971.

### 4.3 POLICY IMPLICATIONS

The Leases of the subject land lots are in accordance with Council Policy No 195 – ‘Lease over Council Owned or Controlled Land’ the draft Property Management Policy, and is consistent with the Plan of Management for Mona Vale Golf Course.

### 4.4 RELATED LEGISLATION

In accordance with Section 102 of the Crown Lands Act 1989, the proposed lease for the Crown land of Beeby Park (R45244) Reserve Trust being described as Lot 7092 DP 1051073 requires the Minister’s Consent.

Under s.47A of the Local Government Act 1993, Council are required to notify and exhibit any lease of a period of 5 years or greater than 5 years. As such, the proposed two lease f will be placed on public notice for a period of 28 days.

### 4.5 FINANCIAL ISSUES

#### 4.5.1 Budget

- (i) The two leases attract an income of approximately \$400,000 for a period of five years including annual CPI increases.
- (ii) It has been negotiated with the Club that the first year rent of \$76,500 be invested in the project to improve public safety adjacent to the 17th hole and the walkway connecting Golf Ave and Mona Vale Hospital.

#### 4.5.2 Resources Implications

Nil

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## 5.0 KEY ISSUES

- 5.1 Mona Vale Golf Club is now seeking to renew its leases over all four lots and have agreed to the following terms and conditions;
- Lease Term: 5 years.
  - Commencement annual rent: As per valuation at \$76,500 excluding GST
  - Annual rent reviews; subject to CPI (all groups, Sydney).
  - Council propose to contribute \$76,500 which is equivalent to the first year’s rent to the walkway project.
- 5.2 Lease term of 5 years was agreed by both parties due to Council’s current consideration of the broader context of Mona Vale Place Planning.
- 5.3 An independent valuation was conducted by BEM Property Consultants & Valuers which valued the market rent for the subject land at \$76,500 excluding GST.
- 5.4 Council’s solicitor has prepared two separate proposed leases to reflect the different ownership of the land involved (refer **Attachment 4** for Crown land and **Attachment 5** for Council land).
- 5.5 The Club has committed to spend \$120,000 on improvements to the site for works to improve public safety adjacent to the 17th hole and the walkway connecting Golf Ave and Mona Vale Hospital.

- 5.6 The *Pittwater Public Space and Recreation Strategy*, which was adopted by Council in 2014, recommends that Council investigate more equitable use of golf courses and bowling clubs for the benefit of the wider community. For instance, Pittwater contains three public golf courses covering 66.6 hectares plus three private golf courses for a population of 60,250”.

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## 6.0 ATTACHMENTS / TABLED DOCUMENTS

- **Attachment 1** – Map
  - **Attachment 2** – A copy of report to Council Meeting 13 October 1997
  - **Attachment 3** – A copy of report to Council Meeting 21 October 2002
  - **Attachment 4** – A copy of the proposed new lease for Crown land (Lot 7092 DP 1051073)
  - **Attachment 5** – A copy of the proposed new lease for Council owned land (Lots 2 and 4 in DP 251053 and Lot 1 in DP 1033971)
- 

## 7.0 SUSTAINABILITY ASSESSMENT

### 7.1 GOVERNANCE & RISK

#### 7.1.1 Community Engagement

It is proposed that the two new leases over Council lots (Lots 2 and 4 in DP 251053, Lot 1 in DP 1033971 and Lot 7092 in DP 1051073) be placed on public notice for 28 days after which time a report is brought back to Council for consideration.

#### 7.1.2 Risk Management

The proposed new lease agreements provide a level of certainty to the Club to assist it to maintain its membership level and encourage it to provide funding for capital improvements to the golf course.

Risk to public safety is reduced due to improvements that are being made to the 17<sup>th</sup> hole and the walkway connecting Golf Ave and Mona Vale Hospital

### 7.2 ENVIRONMENT

#### 7.2.1 Environmental Impact

There will be no impact on the natural environment arising from the lease of the subject land for the use as a golf course.

#### 7.2.2 Mitigation Measures

There are no mitigation measures necessary.

### 7.3 SOCIAL

#### 7.3.1 Address Community Need & Aspirations

The proposed leases are consistent with the objectives in the Plan of Management for Mona Vale Golf Course enables the provision of a quality sporting facility within the Council area.



### **7.3.2 Strengthening local community**

The provision of a high quality golf facility to the community encourages community connection and cohesion through recreational enjoyment.

Provide improved public pedestrian access within Mona Vale Golf Course connecting Golf Avenue and Coronation Street

## **7.4 ECONOMIC**

### **7.4.1 Economic Development**

Currently being an eighteen (18) hole “A” grade golf course, the proposed lease supports the ongoing operation of Mona Vale Golf Club as a tourism attraction which will create opportunities for local business and employment.

Report prepared by  
Leo Li – Senior Property Officer, Commercial Property & Projects

Simonne Johnston  
**A/MANAGER, COMMERCIAL PROPERTY & PROJECTS**

Land Ownership Map



No.	Land	Registered Proprietor
A	Lot 7092 DP 1051073, Beeby Park (R45244) Reserve Trust	Council, as Reserve Trust Manager of the Crown
B	Lots 2 DP 251053	Council
C	Lots 4 DP 251053	Council
D	Lot 1 DP 1033971	Council
E	Lot 249 DP 752046	NSW Department of Crown Lands
F	Lot 323 DP 824000	NSW Department of Crown Lands
G	Lot 1 DP 439092	NSW Department of Health

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## Report to Council Meeting of 13 October 1997

Subject: Lease To Mona Vale Golf Club Limited

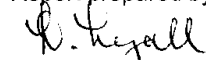
Item: C9.9

File: 16145

## EXECUTIVE SUMMARY

<b>PURPOSE OF REPORT</b>	To obtain Council approval to affix the Common Seal to Lease documents. (copy of lease document tabled at this meeting with a specific notation to that effect).
<b>BACKGROUND</b>	<ul style="list-style-type: none"> <li>Council has been working closely with Mona Vale Golf Club Ltd to develop a lease package that will address their need for tenure over the next 20 year period (from October 1995). An important element of this lease is the need to clearly demonstrate the net benefit to the Pittwater community in terms of recognising the considerable asset that has been established through the Club's endeavours and the need to preserve and embellish these assets into the future and provide a return to the community.</li> <li>The agreed financial package consists of the following: 25% of gross income from course fees to be apportioned as follows: 15% of 25% rental to Council (approximately \$42,000 97/98) 70% of 25% capital works/depreciation 15% of 25% junior golf sport development.</li> </ul>
<b>ISSUES</b>	<ul style="list-style-type: none"> <li>An agreed way forward – the conclusion of the lease documentation establishes a formal relationship between Council and Mona Vale Golf Club Limited with a strong focus on sustainable outcomes of community benefit.</li> </ul>
<b>FINANCIAL IMPLICATIONS</b>	First 2 years of lease, ie from October 1995 - \$30,000 annual rental. As of October 1997, the new lease package applies (as above).
<b>POLICY IMPLICATIONS</b>	This Lease package with Mona Vale Golf Club Limited represents a benchmark for other lease arrangements in Pittwater. Preliminary negotiations are taking place with Palm Beach Golf Club Limited and Pittwater Rugby Club on the basis of this lease package.
<b>RECOMMENDATION</b>	That Council approves the Common Seal being affixed to Lease documents for Mona Vale Golf Club Limited as tabled at the meeting.

Report prepared by Matthew Johnson A/Property Manager



David Lyall

MANAGER, PROPERTY/COMMERCIAL

BG/JH



# Pittwater Council

**SUBJECT:** Council - Agenda Master - 16 November 2015

**Meeting:** Council

**Date:** 21 October 2002

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## EXECUTIVE SUMMARY

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### PURPOSE OF REPORT

To endorse an extension to the existing lease area of the Mona Vale Golf Club at the corner of Pittwater Road and Coronation Street, Mona Vale.

### BACKGROUND

At its meeting on 12 August 2002, the Council resolved to publicly exhibit a proposed increase to the current lease area of the Mona Vale Golf Club and report back on any submissions received.

### ISSUES

- Results of Public Notification

### FINANCIAL IMPLICATIONS

It is proposed to incorporate the additional land within the terms of the existing lease which would be subject to the net community benefit rental formula applicable under the lease.

### POLICY IMPLICATIONS

Nil.

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## SUMMARY OF RECOMMENDATION

That the lease area be extended as publicly exhibited.

---

## **1.0 BACKGROUND**

The Council entered into a 20 year lease with the Mona Vale Golf Club commencing 1 November 1995 and terminating on 31 October 2015. The terms of the lease are in accordance with Council's net community benefit formula whereby the Club makes annual payments to Council comprising 25% of gross turnover which is divided into a Cash Rental component, Youth Development component and rolling 5 year Capital Works Program.

At its meeting on 12 August 2002, the Council resolved to publicly exhibit a proposed increase to the current lease area of the Mona Vale Golf Club and report back on any submissions received.

The subject land is roughly square in shape measuring approximately 70m x 75m and occurs on low-lying flat and swampy land. A large Sydney Water service pit for sewerage and/or stormwater exists in the southern part of the subject site. The Club intends to lodge a development application to establish a new golf hole which involves clearing some mature or semi-mature indigenous trees and weedy undergrowth, as well as relocating the creekline currently bisecting the site. A pond will also be created. Following installation of facilities for the proposed golf hole, the land surrounding the fairway and green will be landscaped and regenerated with appropriate native species. It is also proposed to allow for a service road for sewerage maintenance at the southern end of the subject site. The Council's Property Assets Management Panel (PAMP) granted owner's consent to the Club to lodge the subject development application on 19 April 2001.

## **2.0 ISSUES**

### **Results of Public Notification**

The proposed extension to the lease area was publicly notified in the Manly Daily on Friday, 23 August 2002 and no public submissions were received. The Council also wrote to the Mona Vale Hospital (Northern Sydney Health) as a small portion of the subject land is currently used as an informal spillover parking area by visitors/staff of the hospital.

Northern Sydney Health (NSH) has written to Council expressing concerns that the proposal will result in a significant loss of parking for visitors and staff of Mona Vale Hospital. A copy of this submission is attached. A site meeting was held on 26 September 2002 between representatives of the Mona Vale Golf Club, senior officers from NSH and Council staff. It was agreed by NSH at this on site meeting that they would remove their objection if alternate parking could be provided elsewhere in the vicinity. It was agreed in principle between all parties that alternate parking could be provided within the Mona Vale Hospital grounds, adjacent to the subject lease area, which would accommodate the displaced vehicles. The parties agreed that the Mona Vale Golf Club could fund the necessary civil works to provide the necessary parking, from the Capital Works component of their existing lease with Council.

## **3.0 FINANCIAL IMPLICATIONS**

It is proposed to incorporate the additional land within the terms of the existing lease, which would be subject to the net community benefit rental formula applicable under the lease.

## **4.0 POLICY IMPLICATIONS**

Nil.

## **RECOMMENDATION**

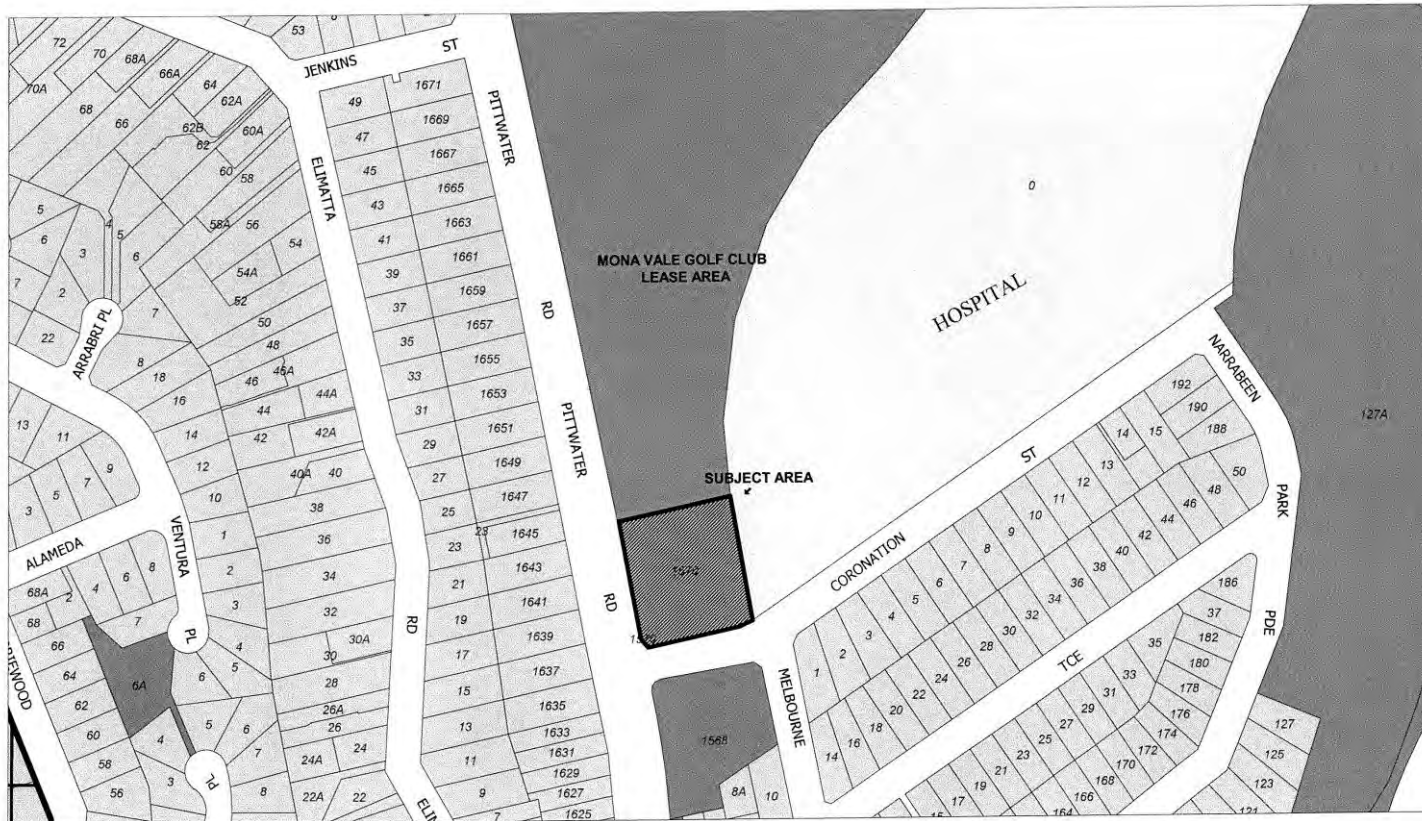
1. That the Mona Vale Golf Club be invited to take up Council's offer of an extension to the existing lease area to include the area of land approximately 75 m x 70m at the Corner of Pittwater Road and Coronation Street, Mona Vale as indicated on the diagram attached to this report, subject to the outcome of the Club's development application for a new golf hole.



2. That should the Golf Club's development application for a new golf hole on the subject land be refused, the Club retains the option of declining Council's offer to take up the additional land within its existing lease.
3. That subject to 1 and 2 above, the Mona Vale Golf Club funds the necessary civil works to enable construction of alternate parking for approximately 21 vehicles within the grounds of the Mona Vale hospital adjacent to the subject lease area which are to be credited to the Club as part of its Capital Works program under its existing lease with Council.

Report prepared by

Steve Rawe  
**MANAGER, BUSINESS & ADMINISTRATION**



# Northern Sydney Health

better health: from the Harbour to the Hawkesbury

Group

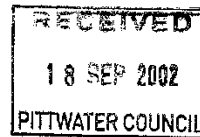
## Asset Services

Cameron Building  
Macquarie Hospital  
Wicks Rd  
NORTH RYDE NSW 2113

Telephone: 9887 7543  
Facsimile: 9887 5508

17 September, 2002

Mr. Steve Rawe  
Manager Business and Administration  
Pittwater Council  
Po Box 882  
Mona Vale NSW 1660



By Facsimile: 9970 7150

Dear Sir,

### Proposed Extension to Lease – Mona Vale Golf Course

I refer to your of 15<sup>th</sup> August 2002 and our subsequent telephone conversation discussion regarding the implications of the proposed lease to the Mona Vale Golf Club.

The existing long term arrangement whereby Mona Vale Hospital utilises part of the areas in question for parking will, if terminated, significantly impact on the operation of the hospital from a visitor, staff & community perspective. It is estimated that approximately 45 vehicles will be lost. Whilst it is appreciated that alternate parking spaces may be able to be identified elsewhere on the perimeter of the golf course, this will obviously need investigation and if spaces are identified, some civil works to have them established.

Accordingly, I request that any decision to grant to the golf club the additional land be deferred until we can meet with Council to discuss this issue. I will have someone contact your office to arrange a convenient time and location at the earliest opportunity.

Yours sincerely,

A handwritten signature in black ink, appearing to read "David Green".

David Green  
Director Asset Services

Form: 07L  
 Licence: 05-11-667  
 Licensee: Softdocs  
 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.

<b>STAMP DUTY</b>	Office of State Revenue use only	
<b>(A) TORRENS TITLE</b>	Property leased: if appropriate, specify the part or premises  7092/1051073	
<b>(B) LODGED BY</b>	Document Collection Box  <b>307V</b>	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
		<b>CODE</b>  <b>L</b>
<b>(C) LESSOR</b>	BEEBY PARK (R45244) RESERVE TRUST THE AFFAIRS OF WHICH ARE MANAGED BY PITTWATER COUNCIL (ABN 61 340 837 871)	
	The lessor leases to the lessee the property referred to above.	
<b>(D)</b>	Encumbrances (if applicable):	
<b>(E) LESSEE</b>	THE MONA VALE GOLF CLUB LTD (ACN 000 024 224)	
<b>(F)</b>	TENANCY:	

- (G) 1. TERM** Five (5) Years
2. **COMMENCING DATE** 1 November 2015
3. **TERMINATING DATE** 31 October 2020
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) The seal of PITTWATER COUNCIL (ABN 61 340 837 871) as Reserve Trust Manager of the BEEBY PARK (R45244) RESERVE TRUST was hereunto affixed in the presence of authorised officers of the Council who certify this dealing to be correct for the purposes of the Real Property Act 1900.

Council's seal:

Signature of authorised officer:

Signature of authorised officer:

Name of authorised officer:

Name of authorised officer:

Position of authorised officer: MAYOR

Position of authorised officer: GENERAL MANAGER

*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:

Name of authorised person:

Office held:

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.

ALL HANDWRITING MUST BE IN BLOCK CAPITALS

Page 2 of 32

Number additional pages sequentially

## **ANNEXURE "A"**

This and the following      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 Pittwater Council (ABN 61 340 837 871) 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 negated 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 or permit any other person to reside on the Premises.

## **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 reasonable legal costs, the 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) the preparation, completion, 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.

#### **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.

#### **24. ACCEPTANCE OF RENT NOT WAIVER**

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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**

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- (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 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.**

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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**

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- (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**

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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**

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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**

---

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.

**37. RELICS**

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- (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**

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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**

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Without prejudice to any specific obligations contained in this Lease the Lessee will to the satisfaction of the Lessor at all times keep the Premises in good repair and properly maintained in all respects.

### **41. BREAKAGES**

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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 AND REPAIR**

---

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.

### **43. INDEMNITIES AND INSURANCE**

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#### **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**

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##### **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**

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

### **51. QUIET ENJOYMENT**

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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**

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- (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**

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#### **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**

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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**

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

**65. CONTACT PERSON**

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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**

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This Lease shall be construed and interpreted in accordance with the law of New 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**

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- (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 negatived.

**69. SPECIAL CONDITIONS**

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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	<b>Commencing Date</b>	1 November 2015
2	7	<b>Term</b>	Five (5) Years
3	21	<b>Terminating Date</b>	31 October 2020
4	8	<b>Permitted Use</b>	Golf Course
5	9	<b>Initial Rent</b>	\$38,250.00 plus GST by equal monthly instalments in advance of \$3,187.50
6	9	<b>Rent Rebate</b>	N/A
7	9	<b>Due Date</b>	First (1 <sup>st</sup> ) day of each month commencing on the Commencing Date
8	9	<b>Market Rent Review Date</b>	N/A
9	18	<b>Address for Payment of Rent</b>  <b>[OPTIONAL] Electronic Funds Transfer details for payment of rent</b>	Name of financial institution: BSB: Account No.: Account in name of:
10	60	<b>Lessee's address for Service of Notices</b>	Golf Avenue, Mona Vale NSW 2103  Attention: Phone: Facsimile: Email:
11	60	<b>Lessor's address for Service of Notices</b>	c/- Pittwater Council, 1 Park St, Mona Vale NSW 2103  Attention: Phone: Facsimile: Email:

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

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. 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. Lessee's Works**

- (a) The Lessee must at its own cost, during the Term of this Lease, spend no less than \$250,000 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 (**Works**).
- (b) The Works consist of the construction of a public walking track/path and associated mounding/vegetation planting adjacent to the 17<sup>th</sup> hole on the Mona Vale Golf Course, connecting 1 Golf Avenue, Mona Vale and Mona Vale Hospital.
- (c) Prior to commencing the Works, the Lessee must provide the Lessor with all details of the proposed Works and all relevant contractors for the Lessor's approval, which will not be unreasonably withheld.
- (d) The Lessee must provide evidence to the Lessor by 31 January 2018 that \$125,000 has been spent towards the Works between the Commencing Date and 31 October 2017.
- (e) The Lessee must keep all financial records in respect of the Works and provide same to the Lessor within 30 days upon request by the Lessor.

##### **3. Lessor's Contribution to Lessee's Works**

The Lessor must provide the Lessee \$76,500 within six (6) months of the Commencing Date of this Lease as a contribution towards the Works.

##### **4. 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 directions provided by the Lessor in providing such protection to the public.

**5. 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.

## EXECUTION

Dated this      day of

The Common Seal of PITTWATER COUNCIL (ABN 61 340 837 871) was hereunto duly affixed on the day of      20 in pursuance of a resolution of the Council passed on the day of      20 as Reserve Trust Manager of the BEEBY PARK (R45244) RESERVE TRUST in the presence of:

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

\_\_\_\_\_  
Mayor

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

\_\_\_\_\_  
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: Softdocs  
 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

307V

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

(C) **LESSOR**

PITTWATER COUNCIL (ABN 61 340 837 871)

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

(D) Encumbrances (if applicable):

(E) **LESSEE**

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

(F) **TENANCY:**

(G) 1. **TERM** Five (5) Years

2. **COMMENCING DATE** 1 November 2015

3. **TERMINATING DATE** 31 October 2020

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

Council's seal:

Signature of authorised officer:

Signature of authorised officer:

Name of authorised officer:

Name of authorised officer:

Position of authorised officer: MAYOR

Position of authorised officer: GENERAL MANAGER

*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:

Name of authorised person:

Office held:

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.

ALL HANDWRITING MUST BE IN BLOCK CAPITALS

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Number additional pages sequentially



## **ANNEXURE "A"**

This is Annexure "A" referred to in the Lease between Pittwater Council (ABN 61 340 837 871) 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**

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### **2.1 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.

**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 or permit any other person to reside on the Premises.

#### 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**

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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 reasonable legal costs, the 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) the preparation, completion, 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.

#### **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 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.
- 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.

#### **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**

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- (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.

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**23. LESSEE TO YIELD UP**

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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 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**

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**24. ADDITIONS AND ALTERATIONS**

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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.

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**25. MAINTENANCE OF PREMISES AND ENCLOSED AREAS**

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

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**26. LESSEE TO ERECT BARRICADES ETC.**

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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.

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**27. LESSEE NOT TO REMOVE MATERIALS**

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- (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.

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**28. ADVERTISING**

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- (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.

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**29. NOTIFICATION OF ACCIDENT**

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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.

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**30. RODENTS AND VERMIN**

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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.

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**31. LESSEE NOT TO BURN OFF**

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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**

---

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.

### **34. RELICS**

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- (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**

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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**

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Without prejudice to any specific obligations contained in this Lease the Lessee will to the satisfaction of the Lessor at all times keep the Premises in good repair and properly maintained in all respects.

### **38. BREAKAGES**

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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 AND REPAIR**

---

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.

### **40. INDEMNITIES AND INSURANCE**

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#### **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**

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#### **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.

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**DISPUTE RESOLUTION**

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**56. PROCEDURE - DISPUTE RESOLUTION**

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- (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**

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### **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**

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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**

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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**

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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	<b>Commencing Date</b>	1 November 2015
2	7	<b>Term</b>	Five (5) Years
3	21	<b>Terminating Date</b>	31 October 2020
4	8	<b>Permitted Use</b>	Golf Course
5	9	<b>Initial Rent</b>	\$38,250.00 plus GST by equal monthly instalments in advance of \$3,187.50
6	9	<b>Rent Rebate</b>	N/A
7	9	<b>Due Date</b>	First (1 <sup>st</sup> ) day of each month commencing on the Commencing Date
8	9	<b>Market Rent Review Date</b>	N/A
9	18	<b>Address for Payment of Rent</b>  <b>[OPTIONAL] Electronic Funds Transfer details for payment of rent</b>	Name of financial institution: BSB: Account No.: Account in name of:
10	60	<b>Lessee's address for Service of Notices</b>	Golf Avenue, Mona Vale NSW 2103  Attention: Phone: Facsimile: Email:
11	60	<b>Lessor's address for Service of Notices</b>	Pittwater Council, 1 Park St, Mona Vale NSW 2103 Attention: Phone: Facsimile: Email:

12	48	<b>Public Risk Insurance amount</b>	\$20,000,000
13	65	<b>Lessor's Contact Person</b>	Leo Li
14	65	<b>Lessee's Contact Person</b>	
15	5	<b>Essential Conditions</b>	5, 6, 7, 9, 10, 18, 19, 24, 25, 37, 45, 46, 51, 53
16	69	<b>Special Conditions</b>	[The special conditions set out in Schedule 3]

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. 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 directions provided by the Lessor in providing such protection to the public.

## EXECUTION

Dated this     day of

The Common Seal of PITTWATER COUNCIL (ABN 61 340 837 871) was hereunto duly affixed on the day of     20 in pursuance of a resolution of the Council passed on the     day of     20 in the presence of:

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

\_\_\_\_\_  
Mayor

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

\_\_\_\_\_  
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]

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<b>C12.6</b>	<b>Tender T04/15 SHOROC - Provision of Road Construction Services and Materials</b>
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**Meeting:** Sustainable Towns and Villages Meeting

**Date:** 16 November 2015

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**COMMUNITY STRATEGIC PLAN STRATEGY:**

**Construction and maintenance of road infrastructure assets**

**COMMUNITY STRATEGIC PLAN OBJECTIVE:**

SHOROC Tender T04/15 Provision of Road Construction Services and Materials was conducted to renew the previous contract 2011/114 which current term ends on 31 December, 2015.

The provision of services as tendered will greatly benefit Pittwater Council in the construction of new urban road infrastructure as well as maintaining those existing on the mainland, Scotland Island and the Western Foreshores.

**DELIVERY PROGRAM ACTION:**

Servicing the Delivery Program and allocated budgets for 2015-2019 Capital Improvement Projects.

**EXECUTIVE SUMMARY**

The need for this tender is primarily due to the expiration of the previously established regional contract for Provision of Road Construction Services and Materials.

Participating Councils in this Tender include:

- Pittwater Council
- Mosman Municipal Council
- Manly Council

This Tender will continue the success of the existing contract.

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**2.0 RECOMMENDATION**

*That the Recommendation contained in the Confidential Tender Assessment for T04/15 – Provision of Road Construction Services and Materials contained within the Confidential Section of this Agenda, be adopted.*

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**3.0 BACKGROUND**

**3.1 PURPOSE**

SHOROC, on behalf of Pittwater, Mosman and Manly Councils prepared a Request for Tender T04/15SHOROC – Provision of Road Construction Services and Materials. Ten (10) submissions were received from the following companies (in alphabetical order):

1. Downer EDI Works Pty Ltd
2. Fulton Hogan Industries Pty Ltd
3. North Shore Paving Co. Pty Ltd
4. Ozpave (Aust) Pty Ltd
5. Optimum Roads P/L Trading as National Road Sealing & Maintenance
6. SRS Road Pty Ltd
7. Stabilised Pavements of Australia Pty Ltd
8. State Asphalt Services Pty Ltd
9. Stateline Asphalt Pty Ltd
10. The Trustee for SuperSealing Unit trust (Trading as SuperSealing)



### **3.2 BACKGROUND**

Council has an ongoing need to manage items of road infrastructure as they age, break down and decay. In light of this, a tender to cover a range of road pavement construction and maintenance works as well as traffic management control was required to cover Council for ongoing construction, maintenance and repair.

### **3.3 POLICY IMPLICATIONS**

Council Policy - No. 193: Road Reserve and Streetscape Management Policy.

### **3.4 RELATED LEGISLATION**

There are no legislative requirements that have prompted this report.

### **3.5 FINANCIAL ISSUES**

#### **3.5.1 Budget**

A budget of approximately \$1.7 million annually is available, consisting of CIP and Maintenance budgets funded from Councils own funding sources and external grants, such as Roads to Recovery Program, Roads and Maritime Services (RMS), Regional Roads Block Grants and Financial Assistance Grants (FAG).

#### **3.5.2 Resources Implications**

The tender will provide Council with access to a broad range of road construction Service Contractors at competitive pricing.

## **4.0 KEY ISSUES**

Tender process and assessment

The tender process was conducted via an open invitation to the general public. Tenders were called in accordance with Section 55 of the Local Government Act and Clauses 168 and 177 of the Local Government Regulation. Tender documentation included the Conditions of Tender, the Specification, Schedules, General Conditions of Contract and Special Conditions of Contract.

Assessment of the Tenders was conducted by the Tender Evaluation Panel, and the findings and recommendations are contained within in the Confidential section of this agenda.

## **5.0 ATTACHMENTS / TABLED DOCUMENTS**

Confidential Tender Evaluation Report including Attachment 1 Evaluation Scoresheet and Attachment 2 tender price comparison specific to Pittwater Council for Asphaltic concrete and cold milling of Asphaltic concrete and base course.

## **6.0 SUSTAINABILITY ASSESSMENT**

### **6.1 GOVERNANCE & RISK**

#### **6.1.1 Community Engagement Prior and during construction**

- Prior notification of major works is conveyed via:
- Manly Daily Publication
- Direct notice to all Emergency Services as well as bus companies and Chambers of Commerce.
- Formal letterbox drops to residents immediately affected by the works.
- Variable Messaging Signage boards (VMS) on site 7 days prior to works.
- Council website and online notice boards by council Media Team.

#### **During Construction**

Direct engagement with the public/residents immediately affected are conducted on site and in some instances reinforced with letterbox drops explaining of progression and change to conditions of works.

#### **6.1.2 Risk Management**

During construction works the following risks will be managed by each individual contractor awarded on the panel:

- access to businesses/residential
- health & safety of the public from noise, dust, and traffic disruptions wet weather
- days may extend the construction period
- pedestrian & traffic control

The Risks associated with the works, including Work, Health and Safety, and all legal compliances are to be managed by the successful contractor selected for the individual works. Insurances including public liability, workers compensation and any other required insurances will be monitored by Council's project coordinator throughout the term of the contract.

### **6.2 ENVIRONMENT**

#### **6.2.1 Environmental Impact**

Specific Site Assessments are to be conducted by contractors responsible for individual projects awarded.

The following factors are considered as a minimum on typical projects:

- Soil stability & sediment control
- Waste management and hazardous materials controls
- Noise and dust suppression
- Public and worker health & safety
- Traffic and emergency vehicles management and controls

#### **6.2.2 Mitigation Measures**

Every project shall be assessed individually. Immediate and potential environmental impacts are taken into account and controlled. A Part 5 may be submitted for projects where potential environmental impacts are recognised, these are typically incorporated into the investigative and design process.

Where appropriate, selected contractors will be encouraged to use recycled products and whenever possible, stockpiling of road milling materials to Council's Recycling Facility for other uses.

## 6.3 **SOCIAL**

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

All CIP's benefit both the local and broader community, addressing the needs of Pittwater as well as visitors to our local area.

### 6.3.2 **Strengthening local community**

The construction and maintenance of road infrastructure assets will only:

- Provide safer roads and traffic calming
- Improve drainage to problem areas
- Improve our local road infrastructure to anticipate and accommodate a growing community
- To further enhance the visual appearance of Pittwater Council

## 6.4 **ECONOMIC**

### 6.4.1 **Economic Development**

Safer roads and improved community assets will serve a physical and visual attraction to Pittwater Council area as a place to live, visit and recreate.

Report prepared by  
James Phan, Senior Engineer – Works – Urban Infrastructure

Les Munn  
**A/MANAGER, URBAN INFRASTRUCTURE**

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**Council Meeting**

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

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

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