

**ATTACHMENT 9**

**TABLE (A): WLEP 2011 SCHEDULE 1 ADDITIONAL PERMITTED USES**

<b>Area No.</b>	<b>ADDITIONAL PERMITTED USES (As identified on MAP (C) – Attachment 5)</b>
<b>21</b>	<p><b>Use of certain land to the western side of Forest Way, Belrose</b></p> <p>(1) This clause applies to certain land to the western side of Forest Way, Belrose, shown as "Area 21" on the Additional Permitted Uses Map.</p> <p>(2) Development for the purposes of educational establishments, garden centres, hospitals, hotel or motel accommodation, places of public worship, recreation areas, recreation facilities (indoor), recreation facilities (outdoor), registered clubs and restaurants or cafes is permitted with consent.</p>
<b>22</b>	<p><b>Use of certain land at Challenger Drive, Belrose</b></p> <p>(1) This clause applies to so much of the land at Challenger Drive, Belrose, that is covered by Lease RE 412 592 issued by the Department of Lands, shown as "Area 22" on the Additional Permitted Uses Map.</p> <p>(2) Development for the purposes of extractive industries, recreation facilities (indoor), recreation facilities (outdoor), processing and recycling facility for construction and demolition waste and a concrete batching plant is permitted with consent.</p>
<b>23</b>	<p><b>Use of certain land at 6 to 8 Wyatt Avenue, Belrose</b></p> <p>(1) This clause applies to land at 6 to 8 Wyatt Avenue, Belrose, being Lot 1, DP 601101 and Lot 101, DP 874509, shown as "Area 23" on the Additional Permitted Uses Map.</p> <p>(2) Development for the purpose of educational establishment is permitted with consent.</p>
<b>24</b>	<p><b>Use of certain land at Lot 100 Meatworks Avenue, Oxford Falls</b></p> <p>(1) This clause applies to land at Lot 100 Meatworks Avenue, Oxford Falls, being Lot 100, DP 1023183, shown as "Area 24" on the Additional Permitted Uses Map.</p> <p>(2) Development for the purposes of industrial activity and warehouse or distribution centre is permitted with consent.</p>
<b>25</b>	<p><b>Use of certain land at Wakehurst Parkway, Frenchs Forest</b></p> <p>(1) This clause applies to land at Wakehurst Parkway, Frenchs Forest, being Lot 1, DP 863123 and Lot 101, DP 719870, shown as "Area 25" on the Additional Permitted Uses Map.</p> <p>(2) Development for the purpose of a place of public worship is permitted with consent.</p>
<b>26</b>	<p><b>Use of certain land at 1078 Oxford Falls Road, Oxford Falls</b></p> <p>(1) This clause applies to land at 1078 Oxford Falls Road, Oxford Falls, being Lot 1, DP 1046451, shown as "Area 26" on the Additional Permitted Uses Map.</p> <p>(2) Development for the purpose of educational establishment is permitted with consent.</p>
<b>27</b>	<p><b>Use of certain land at Lot 1110 Oxford Falls Road, Frenchs Forest</b></p> <p>(1) This clause applies to land at Lot 1110 Oxford Falls Road, Frenchs Forest, being Lot 1110, DP 752038, shown as "Area 27" on the Additional Permitted Uses Map.</p> <p>(2) Development for the purpose of recreation facility (outdoor) is permitted with consent.</p>





**Warringah Council Policy**  
**Policy No. Number**  
**Draft Voluntary Planning Agreements**

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## 1 Purpose of the Policy

This Policy sets out Warringah Council's position and procedures relating to voluntary planning agreements ("VPAs") under the *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment Regulation 2000*. Guidance is also obtained from the *Practice Note on Planning Agreements* published by the Department of Infrastructure Planning and Natural Resources (July 2005).

The Policy applies to any development application or planning proposal where a VPA is proposed, on land and development within the local government area of Warringah Council.

## 2 Authorisation

This Policy was adopted by Council on 26 August 2014.

It is effective from 27 August 2014.

It is due for review on 26 August 2015. – one year from date effective

## 3 Amendments

This Policy was last amended on [Nil].

Attachments A, B and C, do not form part of this Policy and may be amended at any time without resolution of Council.

## 4 Who is responsible for implementing this Policy?

- Group Manager Strategic Planning,
- Group Manager Development and Compliance

## 5 Document owner

Deputy General Manager – Environment

## 6 Objectives

The guiding objectives of this policy are:

- a) to establish a fair, transparent and accountable framework governing the use of VPAs by Council;
- b) to enhance the range and extent of public benefits arising from a development;
- c) to set out Council's procedures relating to the use of VPAs within Council's area; and
- d) to facilitate public participation in assessing the public benefit of a VPA.

This Policy and the outcomes sought through the VPA process will be undertaken in the context of delivering the outcomes and objectives of the Community Strategic Plan.

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## **7 Definitions**

In this Policy, the following terminology is used:

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

**Council** means Warringah Council,

**Developer** is a person who has sought a change to an environmental planning instrument (which includes the making, amendment or repeal of an instrument (s93F(11)), or who has made or proposes to make a development application, or who has entered into an agreement with or is otherwise associated with such a person,

**Development application** has the same meaning as in the Act,

**Development contribution** means the kind of provision made by a developer under a planning agreement, being a monetary contribution, the dedication of land free of cost or the provision of a material public benefit.

**Explanatory note** means a written statement that summarises the objectives, nature and effect of the proposed VPA, amendment or revocation, and contains an assessment of the merits of the proposed VPA, an amendment or revocation including the impact (positive or negative) on the public or any relevant section of the public.

**Instrument change** means a change to an environmental planning instrument to facilitate a development the subject of a planning agreement,

**Planning benefit** means a development contribution that confers a net public benefit, that is, a benefit that exceeds the benefit derived from measures that would address the impacts of particular development on surrounding land or the wider community,

**Planning obligation** means an obligation imposed by a planning agreement on a developer requiring the developer to make a development contribution,

**Practice Note** means the *Practice Note on Planning Agreements published by the Department of Infrastructure Planning and Natural Resources (July 2005)*

**Public** includes a section of the public,

**Public benefit** is the benefit enjoyed by the public as a consequence of a development contribution which may be tangible and / or intangible,

**Public facilities** means public infrastructure, facilities, amenities and services,

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

**VPA** means a voluntary planning agreement.

**WDCP 2011** means *Warringah Development Control Plan 2011* or its equivalent.

**WDCP 2000** means *Warringah Development Control Plan 2000 (Notification)* or its equivalent

**WLEP 2011** means *Warringah Local Environmental Plan 2011* or its equivalent.

**WLEP 2000** means *Warringah Local Environmental Plan 2000* or its equivalent.

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## **8 Purposes of VPAs**

Section 93F(1) of the Act provides that a VPA is a voluntary agreement or other arrangement between one or more planning authorities and a developer under which the developer agrees to make development contributions towards a public purpose.

Council's approach to the consideration of VPAs is based on the planning purpose of achieving the community's vision for the Warringah area as set out in the Community Strategic Plan and WLEP 2011, WLEP 2000, WDCP 2011, plans of management and other key Council documents.

The Community Strategic Plan's community vision is for a vibrant community, improving our quality of life by living and working in balance with our special bush and beach environment. This is supported by the strategic community outcomes for living environment, living communities, living spaces, living enterprises and living organisation. A diverse range of benefits may be provided in order to make a contribution to the achievement of one or more elements of Council's vision. When considering planning obligations, Council will adopt a flexible approach, taking into account the vision and strategic aims of the Community Strategic Plan, the Community Strategic Plan's general priorities set out in the programs to that Plan, the site circumstances and also the obligations and preferences of the developer.

Council may consider a VPA with a developer in connection with any proposed application by the developer for an instrument change (e.g. rezoning application) or for development consent relating to any land in Council's area. Council may also consider a VPA in association with another Council or another authority where relevant. The consideration of a VPA is at the absolute discretion of Council.

## **9 General process**

The general process relating to the consideration, notification and entering of VPAs is as follows:

- i) Before the making of an application, Council and the developer will decide whether a VPA is appropriate. This will include consideration as to who should be the parties to the VPA.
- ii) If the developer makes a VPA Offer to Council, this will be assessed by Council, which will decide whether to consider the proposed draft VPA.
- iii) If the VPA Offer is considered appropriate the developer is to make their application. The application must clearly record the developer's offer to enter the VPA if the application is approved.
- iv) The VPA Offer is documented as a proposed draft VPA and the parties agree on the terms of the accompanying explanatory note.
- v) If Council resolves to support the terms in the draft VPA and explanatory note, the proposed draft VPA and explanatory note are then publicly notified and exhibited in accordance with the Act. Any subsequent amendments to the proposed draft VPA and explanatory note will be re-notified if there is a material change.

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- vi) If Council resolves to accept a proposed draft VPA, then it can be entered into.

## **10 Related Council Policies / Documents**

- a) Statement of Business Ethics
- b) Community Engagement Policy
- c) Community Matrix

## **11 Legislation and references**

The legal and procedural framework for planning obligations is set by the *Environmental Planning and Assessment Act 1979*, Part 4 Division 6 Subdivision 2, and the provisions of Division 1A of Part 4 of the *Environmental Planning and Assessment Regulation 2000*. Guidance is also obtained from the *Practice Note on Planning Agreements* published by the Department of Infrastructure Planning and Natural Resources (July 2005).

## **12 Attachments**

- A. Voluntary Planning Agreement Template
- B. Explanatory Note Template
- C. Potential Planning Obligation Benefits

## **13 Procedure**

This Policy sets out Council's approach to the use of VPAs when considering rezoning or planning applications for development in the Warringah area. It complements the policy approach set out in the Practice Note.

In particular, this procedure sets out

- a) the circumstances in which Council would ordinarily consider entering into a VPA (Section 13 of this Policy).
- b) the matters ordinarily covered by a VPA (Section 14 of this Policy),
- c) the form of development contributions ordinarily sought under a VPA (Sections 19 and 22 of this Policy),
- d) the kinds of public benefits ordinarily sought and, in relation to each kind of benefit, whether it involves a VPA (Sections 17, 18 and 19 of this Policy),
- e) the method for determining the value of public benefits and whether that method involves standard charging (Section 38 of this Policy),
- f) whether money paid under different VPAs is to be pooled and progressively applied towards the provision of public benefits to which the VPAs relate (Section 21 of this Policy),

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- g) when, how and where public benefits will be provided (Sections 15, 29 and 30 of this Policy),
- h) the procedures for entering into VPAs (Sections 9, 23 and 27 of this Policy),
- i) Council's practices on other matters relating to VPAs such as their review and modification, the discharging of the developer's obligations under VPAs, the circumstances, if any, in which refunds may be given, dispute resolution and enforcement mechanisms, and the payment of costs relating to the preparation, execution, monitoring and other administration of VPAs (Sections 27, 28, 31, 32, 33, 34, 35, 36 and 38 of this Policy).
- j) the process for the public notification of VPAs (Section 25),

#### **14 What are the mandatory requirements of a VPA?**

Section 93F(3) of the Act requires VPAs to include provisions specifying:

- a) a description of the land to which the VPA applies,
- b) a description of:
  - i) the change to the environmental planning instrument to which the VPA applies, or
  - ii) the development to which the VPA applies,
- c) the nature and extent of the provision to be made by the developer under the VPA, the time or times by which the provision is to be made and the manner by which the provision is to be made,
- d) in the case of development, whether the VPA excludes (wholly or in part) or does not exclude the application of section 94, 94A or 94EF to the development,
- e) if the VPA does not exclude the application of section 94 to the development, whether benefits under the VPA are or are not to be taken into consideration in determining a development contribution under section 94,
- f) a mechanism for the resolution of disputes under the VPA,
- g) the enforcement of the VPA by a suitable means, such as the provision of a bond or guarantee, in the event of a breach of the VPA by the developer.

The Act does not preclude a VPA containing other provisions that may be necessary or desirable in particular cases, except as provided by law. Council has prepared a template VPA that may form the basis for a VPA and this template is Council's preferred form for a VPA. Please refer to Attachment A.

#### **15 Explanatory Note**

Clause 25E(1) of the Regulation requires that an explanatory note must accompany a VPA that:

- a) summarises the objectives, nature and effect of the proposed VPA, amendment or revocation, and

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- b) contains an assessment of the merits of the proposed VPA, an amendment or revocation including the impact (positive or negative) on the public or any relevant section of the public.

Council has prepared a template explanatory note. Please refer to Attachment B.

## **16 Implementation Plan**

Council may require an implementation plan. This will be incorporated in the VPA and may include:

- a) The timetable for provision of planning obligations under the VPA.
- b) The design, technical specification and standard of any work required by the VPA to be undertaken by the developer.
- c) The manner in which a work is to be handed over to Council.
- d) The manner in which a material public benefit is to be made available for its public purpose in accordance with the VPA.
- e) A warranty period for materials and buildings that form part of any public benefit. These warranties would be for a minimum of 12 months for materials and services such as electrical works and 15 years for structural items.

## **17 Principles underlying the use of VPAs**

The Practice Note sets out guidelines and safeguards in the application of planning agreements. These include determining the planning agreements' acceptability and reasonableness. Regard will be had to:

- whether it is reasonable to use a VPA,
- proper or legitimate planning purposes, ordinarily ascertainable from the statutory planning controls and other adopted planning policies applying to development,
- providing for public benefits that bear a relationship to development that are not wholly unrelated to the development and are located in the precinct area in which the development is located (note section 93F(4) of the Act does not require any nexus between the public benefit and the development application or planning proposal),
- producing outcomes that meet the general values and expectations of the public and protect the overall public interest,
- providing for a reasonable means of achieving the relevant purposes and outcomes and securing the benefits,
- protecting the environment and community against planning harm.

In addition to these principles Council will ensure:

- a) All dealings relating to VPAs including assessment and implementation will be subject to strict compliance with Council's Statement of Business Ethics.
- b) Planning decisions will not be bought or sold through VPAs.

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- c) Council will not allow VPAs to improperly fetter the exercise of its functions under the Act, Regulation or any other act or law.
- d) Council will not use VPAs for any purpose other than that contemplated by section 93F of the Act.
- e) If there is no planning merit in a development application or planning proposal, then a VPA will not be accepted.
- f) Council will not give undue weight to a VPA.
- g) Council will not allow the interests of individuals or interest groups to outweigh the public interest when considering a proposed VPA.
- h) Council will not improperly use its position to extract disproportionate public benefits from developers under VPAs.

#### **18 What matters will Council consider?**

Council will consider matters that provide a positive planning outcome for the people of Warringah and are in accordance with the objects of the Act. Such matters may include, but are not limited to, the following:

- a) Whether the VPA meets the current and future demands created by the development for new public infrastructure, amenities and services.
- b) If inclusions in the development meet specific planning objectives of Council.
- c) If compensation is required for the loss of, or damage to, a public amenity, service, resource, the natural environment or asset caused by the development through its replacement, substitution, repair or regeneration.
- d) Rectification of an existing deficiency in the existing provision of public facilities in Council's area,
- e) Whether future recurrent funding related to the proposed public benefit is sustainable.
- f) Whether sufficient public benefit accrues from the VPA.

Development that is unacceptable on planning grounds will not be given consent because of unrelated benefits offered by a developer. The most important factor in deciding what planning obligations might be required is likely to be the size of the development, but other factors such as the location or type of development may be relevant. These will establish core information such as likely increase in population and demand for particular public services.

This information will help Council to determine the application and to consider the VPA.

#### **19 What will Council require to be provided under VPAs?**

Council will consider development contributions that provide a demonstrable public benefit. The public benefit must provide a positive planning outcome for the people of Warringah and be in accordance with the objects of the Act.

An outline of the potential public benefits is set out in the Potential Public Benefits table which is attached as Attachment C. It is also recognised that the planning obligation benefits



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actually sought may differ from the facilities included in Attachment C in the Potential Public Benefits table because the consideration of each proposed development will reflect the circumstances of each case and the needs created by the scale of proposed change.

Therefore, other benefits which are not identified specifically in Attachment C may also be relevant. For example, where there may be variations to a development control to support a proposed aged care facility, Council may deem it acceptable to obtain public benefits through a VPA for much needed child care facilities, so as to ensure that the population demands of Warringah are met. Consequently, Attachment C is not intended to be exhaustive.

## **20 Recurrent charges**

A VPA may require a developer to make development contributions towards the recurrent costs of public facilities. Where the public facility primarily serves the development to which the VPA relates, or a neighbouring development, the arrangement for recurrent funding may be in perpetuity.

Where the public facility or public benefit is intended to serve the wider community, the VPA may only require the developer to make contributions towards the recurrent costs of the facility for a set period which will be determined according to the impact of the development.

## **21 Pooling of development contributions**

Where a proposed VPA provides for a monetary contribution by the developer, the VPA must provide that money paid under the VPA may be pooled with money paid under other VPAs and applied progressively for the different purposes under those VPAs.

Pooling may be appropriate to allow public benefits, particularly essential infrastructure, to be provided in a fair and equitable way.

## **22 Do other development contributions apply?**

Council will not exclude the application of section 94 or section 94A of the Act to development to which the VPA relates.

Council will not agree to a provision allowing benefits under the VPA to be taken into consideration in determining a development contribution under section 94 or section 94A.

Where a VPA excludes benefits from being taken into consideration under a section 94 plan, the provisions of section 94(6) or any equivalent provision of the Act do not apply to the benefit – see section 93F(6) or any equivalent provision of the Act.

## **23 Consideration by Council**

Council's consideration of VPAs shall be transparent and accountable. Council will seek to ensure that the final consideration of a VPA runs in parallel with applications for instrument changes or development applications so as not to unduly delay the approval.

Council will seek to ensure that a VPA is publicly notified in the same manner and at the same time as the application for the instrument change or the development application to which it relates.

Council's preference is therefore to have the VPA considered and documented before it is publicly notified as required by the Act and Regulation. It is also preferable that a VPA is

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considered before lodgement of the relevant application and that it accompanies the application on lodgement.

## **24 Probity**

Public probity is important to Council and it will ensure that the consideration of any VPA is fair, transparent and is directed at achieving public benefits in an appropriate manner free of corruption or perception of bias.

In this regard, Council will:

- a) Ensure that any considerations of the VPA are consistent with the fundamental principles outlined in Section 17 of this Policy.
- b) Inform any developer about Council values and business ethics as set out in Council's Statement of Business Ethics and the Warringah Code of Conduct, - specifically inform the developer as to ethical behaviour appropriate to business dealings.
- c) Ensure that its communities understand Council's role – how the VPA operates and how Council will assess developments objectively.
- d) Notify VPAs to ensure they are open and transparent – achieving maximum public awareness of the matters contained in a VPA and the potential benefits of a VPA.
- e) Ensure appropriate delegations and separations of responsibilities in considering development applications that involve VPAs – the need to ensure processes adequately address the level of risk of corruption of a process while at the same time being appropriate to the likely level of risk.
- f) Ensure that modifications to approved development should be subject to the same scrutiny as the original development application and include notification to the VPA Panel prior to determination.
- g) Ensure that Councillors and Council staff understand their varied roles, some of which have potential to conflict.
- h) Take every step to ensure that conflicts of interest are ameliorated to the greater extent possible – independent assessment by third parties where Council has an interest and not entering into any contractual arrangement which purport to guarantee outcomes that are subject to separate regulatory processes.
- i) Ensure that appropriate probity mechanisms are in place where Council is party to a VPA and also has a financial interest in the public benefit being provided by the VPA.

The procedures that will be implemented to address these matters may include, but not be limited by, the following:

- a) The Councillors will not be involved in the preparation of the VPA but will ultimately approve the VPA as part of their duties as Councillors.
- b) A Council officer with appropriate delegated authority will consider a VPA on behalf of Council in accordance with this Policy.
- c) Council will, in all cases, ensure that Council staff with key responsibility for providing advice on approvals, approving applications or ensuring compliance, do not have a role in the assessment of the commercial aspects of the VPA nor on the conditions of the

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VPA except where advice is required on matters relating to the conditions of consent for a particular proposal.

- d) Council may involve an independent person(s) to facilitate or otherwise participate in the consideration of a VPA proposal, particularly where this will lead to a better outcome.
- e) Council will ensure that all discussions with a developer and their consultants are sufficiently documented.
- f) Council will ensure that Council staff involved in VPA considerations are free from conflicts of interest.
- g) Where Council has a commercial stake in development the subject of a VPA, it will take appropriate steps to ensure that it avoids a conflict of interest between its role as a planning authority and its commercial interest in the development consistent with the ICAC strategies for managing dual roles in its publication *Corruption Risks in the NSW development approval processes: Position Paper (September 2007)*.

## **25 Public notification of VPAs**

Council will ensure that all publicly available information is provided to the public in plain language using online and other platforms.

The Act requires that, a VPA must be publicly notified and available for public inspection for a minimum period of 28 days. Council reserves the right to extend the statutory exhibition period.

Council will also notify the application to which a VPA relates in accordance with relevant environmental planning instruments.

## **26 Re-notification**

Council will publicly re-notify and make available for public inspection a proposed VPA and the application to which it relates if, in Council's opinion, a material change is made to the terms of the VPA or the application after it has been previously publicly notified and inspected. Such a change may arise as a consequence of public submissions made in respect of the previous public notification and inspection of the VPA or the application, or their formal consideration by Council, or for any other reason.

## **27 Preparation of the VPA**

The developer/relevant party will prepare a VPA relating to a particular application for an instrument change or development application. The developer/relevant party is encouraged to use the standard form of VPA as this reflects the requirements set out in this Policy (Attachment A).

Council will require a VPA to make provision for payment by the developer of Council's costs of and incidental to preparing and entering into the VPA as well as administering and enforcing the VPA. Cost may include the payment of an independent registered property valuer to establish the cost of the key items of the VPA.

## **28 When is a VPA entered into?**

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If the draft VPA is adopted by resolution of Council, it is entered into when it is signed by all of the parties. Council will usually require a VPA to be entered into as a condition of granting development consent to the development to which the VPA relates. However, a VPA can be entered into at any time after the VPA is publicly notified in accordance with the Act and Regulation.

## **29 When will planning obligations arise?**

Council will require a VPA to provide that the developer's obligations under the VPA take effect when:

- a) the development consent operates in respect of development that is the subject of the VPA; or
- b) on notification of an Environmental Planning Instrument; or
- c) other date agreed between the parties.

## **30 Monitoring and review of a VPA**

Council will routinely monitor the performance of the developer's obligations under a VPA and report them in accordance with the Act.

Council will require the VPA to contain a provision establishing a mechanism under which the VPA is periodically reviewed with the involvement of all parties. This will include a review of the developer's performance under the VPA and obligations specified in the Implementation Plan.

## **31 Modification or discharge of obligations**

Council may agree to a provision in a VPA permitting the developer's obligations under the VPA to be modified or discharged in the following circumstances:

- a) The developer's obligations have been fully carried out in accordance with the VPA, or
- b) The development consent to which the VPA relates has lapsed, or
- c) The development consent to which the VPA relates has been modified to such an extent that the planning obligations may not be appropriate, or
- d) The performance of the VPA has been frustrated by an event or events beyond the reasonable control of the parties, or
- e) The developer has fully and completely assigned the developer's interest under the VPA in accordance with its terms, or
- f) Other material changes affecting the operation of the VPA have occurred, or
- g) Council and the developer otherwise agree to the modification or discharge of the VPA.

Such a provision will require the modification or revocation of the VPA in accordance with the Act and Regulation.

## **32 Assignment and dealings by the developer**

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Council will not permit the assignment of any or all of the developer's rights or obligations under the VPA, nor will Council permit any dealing in relation to any part or the whole of the land the subject of the VPA unless:

- a) The developer has, at no cost to Council, first procured the execution by the person with whom it is dealing of all necessary documents in favour of Council by which that person agrees to be bound by the VPA as if they were a party to the original VPA, and
- b) If the proposed dealing involves a mortgage, charge or other encumbrance in relation to the party's right, title and interest in the land, such documents provide for a VPA by the person to the effect that they, and any receiver appointed by them, will not enjoy rights greater than those of that party, and
- c) The party is not in breach of the VPA.

This does not affect the operation of any of other requirements of the VPA.

### **33 Provision of security under a VPA**

Council will require a VPA to make provision for security to cover the developer's obligation under the VPA. The form of security will generally be an unconditional bank guarantee from an Australian bank in favour of Council to the full value of the developer's obligation under the VPA and on terms otherwise acceptable to Council.

### **34 Notations on Certificates under S149(5) of the Act**

Council will generally require a VPA to contain an acknowledgement by the developer that Council will make a notation under section 149(5) of the Act about the VPA on any certificate issued under section 149(2) of the Act relating to the land the subject of the VPA or any other land.

### **35 Registration of VPAs**

Council may require a VPA to contain a provision requiring the developer to agree to registration of the VPA pursuant to s93H of the Act if the requirements of that section are satisfied.

### **36 Dispute resolution**

Council will require a VPA to provide for mediation of disputes between the parties to the VPA before the parties may exercise any other legal rights in relation to the dispute.

### **37 The application of Clause 4.6 of WLEP 2011**

Variation to applicable development standards WLEP 2011 as part of a VPA or application will not be permitted unless Council is of the opinion that the tests within cl.4.6 are satisfied and the proposed VPA addresses the matters specifically required to be addressed under that clause in relation to the dispensation sought.

### **38 How will Council value development contributions under a VPA?**

There must be a demonstrable public benefit arising from a development contribution. The public benefit must provide a positive planning outcome for the people of Warringah and be in accordance with the objects of the Act.

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Policy No. [Insert]

If the public benefit under a VPA is the provision of land for a public purpose, Council will generally seek to value the benefit on the basis of the market value of the land or other development contribution if valuation is possible. This market value is to be provided by the proponent and independently verified by a registered property valuer.

If the public benefit under a VPA is the carrying out of works for a public purpose, Council will generally seek to value the benefit on the basis of the estimated value of the completed works on the basis of a cost estimate prepared by an independent registered property valuer.

In either instance, the costs of the valuation of the benefits are to be at no cost to Council.

It is acknowledged that in some cases the public benefit may be an intangible benefit that can only be assessed in qualitative terms, such as a particular design outcome for a proposed building.

Council has the discretion not to enter into a VPA if the development contribution is not assessed as delivering a demonstrable public benefit.

DRAFT

**Attachment A**

Voluntary Planning Agreement Template

**Attachment A – Voluntary Planning Agreement Template****Planning Agreement****PARTIES**

Warringah Council 725 Pittwater Road, Dee Why, New South Wales (Council)

And

## of ##, (Developer)

**BACKGROUND**

(For Development applications)

- A. On, ##, the Developer made a Development Application to Council for Development Consent to carry out the Development on the Land.
- B. That Development Application was accompanied by an offer by the Developer to enter into this Agreement to make Development Contributions towards the Public Facilities if that Development consent was granted.

(for changes to Environmental Planning Instruments)

- A. On, ##, the Developer made an application to Council for the Instrument Change for the purpose of making a Development Application to Council for Development Consent to carry out the Development on the Land.
- B. The Instrument Change application was accompanied by an offer by the Developer to enter into this Agreement to make Development Contributions towards the Public Facilities that Development Consent was granted.
- C. The Instrument Change was published in NSW Government Gazette No. ## on ## and took effect on ##.
- D. On, ##, the Developer made a Development Application to Council for Development Consent to carry out the Development on the Land.

**OPERATIVE PROVISIONS****1 Planning agreement under the Act**

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

**2 Application of this Agreement**Effective Date  
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### Voluntary Planning Agreement Template

(Specify the land to which the Agreement applies and the development to which it applies)

### 3 Operation of this Agreement

(Specify when the Agreement takes effect and when the Parties must execute the Agreement)

### 4 Definitions and interpretation

#### 4.1 In this Agreement the following definitions apply:

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

**Dealing**, in relation to the Land, means, without limitation, selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land.

**Development** means ##.

**Development Application** has the same meaning as in the Act.

**Development Consent** has the same meaning as in the Act.

**Development Contribution** means a monetary contribution, the dedication of land free of cost or the provision of a material public benefit.

**GST** has the same meaning as in the GST Law.

**GST Law** has the meaning given to that term in A New Tax System (Goods and Services Tax) Act 1999 (Cth) and any other Act or Regulation relating to the imposition or administration of the GST.

**Instrument Change** means ## Local Environmental Plan ##.

**Land** means Lot ## DP ##, known as ##.

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

**Public Facilities** means ##.

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

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

A. Headings are inserted for convenience only and do not affect the interpretation of this Agreement.

B. A reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.

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- C. If the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day.
- D. A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- E. A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- F. A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- G. A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- H. An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- I. Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- J. A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- K. References to the word 'include' or 'including' are to be construed without limitation.
- L. A reference to this Agreement includes the agreement recorded in this Agreement.
- M. A reference to a party to this Agreement includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.
- N. Any schedules and attachments form part of this Agreement.

## 5 Development Contributions to be made under this Agreement

### SCHEDULE 1 – REFERENCE SCHEDULE

Specify the development contributions to be made under the agreement; when they are to be made; and the manner in which they are to be made.

Item	Name	Description
1	Advanced Payments	
2	Contributions	

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3	Dedicated Land	
4	Public Benefits	

## 6 Application of the Development Contributions

### SCHEDULE 2 – DEVELOPER'S WORK

Specify the times at which, the manner in which and the public purposes for which development contributions are to be applied.

Item of Work	Development Stage	Final Inspection Stage	Relevant Drawing Numbers

## 7 Application of s94 and s94A of the Act to the development

### SCHEDULE 3 – PUBLIC BENEFITS

Public Benefits Offer and section 94 Contributions

**Table 1** identifies the section 94 Contributions payable in respect of the proposal calculated in accordance with Warringah section 94A Development Contributions Plan.

Warringah s94A Development Contribution Plan			
Contribution based on a total development cost of \$			
Contributions	Total development cost (as defined in the s94A Development Contribution Plan)	Levy Rate	Payable
Section 94A Levy			

**Table 2** identifies the Public Benefits offered under the Voluntary Planning Agreement between ## (Developer) and Warringah Council in lieu of monetary contributions otherwise payable under Warringah section 94A Development Contributions Plan as outlined above.

Voluntary Planning Agreement Offer – Public Benefits	Offer Value
Subtotal VPA Offer (Excluding Development Costs)	
VPA Offer in Excess of Developer Obligations	

(Specify whether and to what extent s94 and s94A apply to development the subject of this Agreement)

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#### 8 Registration of this Agreement

(Specify whether the Agreement is to be registered as provided for in s93H of the Act)

#### 9 Review of this Agreement

(Specify whether the Agreement is to be registered as provided for in s93H of the Act)

#### 10 Dispute Resolution

##### 10.1 Notice of Dispute

If a party claims that a dispute has arisen under this Agreement (Claimant), it must give written notice to the other party (Respondent) stating the matters in dispute and designating as its representative a person to negotiate the dispute (Claim Notice). No party may start court proceedings (except for proceedings seeking interlocutory relief) in respect of a dispute unless it has first complied with this clause 10.

##### 10.2 Response to Notice

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

##### 10.3 Negotiation

The nominated representative must:

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

##### 10.4 Further Notice if Not Settled

If the dispute is not resolved within 15 business days after the nominated representatives have met, either party may give to the other a written notice calling for determination of the dispute (Dispute Notice) by mediation under clause 10.5 or by expert determination under clause 10.6.\*

##### 10.5 Mediation

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

- (1) the parties must agree to the terms of reference of the mediation within 5 business days of the receipt of the Dispute Notice (the terms shall include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply);
- (2) the Mediator will be agreed between the parties, or failing agreement within 5 business days of receipt of the Dispute Notice, either party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;

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- (3) the Mediator appointed pursuant to this clause 10.5 must:
  - (a) have reasonable qualifications and practical experience in the area of the dispute; and
  - (b) have no interest or duty which conflicts or may conflict with his function as mediator, he being required to fully disclose any such interest or duty before his appointment;
- (4) the Mediator shall be required to undertake to keep confidential all matters coming to his knowledge by reason of his appointment and performance of his duties;
- (5) the parties must within 5 business days of receipt of the Dispute Notice notify each other of their representatives who will be involved in the mediation;
- (6) the parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement;
- (7) in relation to costs and expenses:
  - (a) each party will bear their own professional and expert costs incurred in connection with the mediation; and
  - (b) the costs of the Mediator will be shared equally by the parties unless the Mediator determines a party has engaged in vexatious or unconscionable behaviour in which case the Mediator may require the full costs of the mediation to be borne by that party.

### 10.6 Expert Determination

If the dispute is not resolved under clause 10.3 or 10.5, the dispute may, by agreement between the parties, both acting reasonably having regard to the nature of the dispute, be resolved by expert determination, in which event:

- (1) the dispute must be determined by an independent expert in the relevant field:
  - (a) agreed upon and appointed jointly by Council and the Developer; or
  - (b) in the event that no agreement is reached or appointment made within 30 business days, appointed on application of a party by the then current President of the Law Society of New South Wales;
- (2) the expert must be appointed in writing and the terms of appointment must not be inconsistent with this clause;
- (3) the determination of the dispute by such expert will be made as an expert and not as an arbitrator and will be in writing and contain the reasons for the determination;

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- (4) the expert will determine the rules for the conduct of the process but must conduct the process in accordance with the rules of natural justice;
- (5) each party will bear its own costs in connection with the process and the determination by the expert together with an equal proportion of the expert's fees and costs; and
- (6) any determination made by an expert pursuant to this clause is final and binding upon the parties except where the determination is in respect of, or relates to, termination or purported termination of this agreement by any party, in which event the expert is deemed to be giving a non-binding appraisal and any party may commence litigation in relation to the dispute if it has not been resolved within 20 business days of the expert giving his or her decision.

### 10.7 Litigation

If the dispute is not finally resolved in accordance with this clause 10, either party is at liberty to litigate the dispute.

### 10.8 Continue to perform obligations

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

## 11 Enforcement

11.1 Nothing in this Agreement prevents Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Agreement (including the breach of this Agreement by the Developer) or any matter to which this Agreement relates.

11.2 Until such time as the Development Contribution has been paid in full the Developer must:

- a) notify Council in writing of the name and contact details of any Certifying Authority to which it has applied for a Construction Certificate at the same time that such application is made;
- b) at the time it lodges any application for a construction certificate notify the Certifying Authority in writing of the existence and terms of this Agreement;
- c) procure and provide to Council a written acknowledgement from the Certifying Authority addressed to Council confirming that the Certifying Authority will not issue a Construction Certificate until Council provides written confirmation that the Development Contribution has been paid.

11.3 The Developer acknowledges and agrees that Council has a caveatable interest in the Land from the date of Development Consent and shall be entitled to lodge and maintain a caveat on the title to the Land notifying Council's interest created by this Agreement.

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- 11.4 The Developer will upon execution of this Agreement deliver to Council a caveat in registrable form with the consent to caveat signed by the Developer notifying Council's interest created by this Agreement together with a cheque in favour of Land & Property Information, NSW for the registration fee on the caveat.
- 11.5 Council will provide such written consents and registrable documents to the Developer to enable the Land to be mortgaged provided that the mortgagee acknowledges Council's interest in the Land under this Agreement and agrees to the registration of this Agreement in accordance with its terms.
- 11.6 Upon registration of the Agreement on the title to the Land in accordance with clause 8 or payment of the Development Contribution to Council or surrender of the Development Consent, the Developer will be entitled to withdrawal of the caveat.

## 12 Notices

- 12.1 Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:

- a) Delivered or posted to that Party at its address set out below.
- b) Faxed to that Party at its fax number set out below.
- c) Emailed to that Party at its email address set out below.

### Council

Attention: General Manager

Address: 725 Pittwater Road, Dee Why, New South Wales, 2099

Fax Number: 02 9971 4522

Email: council@warringah.nsw.gov.au

### Developer

Attention:

Address:

Fax Number:

Email:

- 12.2 If a Party gives the other Party 3 business days' notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.

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

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

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

## 13 Approvals and consent

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

## 14 Assignment and Dealings

Until the Development Contribution is paid in full, the Developer cannot sell, transfer, assign, novate, charge, encumber or otherwise deal with the Land or attempt or purport to do so unless the Developer:

- 14.1 gives Council no less than ten (10) Business Days' notice in writing of the proposed sale, transfer, assignment, novation, charge, encumbrance or other dealing with its rights in respect of the Land;
- 14.2 procures that any buyer, transferee, assignee or novatee promptly executes an Agreement in favour of Council whereby the buyer, transferee, assignee or novatee becomes contractually bound with Council to perform the Developer's obligations under this Agreement;
- 14.3 in the event of a proposed charge, mortgage, encumbrance or other dealing with the Land, provides to Council a bank guarantee unlimited in time from a bank and on terms acceptable to Council to secure the payment of the Development Contribution.

## 15 Costs

Council's costs of and incidental to the preparation and execution of this Agreement and any related documents and registration of same shall be borne by the Developer.

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### Voluntary Planning Agreement Template

#### 16 Entire Agreement

This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with. No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Agreement was executed, except as permitted by law.

#### 17 Further acts

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

#### 18 Governing law and jurisdiction

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

#### 19 Joint and individual liability and benefits

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

#### 20 No fetter

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

#### 21 Representations and warranties

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

#### 22 Severability

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

#### 23 Modification

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### Voluntary Planning Agreement Template

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

#### 24 Waiver

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

#### 25 GST

- 25.1 Unless otherwise indicated, all amounts payable by one party to the other party in relation to a supply under this Agreement have been calculated exclusive of any GST which may be imposed on the supply.
- 25.2 If any supply made under this Agreement is, or becomes, subject to GST, the party to whom the supply is made ("**Recipient**") must pay to the party making the supply ("**Supplier**"), as consideration, in addition to any consideration payable or to be provided elsewhere in this Agreement, subject to issuing a Valid Tax Invoice, an additional amount on account of GST, such amount to be calculated by multiplying the consideration by the applicable rate of GST.
- 25.3 Any amount in respect of GST payable under clause 25.2 must be paid to the Supplier immediately on receipt of the Valid Tax Invoice.
- 25.4 If any party is required to reimburse or indemnify the other party for a cost or expense ("**Cost**") incurred by the other party, the amount of that Cost for the purpose of this Agreement is the amount of the Cost incurred, less the amount of any credit for, or refund of, GST, which the party incurring the Cost is entitled to claim in respect of the Cost.
- 25.5 If GST is linked with the abolition or reduction of other taxes and charges, all amounts payable by the Recipient to the Supplier under this Agreement (excluding GST) must be reduced by the same proportion as the actual total costs of the Supplier (excluding GST) are reduced either directly as a result of the abolition or reduction of other taxes and charges payable by the Supplier or indirectly by way of any reduction in prices (excluding GST) charged to the Supplier. Both parties must also comply with Part VB of the *Trade Practices Act 1974* (Cth).

#### Execution

##### Dated:

##### Executed as an Agreement:

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**Attachment A**

**Voluntary Planning Agreement Template**

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Note: this explanatory note providing details on this Agreement may not be used to assist in construing this Agreement.

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### Attachment B - Explanatory Note Template

Clause 25E(1) of the Regulation requires that an explanatory note must accompany a VPA that:

- a) summarises the objectives, nature and effect of the proposed VPA, amendment or revocation, and
- b) contains an assessment of the merits of the proposed VPA, an amendment or revocation including the impact (positive or negative) on the public or any relevant section of the public.

*Note: This template has been drafted for a proposed draft planning agreement, but applies equally to a proposed amendment or revocation of a VPA*

Environmental Planning and Assessment Regulation 2000  
(Clause 25E)

### Explanatory Note

Proposed draft Planning Agreement  
Under s93F of the Environmental Planning and Assessment Act 1979

- 1 Parties
  - ## Warringah Council (Planning Authority)
  - ## (Planning Authority)
  - ## (Developer)
- 2 Description of subject land
- 3 Description of proposed change to environmental planning instrument/development application
- 4 Summary of objectives, nature and effect of the proposed draft Planning Agreement
- 5 Timing of delivery of the public community benefit.

**Note:** Information is to be provided on the timing of delivery of the proposed benefits in relation to the issuing of construction, occupation or subdivision certificates.

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- 6 The assessment of the merits of the proposed draft Planning Agreement will be assessed against:
- a) The planning purposes served by the proposed draft Planning Agreement
  - b) How the proposed draft Planning Agreement promotes the objects of the Environmental Planning and Assessment Act 1979
  - c) How the proposed draft Planning Agreement promotes the public Interest
  - d) Development corporations – how the proposed draft Planning Agreement promotes its statutory responsibilities
  - e) Public Authority – how the proposed draft Planning Agreement promotes the objects (if any) of the Act under which it is constituted
  - f) How the proposed draft Planning Agreement Promotes the elements of Council's charter under Section 8 of the Local Government Act 1993
  - g) Whether the proposed draft Planning Agreement conforms with Council's capital works program
  - h) The impact of the proposed draft Planning Agreement on the public or any section of the public

7 Other Matters

Signed and Dated by All Parties



## **Attachment C**

### **Potential Planning Obligation Benefits**

#### **Attachment C – Potential Public Benefits**

##### **Possible requirements:**

The following is a list of possible requirements that Council may have for planning agreements. They are not exhaustive and developers are encouraged to discuss these or other requirements that may be included in a planning agreement. Planning agreements may involve monetary contributions, partial or full construction of new facilities, expansion, upgrades, augmentations, embellishments, fit-outs and resourcing of existing facilities or any other public benefit as agreed to by Council:

Infrastructure	Accessibility improvements – accessible parking, kerb ramps, modifications to public buildings or areas Roads – design and construction Open space – parks, public places, embellishment Drainage and storm water controls Traffic measures Transport outcomes Pedestrian and cycleway linkages and footpaths Telecommunication networks Power, water, gas Communications and information technology such as WIFI public space Bridges (vehicular and pedestrian) Flood management / mitigation works
Facilities	Community buildings – e.g. meeting rooms, halls, libraries Child care centres Public toilets Youth spaces Public leisure facilities Performance spaces Civic spaces Public car parking areas and commuter parking Bus shelters Family care facilities Sport, recreation and activity centres Business, research and creative industries incubator space and ancillary uses Affordable Housing
Public domain improvements	Paving – paths, streets and open space areas Plantings – streets and open space areas Furniture – seats, bins Banners Public art in streets, open space and other public domain space Kerbs and gutters Treatment and/or features in public places Facilities such as kiosk in parks and open spaces Turf Public leisure, sport and recreation facilities Environmental management improvements such as water and energy minimising devices



## Attachment C

### Potential Planning Obligation Benefits

	<p>Restoration and management of natural areas including beaches, bushland, creeks and lagoons</p> <p>Water quality devices</p> <p>Water bubblers, lockers and other amenities</p> <p>Signage including suburb identification, way finding, parking, interpretation and information signs for pedestrians, cyclists and vehicular users</p>
Other	<p>Cash contributions</p> <p>Land such as dedications for parks, facilities, pedestrian connectivity and new roads</p> <p>Contributions for the development of community facilities plans and cultural facilities plans</p> <p>Aboriginal site protection</p> <p>Other benefits in line with Council plans and strategies - including plans of management, flood plan management plans, traffic and transport plans, masterplans, development controls plans, local environmental plans and the management plan</p> <p>Maintenance in perpetuity – e.g. pest control and bush regeneration</p> <p>Other public benefits that provide a positive planning outcome for the people of Warringah and meet the objectives of the Act</p>

**Draft VPA Policy – Public submissions summary table**

A total of 6 Submissions were received in response to the exhibition of the draft policy. The following table provides an overview of the submissions made.

Issue	No of times issue raised	Summary of issue raised	Response
Corruption risks – perception of developers purchasing development rights	3	There is a perception of bribery / corruption in the VPA process	The prevention of corruption and bribery in Council's operations of its functions is given the highest priority within Council.
	2	Council has a chequered history and has required an Administrator in the past	The draft VPA Policy has been prepared to assist Councillors, Council staff, developers and the community in their understanding and consideration of VPAs.
	1	Abandon the VPA scheme. Developers should be kept at arm's length.	An independent probity check of the draft VPA Policy was undertaken by O'Connor Marsden & Associates, probity advisors. Additional probity controls were added to section 24 <i>Probity</i> of the draft VPA Policy in response.
VPAs threaten good planning outcomes			It is not appropriate for Council to abandon VPAs as they are a product of State Government policy and law and are a legitimate means of the community obtaining a public benefit from the future growth of Warringah.
			Development contributions will be independently valued under section 38 'How will Council value development contributions under a VPA' of the draft VPA Policy to ensure that a demonstrable public benefit is being provided.
			It is considered that there are sufficient probity requirements under the draft VPA Policy.
	2	A VPA is an incentive to overcome development controls – e.g. Building height and scale	Council understands the community's desire to see good planning and development outcomes for the area.
	1	There needs to be a limit on how far outside the limits of development a developer can go under the VPA Policy	VPAs are a product of State Government policy and law and are therefore a legitimate component of the NSW planning system.
	1	A VPA should not compromise good planning outcomes	A purpose of the draft VPA Policy is to guide stakeholders and decision makers to ensure good planning outcomes are achieved.

2014/181153

Issue	No of times issue raised	Summary of issue raised	Response
	1	The priorities within the Community Strategic Plan can be interpreted to favour development	<p>Council has seen an increase in the number of proposed VPAs in the past year. A VPA Policy is needed to ensure the consistency of decision making and to set the groundwork for what Council will consider appropriate for the community. Adequate guidelines and safeguards are provided in Section 17 'Principles underlying the use of VPAs' (previously section 18), within the draft VPA Policy to ensure that:</p> <ul style="list-style-type: none"> <li>• a VPA does not compromise good planning outcomes</li> <li>• there is planning merit in a development application or planning proposal</li> <li>• decisions are made in the public interest.</li> </ul> <p>Section 6 Objectives, of the draft VPA Policy states that the outcomes sought throughout the VPA Process are to be undertaken in the context of delivering the outcomes and objectives of the Community Strategic Plan (CSP).</p> <p>The CSP acknowledges that there are a number of pressures facing the community, including the tensions of population growth as a result of targets set by the State Government. Development is required for the future growth of Warringah and therefore the CSP as a long term set of aspirations determined by the community, does not preclude this.</p> <p>The issues are satisfactorily addressed by the draft VPA Policy.</p>
Councillors and development	3	There is a lack of responsiveness of the elected Council to community concerns regarding development and development contributions	<p>Councillors are democratically elected by the people of Warringah and are ultimately accountable to the community.</p> <p>A VPA Policy will improve the Councillor's understanding of VPAs and how they are to consider their value and potential impact.</p> <p>Council's community engagement requirements are adequately addressed in sections 25 'Public Notification of VPAs', and 26 'Re-notification'.</p>

2014/181153

Issue	No of times issue raised	Summary of issue raised	Response
Public consultation	1	The exhibition period for VPAs should be extended beyond 28 days for public holidays and holiday periods	<p>The issue is satisfactorily addressed by the draft VPA Policy.</p> <p>Council makes every effort to avoid exhibition periods during holiday periods. However, Council is required to meet the statutory time frames set for planning proposals and development applications by the State Government. Therefore exhibition periods may be held during these periods, depending upon the date of lodgement of the application.</p> <p>If this does occur, Council extends the exhibition period for public holidays and may extend the period further under Council's Community Engagement Framework.</p> <p>Council's community engagement requirements are adequately addressed in sections 25 'Public Notification of VPAs', and 26 'Re-notification' of the draft VPA Policy.</p>
Cobalt development (cnr St Davids Avenue and Pittwater Road, Dee Why)	1	The Cobalt VPA did not follow the draft VPA Policy and yet the Councillors voted in favour of the Cobalt VPA	<p>The Cobalt VPA was not considered under the draft VPA Policy as the policy was in draft form and had not yet been considered by the public.</p> <p>Please refer to the response to the issue about revenue-raising below.</p>
Revenue raising	1	VPAs should not be used as a means of overcoming revenue raising or spending limitations	<p>We have reviewed VPAs that have been entered into by the NSW Department of Planning and Environment (Department). There are broad inconsistencies in the way in which the Department applies the Practice Note to VPAs. It appears that the Department does not follow the revenue raising principle set out in the Practice Note. It is not considered appropriate to insert the words 'not be used as a mechanism to overcome revenue-raising or spending limitation'. Instead, we have amended section 17 to state that regard will be had to 'whether it is reasonable to use a VPA'.</p>
	1	The words 'not be used as a mechanism to overcome revenue-raising or spending limitation' should be inserted into section 14 as an additional subpoint c); and in the second alphabetical list in section 18.	

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Issue	No of times issue raised	Summary of issue raised	Response
	1	Rates should cover the administration of Council. Request for an audit of every dollar Council spends.	<p>In response to the submissions and a review of the whole policy, we have removed section 14 'Is a VPA appropriate?' from the draft VPA Policy. This improves the readability of the policy by removing any double up between section 14 'Is a VPA appropriate?' and section 18 (now section 17) 'Principles underlying the use of VPAs' whilst also reflecting the Practice Note.</p> <p>The changes made to the draft VPA Policy satisfactorily address the submissions relating to this issue.</p> <p>Rates are used to provide services to the community and fund the renewal of aging community infrastructure such as community buildings, roads and drainage systems. The cost of providing services is increasing faster than Council income. IPART have recognised this and approved Warringham's Special Rate Variation to ensure services to the community can be maintained.</p> <p>The VPA Policy is a tool to accelerate the delivery of new or enhanced assets to support population growth which Council would not be in a position to fund.</p>
Support for the VPA Policy	1	It is good that Council is developing a VPA Policy	Noted.
	1	The draft VPA Policy appears to be a robust policy	
Skills shortage	1	Public sector employees lack the requisite skills and resources to close deals in the public benefit	<p>Council is a public authority and is therefore empowered to enter into VPAs.</p> <p>The draft VPA Policy provides adequate guidance to Council officers in considering and valuing public benefits under a VPA.</p>
Typographical error	1	There is a typographical error at the end of section 14.	<p>As advised to the submission maker, section 14 'Is a VPA appropriate?' of the draft VPA Policy is not missing any parts. This section will be amended to remove the typographical error.</p> <p>As detailed above, this section has been deleted to improve the readability of the policy. The clause is covered in section 17 'Principles underlying the use of</p>

2014/181153

Issue	No of times issue raised	Summary of issue raised	Response
Development contributions under Council's section 94A Plan			VPA's' (previously clause 18). This issue has been satisfactorily addressed in the draft VPA Policy.
	1	Developer contributions should continue to be applied as a condition of consent. The developer then makes a decision whether to develop or not.	The draft VPA Policy does not impact upon Council's Section 94A Plan. Development contributions will continue to be levied on development applications with or without VPAs under Council's Section 94A Plan.
	1	Attachment C to the VPA Policy should be more specific in terms of strategic outcomes and locations	The purpose of 'Attachment C – Potential Public Benefits' to the draft VPA Policy is to outline and to be a starting point for discussions with Council. Section 19 'What will Council require to be provided under VPAs?' of the draft VPA Policy states that Council may consider potential public benefits outside of Attachment C. Therefore an amendment to Attachment C is not required.
The use of the term public interest	1	The 'public interest' is vague and subjective and can be skewed towards development	The term 'public interest' is used in a number of areas of planning policy, legislation and common law. For example the term is adopted from the practice note and section 25E Explanatory Note of the <i>Environmental Planning and Assessment Regulation 2000</i> .  Please note that the 'public interest' must be taken into consideration in the assessment of development applications under section 79C Evaluation of the <i>Environmental Planning and Assessment Act 1979</i> .  A key test in the assessment of planning proposals is the assessment of community benefit against the public interest, planning policy and relevant environmental considerations.  It is not appropriate to amend the term 'public interest' within the draft VPA Policy.
	1	What does 'better outcome' mean in section 25(d) <i>Probity</i> , in the second alphabetised list?	The words 'better outcome' should be interpreted as a better probity outcome as set out in the first alphabetised list in section 24 'Probity', under the draft VPA Policy.
		A VPA should be independently assessed if it is for a value greater than \$500,000. VPAs should	Public benefits under a VPA will be independently valued under section 38

2014/181153

Issue	No of times issue raised	Summary of issue raised	Response
		not be split to overcome this threshold.	<p>'How will Council value development contributions under a VPA?'</p> <p>Councillors are democratically elected by the people of Warringah. It is Council's role to determine public benefit for their community. Therefore it is not considered appropriate for the assessment of a VPA to be taken away from the Council.</p> <p>The draft VPA Policy does not impact upon the development assessment process with regards to the Warringah Development Assessment Panel or the Joint Regional Planning Panel.</p> <p>This issue has been satisfactorily addressed in the draft VPA Policy.</p>
Valuation of public benefits	1	An additional section should be included in the VPA Policy stating that Council will consider alternative means of achieving the same planning or public benefit outcome	<p>A feasibility study is not required for each proposed public benefit, as an independent valuation of the public benefit will be carried out under section 38 'How will Council value development contributions under a VPA?' of the draft VPA Policy.</p>
	1	The public benefits should be described in monetary terms and the benefits to the community should be clearly outlined	<p>A VPA is voluntary and therefore Council cannot mandate public benefits that a developer must provide.</p> <p>Council will require that a developer provide an explanation of the monetary and non-monetary public benefits proposed under a VPA.</p> <p>Whilst tangible public benefits may be described in monetary terms, the draft VPA Policy acknowledges that some intangible public benefits cannot be given a monetary value. Such intangible public benefits will be assessed in qualitative terms under section 38 of the draft VPA Policy.</p> <p>This issue has been satisfactorily addressed in the draft VPA Policy.</p>

2014/181153

**Janelle Brooks**

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**From:**  
**Sent:** Tuesday, 27 May 2014 5:24 PM  
**To:** Council Mailbox  
**Subject:** Draft VPA Policy

There should definitely be no such thing as a VPA between developers and councils as such an agreement is open to corruption and for want of a better of a better word could be described as a bribe. Developers don't need incentives to overcome building height and size restrictions, they seem to be able to lobby all levels of government to get what they want. It's about time the council listened to local residents for a change. Perhaps when we get an elected council that's not so pro developer, maybe that might happen.

### Comments re draft VPA Policy

I am pleased to see Council, albeit somewhat belatedly, moving to produce a policy on VPAs. I am also pleased that it seems to be quite a robust policy.

Although I have a few comments on the draft, my major concern is with its future application and interpretation.

The recent VPA for the "Cobalt" building is fresh in my mind. My view is that it did not comply with this policy and yet it was submitted to Council and approved by them a short period after this draft was placed on public exhibition.

Also, the Councillors who supported the signing of the VPA seemed to have a view that was not in accord with this draft. They saw it entirely as a means of raising funds, not as a contributor to town planning outcomes. The seconder of the motion went as far as saying he was agreeing to a late addition to the motion - that restricted the spending of the cash component to projects in Dee Why - under duress. He wished to spend the money in his Ward, his words being "Warringah consists of more than Dee Why".

### Specific comments

1. The Practice Note states that a VPA should not be a means of overcoming revenue-raising or spending limitations. The draft does not contain this statement. Having seen the response of current Councillors to the proposed "Cobalt" VPA, I view this restriction as particularly important. In my opinion it should be inserted between the second and third item under heading 14, e.g.

c) not be used as a mechanism to overcome revenue-raising or spending limitations

It should also be inserted in the appropriate place under heading 18. (in the "second" alphabetical list).

2. The policy is to me woolly on the use of independent parties. The statement under 25. Probity, on Page 12 in one of the several subparagraphs d), "*where this will lead to a better outcome*" is, in my opinion, uninterpretable without further definition of "*better outcome*". Rather than going down that route, I recommend that the policy encourage the involvement of an independent party in the assessment process and **require it** for all VPAs above a certain value – say \$500,000 – with a rider that VPAs are not allowed to be split to get around this limit.

3. I recommend that a clause be added under 39 *How will Council value development contributions under a VPA?* to the effect that, where applicable, Council will consider alternative means of achieving the same planning or public benefit outcome and give reasons for choosing the means that form the basis of the proposed VPA over the alternatives.

By way of example, in the Cobalt VPA, a landing was proposed to be supplied in the development for one end of an elevated walkway over Pittwater Road and St David's Avenue. This support/landing could

be supplied on the Council-owned park next to the building. A comparison should be done and the best planning/benefit alternative chosen.

4. I have been advised that there is a typo at the end of paragraph d), Section 14, and not a missing clause.

**Janelle Brooks**

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**From:**  
**Sent:** Sunday, 1 June 2014 1:19 PM  
**To:** Council Mailbox  
**Subject:** DRAFT VPA POLICY

There needs to be guidelines and limits on how far a developer can go when it comes to the drafting of this policy. The most recent development which was presented for the cnr of St.Davids Avenue and Pittwater Road was far outside the limits for a development in the area. They, the developers assume because they make offers of money and space we will roll over. This becomes nothing more than corruption. According to the Mayor, the developer now only needs to go about a different approach with his development and it would more than likely be successful. Does this mean the ratepayers don't count? The ratepayers who put in their submissions. Not so long ago we had an Administrator (before he left office) pass 18 and 16 storey developments, again the people not wanting those developments. But we are stuck with them, are we not? They hav'nt even been built yet and in the meantime the place looks like a garbage dump. The ratepayers each year pay their rates which are adequate to administer the Council. With the huge increase the Council has applied to The Local Government for the next four years and developer payments (which are outside their normal costs) then something must be terribly wrong. What the ratepayers should have is an audit of spending and that would be absolutely every dollar the council outlays.

Regards

**Janelle Brooks**

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**From:**  
**Sent:** Monday, 2 June 2014 9:48 AM  
**To:** Council Mailbox  
**Subject:** Draft VPA Policy

Dear hard-working council members and staff,

I strongly urge council to abandon this scheme for Voluntary Planning Agreements.

While I understand that the council is trying to find a way to work with private sector developers to extract the maximum public benefit for ratepayers, recent history in Australia at local, State and Federal levels clearly shows that while this sort of public-private partnership appears promising on paper – public sector officials lack the necessary resources and negotiating skills to successfully close such deals in the public benefit.

It is simply too dangerous to put into a place a mechanism where effectively the private sector is encouraged to 'bribe' authorities through the promise of various 'public benefits' which reveal themselves to be illusory or, worse, against the public interest down the track.

The examples of this are legion: the Cross-City Tunnel in Sydney with its outrageous long-term limitations on public transport development, the Lane Cove tunnel, the various Brisbane road-rail projects, the sale of Brisbane port etc. The list is long and inglorious.

All of these examples show that departments with far greater resources than Warringah Council were incapable of assessing business risk, development costs and feasibility of public-private partnerships.

Private developers are by nature risk-takers and sharp negotiators. Given the chequered history of development in Warringah (and that is putting it mildly), Council should abandon this scheme and keep developers at arms-length. If you want to impose public benefit conditions on developers – simply do it and let them decide whether to accept those conditions and build or not. This was the essential message left by the administrator who replaced council last time it was sacked.

This suggested VPA scheme is simply inviting developers back into our house. Don't let them back in!

Sincerely,

**Janelle Brooks**

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**From:**  
**Sent:** Monday, 2 June 2014 11:07 PM  
**To:** Council Mailbox  
**Subject:** Draft VPA Policy

Dear Council,

Not being a lawyer I'm a bit lost in some of these documents. However I would like to make the following brief comments.

Clause 26. Public inspection is set as a minimum 28 days. When this falls over the December/January holiday period it should be at least doubled to ensure maximum exposure to the community.

Full details should be disclosed of the advantages to the community which would flow from a claimed public benefit and the way in which the advantages could be a benefit; not just the claimed monetary value benefit.

It appears obvious from the recent Cobalt Jubilee VPA that the elected councillors and council staff were at odds with the community in the expectations of our community. The policy/system should be addressing this so that a lot of time is not wasted in getting to no useful end. A fully detailed explanation of the advantages which might flow from a claimed benefit would assist this.

Regards

3<sup>rd</sup> June 2014

Draft VPA Policy  
Comments

The Community Strategic Plan provides a reasonable basis for consideration of benefits. However, selective use can be made of general priorities, with emphasis placed on those which favour increased development. In some circumstances there may be inherent conflicts between priorities which have no particular hierarchy.

The 'public interest' can also be a vague and variable criterion, with subjective overtones. Applicants lean invariably towards an interpretation that favours their development.

In assessing the public interest:  
VPA should

1. Protect / enhance the environment
2. Retain / enhance land set aside for recreation / open space
3. Protect the desired character of an area
4. Respect the strategic basis for the planning controls

In other words:

The VPA should not

1. Have a negative impact on the environment
2. Result in the loss of recreational or open space
3. Be out of character with the area
4. Deviate significantly from the strategic intent of the planning controls

A general concern is that a VPA is a mechanism for developers to push the boundaries and for Council to save money.

Necessary safeguards are required so that this mutually beneficial arrangement does not compromise good planning outcomes. The draft Policy provides many useful points.

Nevertheless, the VPA allows a discretion that could override planning controls and erode confidence in their effectiveness.

Point 38 in the Draft VPA Policy requires that variations to applicable development standards should satisfy the tests within Clause 4.6 of WLEP2011. This is useful.

Point 18 'Principles underlying the use of VPAs' includes: protecting the environment and community against planning harm. This is useful, although the environment does not appear to be mentioned elsewhere in the Policy.

Re Attachment C:

The Potential Public Benefits include 'run of the mill' benefits that would normally be funded by rates etc. The VPA is best applied more selectively to achieve strategic outcomes that are specific to a location.

Yours sincerely

Minutes2-14

**SYDNEY COASTAL COUNCILS GROUP Inc.  
MINUTES FOR THE ORDINARY MEETING  
HELD ON SATURDAY 14 JUNE 2014  
AT THE CITY OF SYDNEY COUNCIL CHAMBERS  
12.00 noon**

**IN ATTENDANCE**

Cr. Brian Troy	Botany Bay Council
Cr. Irene Doutney	City of Sydney Council
Cr. Cathy Griffin	Manly Council
Ms. Melanie Thomas	Pittwater Council
Cr. Geoff Stevenson	Randwick Council
Cr. Lindsay Shurey	Randwick Council
Cr. Peter Towell	Sutherland Council
Cr. Sally Betts (Mayor)	Waverley Council
Cr. Bill Mouroukas	Waverley Council
Cr. Wendy Norton	Willoughby Council
Cr. Lynne Saville	Willoughby Council
Cr. Greg Levenston	Woollahra Council
Cr. Matthew Robertson	Woollahra Council
Mr George Copland	Honorary Member
Mr. George Cotis	Honorary Member
Dr. Judy Lambert AM	Honorary Member
Emeritus Professor Bruce Thom AM	Honorary Member
Mr. Geoff Withycombe	SCCG (EO)
Mr. Stephen Summerhayes	SCCG (MP&P)
Ms. Emma Norrie	SCCG (CPO)
Mr. Michael Dean	SCCG (PO-B)

**1. OPENING**

The meeting opened at 12.30pm. Cr. Griffin (Chairperson) welcomed delegates and thanked the City of Sydney for hosting the meeting

**2. APOLOGIES**

Cr. Mark Castle	Botany Bay Council
Cr. Darcy Byrne (Mayor)	Leichhardt Council
Cr. Tom Sherlock	Mosman Council
Cr. Jacqueline Townsend (Mayor)	Pittwater Council
Cr. Selena Griffith	Pittwater Council
Cr. Shane O'Brian	Rockdale Council
Mr. David Dekel	Rockdale Council
Cr. John Mant	City of Sydney Council
Cr. Linda Scott	City of Sydney Council
Cr. Sue Heins	Warringah Council
Cr. Leon Gottsman	Waverley Council
Dr. Ian Armstrong	SCCG (PO-SP)

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**Resolved that** the apologies be received and noted.

**Councils not represented at the meeting**  
Hornsby, Leichhardt, Mosman, North Sydney, Rockdale, Warringah.

### 3. DECLARATION OF PECUNIARY INTERESTS

**Resolved that** there was no declaration of pecuniary interests.

### 4. CONFIRMATION OF MINUTES

#### 4.1 Minutes of the Ordinary Meeting of the SCCG held on 15 March 2014 at the Coastal Environment Centre hosted by Pittwater Council.

**Resolved that** the Minutes of the Ordinary Meeting of the SCCG held on 15 March 2014 at the Coastal Environment Centre hosted by Pittwater Council be received and noted.

#### 4.2 Minutes of the Technical Committee Meeting of the SCCG held on 13 February 2014 hosted by the City of Sydney Council.

**Resolved that** the Minutes of the Technical Committee Meeting of the SCCG held on 13 February 2014 hosted at the City of Sydney be received and noted.

#### 4.3 Minutes of the Technical Committee Meeting of the SCCG held on 1 May 2014 hosted by the Australian Navy (HMAS Watson).

**Resolved that** the Minutes of the Technical Committee Meeting of the SCCG held on 1 May 2014 hosted by the Australian Navy (HMAS Watson) be received and noted.

### 5. BUSINESS ARISING

Defined action from last meeting either complete or underway.

#### Completed

- **Registrar – General**

SCCG write to the Registrar-General supporting the need for clarification of matters raised by Corkill

- **NSW Marine Estate Management Authority**

The SCCG write to the MEMA and relevant Ministers extending thanks for the presentation and raising issues identified by the Group

- **SCCG Annual Survey 2013 – Results Report**

The SCCG 2014 Action(s) Plans be adapted to incorporate the Annual Survey recommendations and actions from both the Technical Committee and Full Group.

- **Provision of the SCCG Annual Funding Guide 2014**

The Funding Guide be formally sent to Member Councils for their utilisation and placed on the SCCG web site for more general access.

- **SCCG Capacity Building Program & Engagements Report**

- **Finalising activities for SCCG's 25 Year anniversary**

- **SCCG Emergency Management Planning - a Health Check for Local Government**

- **Walking Coastal Sydney**

- **Working Draft – Mapping and Responding to Coastal Inundation: Exposure Assessment for the Sydney Region – Information prepared for the Sydney Coastal Councils Group (by OEH).**

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- **Coastal Vulnerability to Multiple Inundation Sources – Final Outcomes report (Launched Thursday 27 February)**
- **2014 National General Assembly of Local Government**
  - **Boomerang Alliance and Keep Australia Beautiful**
- **Redevelopment of the SCCG Strategic Plan**

All above related actions completed

#### **Outstanding / under development:**

- **SCCG Water Recycling Handbook for Councils**

Due to numerous other priorities the draft Handbook will now be tabled later in the year.

- **Establishment of workshop with Sydney Water, IPART and NSW EPA to end ocean outfalls**

The SCCG facilitate an "Integrated Water Management" forum most likely in late October 2014. This event will address WSUD, sewage outfalls, infrastructure issues including the SCCG integrated water project and the SCCG Water Recycling Guidelines (under development).

- **Greater Sydney Local Land Services**

The SCCG has yet to meet with the LLS regarding the SCCG Salty Communities project and to seek representation on the proposed LLS Local Government Advisory Board.

- **NSW Coastal Reforms**

The SCCG has yet to write to the Minister for the Environment. It was noted that the Minister had recently changed (see item 9.1)

- **Joint Expert Maritime Working Group**

The Secretariat survey Member Councils regarding their views, issues and needs in relation to maritime and boating management in Sydney.

- **Sydney's Salty Communities – Turning the Tide on Blue-Green Carbon**

The Project Officer to consider addressing the issue of streamlined approvals under the EPBC Act as part of literature review

## **6. CORRESPONDENCE**

### **6.1 Sent and Received Correspondence**

**Resolved that** the circulated "sent" and "received" correspondence, including that from the previous meeting, be received and noted.

## **7. PRESENTATIONS**

### **7.1 Coastal Vulnerability to Multiple Inundation Sources Project (COVERMAR) – Dr Filippo Dall'Osso** **Slides attached**

Dr Dall'Osso provided an overview of the recently launched SCCG project *Coastal Vulnerability to Multiple Inundation Sources (COVERMAR)*. The SCCG partnered with the University of New South Wales Australia - Pacific Tsunami Research Centre & Natural Hazards Research Laboratory (UNSW APTRC) to undertake the research project, which addressed coastal vulnerability to multiple inundation sources.

The project developed a multi-hazard tool to assess the vulnerability of buildings and critical infrastructure to extreme marine inundations caused by both storm surges and tsunamis. Inundation scenarios were simulated using state-of-the-art numerical models, under present and predicted future climate conditions, and tested at three NSW study sites.

Dr. Filippo Dall'Osso presented the methodology and the main results of the COVERMAR project. For more information see [fact sheet](#).

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## Questions

*Clr Saville: Was Sydney Airport included in the vulnerability assessment?*

*Yes, the results showed that under most scenarios the airport would be inundated, however only in the most severe scenarios would buildings actually be affected. Therefore there would be significant service disruption however the damage would not be as severe as in other areas.*

*Clr Saville: Can the tool be applied elsewhere?*

*The tool was designed to be applied anywhere in the world. Availability of inundation layers and individual building data are the two inputs that are required to run the tool.*

*Clr Levenston: Is the information available to all Councils?*

*There were three major outputs from the project – a literature review (technical and legislative review), hazard assessment (technical document) and final report (applying the methodology to the case study area).*

*Outputs were sent directly to Member Councils and are now available online. The SCCG is offering customised presentations to individual Member Councils. A grant has been applied for under the National Disaster Resilience Program (NDRP) to extend the project to include wave run-up and coincident catchment flooding.*

*Clr Betts: Is the tool able to assess the impact of storm surge and tsunami on cliffs and cliff-top buildings?*

*The study considered potential shoreline erosion associated with each of the scenarios. Erosion would be most prominent along sandy beaches, rather than cliffs, however in the long term the vulnerability of exposed areas such as cliffs will certainly increase. It is very difficult to determine when a cliff may give way. The tool is not specifically designed to do this.*

### Resolved that:

- 1) The presentation be heard and considered at the meeting.
- 2) Dr Dall'Osso be thanked for his attendance and presentation.

## 7.2 Assessing Coastal Erosion and Inundation Impacts for the Sydney Region – Dr Michael Kinsela, Environmental Scientist (Coastal Risk), Office of Environment & Heritage

**Slides attached**

Dr Kinsela presented the regional scale coastal inundation exposure assessment for the Sydney region, which follows previous work by SCCG and CSIRO on modelling and mapping coastal inundation.

The method provides an intermediate level assessment that fits between previous 'first pass' analyses and site-specific investigations. More specifically, spatial analysis (GIS) techniques are used with the GURAS address database and NSW infrastructure and land tenure datasets, to identify potentially exposed assets for a range of raised water level scenarios. The scenarios considered include 1-year and 100-year ARI storm surges, for both present sea level conditions and potential future sea level rise of 0.4 and 0.9 m, as modelled by CSIRO.

The results reveal that the northeast and southeast regions of Sydney are most exposed, while some central Sydney Councils are also exposed. Specifically, 6,500-7,000 Sydney addresses may be exposed to coastal inundation in a storm event under current conditions, however only 200-400 of these would be inundated to an extent <50 per cent.

The Group congratulated Dr Kinsela on his recent PhD graduation from Sydney University. GW explained that the original project was part of the development of the 'Sydney Resilience Strategy' and that OEH had undertaken the sub-regional assessment of SCCG Councils at the request of the SCCG. The Group thanked Dr Kinsela and David Hanslow for this additional work and for now presenting it 3 times at SCCG events including: the SCCG Technical Committee, the launch of the SCCG Climate Change adaptation MCA project and now the Full Group.

Clr Saville: To what extent does Government (State and Local) have to act on the findings of this research?

- Dr Kinsela was unable to comment on the political consequences of this information.
- GW noted that when the SCCG originally released the hazard information to its member councils it engaged HWL Ebsworth lawyers to provide a briefing directly to the Full group and at the project launch event and subsequently provided all member councils written legal advice to all member council on how and what they are advised to do when provided with such hazard information.

Clr Saville: Will this information be used by insurance companies?

GW advised that the information was provided to Member Councils along with legal advice in 2012. It has not been given to insurance companies.

Clr Griffin noted that Councils should consider what they may need to do in response to this information.

Clr Betts noted that at-risk properties were all noted on Council's s149 Certificates and recommended that other Councils do the same.

Prof Thom: There are a number of assumptions and omissions from this modelling that must be considered, including wave run-up and morphodynamic impacts. If coincident events were included would the distribution of impacts change significantly? For example, Waverley and Woollahra would likely be less impacted by coincident catchment flooding, while Pittwater may be more exposed.

GW noted that the grants recently submitted for under the NDRP will address some of the limitations Prof Thom identified. Dr Kinsela acknowledged the limitations of the study.

Clr Griffin: How can/should this information be used by Councils?

- Clr Norton: Council should provide the information to planning divisions within Council.
- Clr Betts: Use the information to assess the worst-case scenario potentially faced by Councils to inform planning.
- Clr Towell: Council is currently revising s149 Certificates.
- Clr Levenston: Councils need to work together and encourage collaboration with the State Government. All Councillors need to be receptive to this information.
- SS: Department of Planning are developing a Circular on s149 Certificates requiring Councils to distinguish between 'current' and 'future' hazards. There may be an opportunity for SCCG to disseminate some resources relating to these projects along with the Circular from Planning.
- GW: SCCG is finalising the collation all Member Councils s149 notations so that Councils can see what other Councils are doing.
- Clr Saville: Most Councils have recently revised or are in the process of revising LEPs. What impact might this information have and is there an opportunity to include this information in revised LEPs?
- GW noted that Councils have had the hazard maps since 2012. This new information further quantifies what is at risk.

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- *Clr Levenston: While it may be difficult to amend LEPs, this information could be incorporated into Council DCPs with relative ease.*
- *Clr Saville noted that there may be an opportunity to present this information at the upcoming Local Government Conference. Also consider distributing through ROCs.*

*Dr Lambert: Given the recent appointment of new Ministers for Planning and the Environment, we should consider presenting to them on this and related information.*

*GW – recommendation to this effect coming up in Item 9.1.*

*SS: In the context of the review of the SCCG Strategic Plan, this is an appropriate time for the FG to express its support for SCCG undertaking technical projects such as this.*

*Dr Kinsela noted that one of the outcomes from the project was development of a tool that can be run with new information, as it becomes available. Therefore the tool can continue to deliver more sophisticated results into the future.*

**Resolved that:**

- 1) The presentation be heard and considered at the meeting.
- 2) Dr Kinsela be thanked for his attendance and presentation.
- 3) The SCCG formally send the final report to Member Councils for their utilisation.
- 4) The SCCG consider additional distribution potentials for the report and its findings (including distribution to relevant state agencies and public release).
- 5) In the context of the review of the SCCG Strategic Plan, the FG express its support for SCCG undertaking such technical projects which provide immediate outputs for Member Councils as well as a foundation (research base) for future projects and activities.
- 6) The SCCG formally send project outcomes to relevant state agencies including: the Department of Planning and Environment, OEHL, Transport for NSW, Emergency Services, Crown Lands and specifically to planning divisions within each Council.

## 8. ADMINISTRATIVE MATTERS

### 8.1 SCCG Strategic Plan – review and redevelopment

**Slides attached**

The existing SCCG Strategic Plan ends this year and the SCCG is embarking on the development of a new Strategic Plan to guide operations through to 2019. It is intended that a draft of this Plan will be ready for the consideration of the 13 September Full Group Annual General Meeting and then, following direct consultation with Member Councils, finalised for adoption at the 6 December meeting.

To assist in this important planning process, the SCCG has contracted Dr Judy Lambert to facilitate the strategic planning process. A Directional Committee has now been established comprising Councillors and staff and will participate in two key workshops on Thursday 5 June and Thursday 17 July (hosted by Willoughby City Council).

Dr Lambert and the EO reported on outcomes of the first workshop. Delegates subsequently workshoped key issues to inform the next DC workshop.

*Clr Griffin asked delegates to identify what are the pertinent issues in their LGAs (Member Council round table issues and needs):*

- *Clr Levenston: Who determined that the SCCG is a 'peak' organisation?*

*Clr Griffin explained that this title is self-proclaimed, however a legitimate reflection on the growth and reputation of the Group over its 25 year history. GW also advised that several third parties had referred to the Group as a peak body in this regard.*

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- *Clr Levenston: Noting the lack of action in relation to inundation information distributed in 2012, the Group should consider a more systematic process for following up on information provided to Councils (eg, on a six-monthly or yearly basis).*

*GW agreed this is an ongoing issue and requires attention.*

- *Clr Betts: Waverley has been focusing on Bondi Junction and distributed energy. They are also reforming an environmental sustainability committee that is being chaired by Clr Goltsman.*
- *Clr Betts recommended SCCG circulate information on the grants successfully expended by the Group, as evidence of the value of the Group.*
- *Clr Griffin noted the need for Councils to provide information to the JRPP to ensure environmental and social impacts are appropriately considered, particularly in relation to maritime infrastructure.*
- *Clr Betts noted the inundation information may provide an opportunity for Councils to seek State Government funding to heighten seawalls.*

*GW referred delegates to the outcomes from the SCCG project on Seawalls, completed in 2012, which provides Councils with guidance on assessing the vulnerability and integrity of seawalls now and into the future.*

- *Clr Griffin noted that a number of ocean pools were being replaced and in the process a lot of heritage was being lost and replacement materials were often less environmentally-friendly than existing materials.*

*Clr Norton noted that the restoration of ocean pools is extremely expensive, and this was prohibitive for Council. Clr Saville also noted controversies around restoration / maintenance of ocean pools in the Willoughby LGA.*

- *Clr Shurey noted that as population density continues to increase, coastal Councils face increasing pressures for the use of coastal areas.*
- *Clr Levenston: Noting earlier remarks about the SCCG stretching itself too thinly, Clr Levenston questioned whether the broad discussion of issues at the meeting was contributing to that. Clr Levenston suggested the Group should focus specifically on scientific and policy issues.*
- *GW noted that a number of issues had been identified in the SCCG's current project on developing a Scoping Study for a Sydney Harbour CZMP. GW also noted current submissions the SCCG is preparing relating to the Crown Lands Review and the Moorings Review.*
- *Clr Stevenson: Coastal walkways are a major source of recreation and Randwick has one of the highest rates of rock fishing deaths. Safe access to the coastline and coordination with emergency services is a challenging area for Council.*
- *Clr Troy: More detailed analysis of inundation and coincident flooding would be valuable.*
- *Clr Towell: Major issues for Council include inundation, erosion, marinas, moorings, population growth, distribution of funding (taking account of the visitor populations that recreate along the coast) and stormwater management.*

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- Ms Melanie Thomas – Pittwater Council is currently looking at overland flow, coastal storm education strategies, climate change issues and the Marine Estate Management Strategy currently being developed by MEMA.
- GW noted that the SCCG had recently written to the MEMA addressing the issues raised at the last FG meeting.
- Clr Towell recommended that the Group consider undertaking a research project examining the burden on ratepayers of coastal Councils from use by visitor groups.

*Clr Norton and Clr Saville expressed concern that this would be very difficult to do fairly as many Councils face different pressures (eg, the City of Sydney has huge visitor populations and Councils in the Sydney basin bear the burden of food production for the region).*

- Clr Doutney: Seawalls and biodiversity conservation are key issues for the Council, particularly marine life in the Harbour taking account of the impacts of harbour-front development such as the Opera House precinct and Barrangaroo.
- Clr Betts: Stormwater harvesting is a big focus for Council. They are about to commence a project at Tamarama and others are already operational in other Bronte and Bondi.

GW drew delegates attention to the letter received from Minister Stokes MP. GW recommended the Group seek a meeting with the Minister and nominations for the potential delegation.

- Clr Griffin, Clr Betts, Clr Levenston, Clr Stevenson and Clr Towell nominated.

**Resolved that:**

- 1) The Report be received and noted.
- 2) Delegates workshop specific issues requiring attention.
- 3) The Draft SCCG Strategic Plan be tabled at the SCCG AGM (13 Sept) for consideration prior to going to Member Councils for formal consultation.
- 4) The SCCG seek a meeting with the new Environment Minister, the Hon Rob Stokes MP.  
(Delegation to include Clr Griffin, Clr Betts, Clr Levenston, Clr Stevenson and Clr Towell.

## 9. REPORTS

### Reports 9.1 – 9.4 FOR CONSIDERATION

#### 9.1 Reforms to Coastal Management in NSW

Prof Thom provided delegates with an update on developments in coastal policy and reforms at both the State and Federal levels of Government:

Federal reforms:

- Climate change *adaptation* is a focus for the (Federal) Department of the Environment
- NCARRF has been directed by Minister Hunt to engage as a 'knowledge broker' with Local Government, particularly on coastal issues
- The 'Green Army' initiative presents an opportunity for Councils to advance environmental issues (including seawalls and dredging)
- The Productivity Commission is currently holding a Public Enquiry into Natural Disaster Funding, particularly funding spent on disaster relief vs disaster preparedness

(<http://www.pc.gov.au/projects/inquiry/disaster-funding>). However the forward estimates reveal a reduced budget for disaster funding in the future.

State reforms:

- The new Premier has indicated a strong interest in marine biodiversity and the new Environment Minister (and Assistant Minister for Planning) is very well-informed.
  - It is understood that Minister Stokes will be responsible for the marine estate.
  - The Coastal Management Review Panel has recently assessed a number of grants. Of interest, some of these have proposed lowering dunes to enhance amenity (supposedly this is common practice in the US). Other applications have focused on seawall maintenance and restoration.
  - Minister Stokes is in the process of re-appointing the NSW Coastal Expert Panel with new terms of reference. Prof Thom confirmed he will be on the new Panel.
- *GW questioned whether this was a transitional step towards the establishment of a broader more inclusive Coastal Council. Prof Thom recommended GW raise this at a meeting with the Minister.*
  - *GW noted that there was only six months before election preparations commence, therefore there is a short window of opportunity to engage with the new Government.*
  - *Dr Lambert asked what the relationship was between the Minister for Planning (Minister Goward) and the Minister for Environment / Assistant Minister for Planning (Minister Stokes).*

**Resolved that:**

- 1) The report be received and noted.
- 2) Prof Bruce Thom AM provide the Group with an update of activities from the Coastal Expert Panel (where possible).
- 3) Through discussion, the SCCG determine additional actions to address Member Council issues and concerns.

## 9.2 SCCG Capacity Building Program Report

The CPO provided delegates with an update on proposed capacity building activities for 2014, including:

- SCCG 25 Year Conference & Gala Evening (**29 August**)
- Integrated Water Management Forum (~ October)
- Insurance forum and / or coastal biodiversity series (if time / resources allow)

The following projects will also be launched in 2014:

- Becoming Social (**24 July**)
- Sydney Harbour CZMP Scoping Study (~ August)
- Emergency Management Health Check (~ Sept)

**Recommended that** the report be received and considered.

## 9.3 SCCG 25 Year Anniversary Update

SCCG is celebrating its 25<sup>th</sup> Anniversary in 2014. Key activities have now been defined. The CPO reviewed activities to date including promotional materials, the 25 year Conference and the Gala Evening.

*Delegates discussed the suitability of dates for the Conference and Gala Evening, noting a number of conflicts with existing Council appointments / meetings. It was tentatively agreed that Fridays were preferable. The Secretariat will check availability of venues and key speakers for Friday 29<sup>th</sup> August and advise delegates of the outcome as soon as possible.*

**29 AUGUST - NOW CONFIRMED FOR 25 YEAR CONFERENCE AND GALA EVENING**

***Initial notifications to go out soon !***

*GW also sought recommendations from delegates for speakers at the Gala Evening and potential artists to commission for a series of sculpted Awards to present to Member Councils on the night. Initial suggestions include: (Wendy Harmer, Tim Winton, John Clarke, John Deer). Due to limited time, it was agreed that GW should email delegates seeking recommendations.*

**Resolved that:**

- 1) The CPO's report be received and considered.
- 2) The SCCG again write to Member Councils inviting relevant representatives to the 25 year conference and the gala evening.
- 3) The SCCG email delegates seeking nominations for speakers, venues and other contributors to the 25 Year celebrations.

**MEETING BREAK**

**DELEGATE WORKSHOP  
(40 minutes)**

**“MEMBER COUNCILS ROUND TABLE UPDATES & ISSUES DISCUSSION”**

A facilitated session was held following Item 8.1 to provide Member Councils via their elected delegates an opportunity to update delegates on Councils' activities and discuss outstanding issues that are in line with the SCCG Strategic Plan, ie issues under the Group's Six Strategic Outcome statements:

See: <http://sydneycoastalcouncils.com.au/sites/default/files/strategicplan2010-2014.pdf>

*Refer to Item 8.1 for a summary of the discussion.*

**Resolved that:**

- 1) Delegates be provided with 5 minutes each to address relevant updates and issues.
- 2) SCCG action in response be determined or referred to the SCCG Executive Committee for further consideration.

**9.4 Launch of *Prioritising Coastal Adaptation Development Options for Local Government***

The SCCG has now formally launched the last of its Coastal Adaptation Pathway projects entitled **Prioritising Coastal Adaptation Development Options for Local Government**.

The project explored prioritisation of adaption options in response to coastal inundation and erosion. It brought together information on exposure and risk, feasible adaptation strategies and the multiple values that influence Local Government decision-making, including governance, economic, social and environmental. It also developed a broad range of criteria by which the performance of adaptation strategies can be evaluated.

The project final report can be downloaded at [A Multi-Criteria Analysis of Coastal Adaptation Options for Local Government \(Final Report\)](#). The project fact sheet can be downloaded [here](#).

**Resolved that** the report be received and considered.

## 9.5 Sydney's Salty Communities – Turning the Tide on Blue+Green Carbon

The SCCG has secured \$1.9M from the national "Caring for Country – Biodiversity Program to undertake "Sydney's Salty Communities – Turning the Tide on Blue+Green Carbon".

The Sydney's Salty Communities project will allow SCCG and partners to support on-ground projects at local and sub-regional scales on public and private land to address pressures from pollution, weeds, feral animals, degradation, neglect, inundation and erosion. Coastal land managers (especially Councils and their local communities) will use strategic assessment and conservation management activities to physically assess, restore, enhance and maintain biodiversity values and functions in these critical areas.

Michael Dean (Project Officer – Biodiversity) reviewed the project, working group and other activities to date and outlined the activities scheduled through the end of this financial year (project stage 2) and previewed those anticipated through calendar year 2014 (project stage 3).

**Resolved that:**

- 1) The report be received and considered.
- 2) SCCG delegates:
  - a) continue to champion the project within their council
  - b) advise of possible biodiversity capacity-building needs and opportunities for their local communities.

## 9.6 SCCG Grants Programs Update Report

The report included in the business papers includes details of a) recently submitted grant applications (2013-2014) and b) unsuccessful grant applications.

The MPP briefly reviewed recently submitted SCCG grant applications.

**Resolved that** the report be received and noted.

## 9.7 Walking Coastal Sydney

### INAUGURAL SYDNEY HARBOUR & COASTAL WALK 16 AUGUST TO 14 SEPTEMBER 2014

Phil Jenkyn OAM attended the meeting to briefly review progress on the "Inaugural Sydney Harbour & Coastal Walk" (August – September 2014). The Minister for the Environment and Member for Pittwater, the Hon Rob Stokes MP, has agreed to officially launch the walk on Sunday 16 August.

A Steering Committee has been established to oversee preparations for the Walk comprising representatives from the Walking Volunteers, the National Parks Association of NSW, SCCG, Department of Premier and Cabinet, Department of Planning and Environment, Sydney Harbour Federation Trust, NPWS, Walk 21 Conference, Destination NSW and the Heart Foundation.

Mr Jenkyn advised delegates of opportunities for Councils to engage in the Walk, by, for example, showcasing Council projects / significant places along the route. It is anticipated that there will be media coverage of the event.

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Mr Jenkyn also advised that the Walking Volunteers and SCCG had been successful in submitting a paper for the international Walk21 Conference, being hosted in Sydney on 21-23 October 2014. The paper reviews the development of the Sydney Harbour and Coastal Walking Network, emphasising the value and possible outcomes of local and state governments and, most importantly, volunteers working together, with the shared purpose of promoting recreation and engagement with our natural environment.

*Clr Saville: Suggested the Premier's Council for Active Living (PCAL) be engaged.*

*PJ noted that the Group is communicating with PCAL and the Heart Foundation.*

*Clr Stevenson: Are Councils encouraged to coordinate large groups of people to participate in the walk?*

*PJ: It is not designed to be a mass event, as this will create additional logistical and risk burdens, however Councils are welcome to coordinate community involvement in the Walk.*

**Resolved that** the verbal report from Phil Jenkyn OAM be received and considered.

## 9.8 Presentation to the Third International Climate Change Adaptation Conference and Local Government in Latin America

From 12-16 May, 2014, Geoff Withycombe and Stephen Summerhayes represented the SCCG at the Third International Climate Change Adaptation Conference which was held in Fortaleza, Brazil. At the Conference a presentation was delivered by them entitled *Adaptation in a global coastal city – The contributions of regional collaboration in Sydney, Australia – the steps from vision to implementation.*

Whilst overseas, Geoff and Stephen availed themselves of the opportunities to unite with Australian and other international researchers as well as to meet with local government climate change representatives in Rio and Buenos Aires, to explore synergies and knowledge sharing.

**Resolved that:**

- 1) The report be received and considered.
- 2) The Secretariat continue to pursue International collaborations and knowledge sharing, reporting back to the Group when appropriate.
- 3) Delegates thank GW and SS for their representation of the Group in Latin America.

## Reports 9.9 – 9.12 FOR INFORMATION ONLY

**Resolved that** reports for 'information only' be received and noted (pending inquiry).

- 9.9 Beachwatch Program Report (February-April 2014)
- 9.10 Greater Sydney Local Land Services Update - May 2014
- 9.11 NSW Department of Primary Industries Aquatic Pest and Health Update
- 9.12 SCCG Key Activities Report for February – May 2014

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## 10. SCCG SUBMISSIONS

- **Crown Lands Management Review Report and White Paper**

The NSW Government has completed a review into the management of Crown land. The review examined the overall management of Crown land including legislation, financial management, governance, and business structures. The review was overseen by a high level-interagency steering committee independently chaired by Mr Michael Carapiet.

The Government's response to the report is now available. The Government has also released a Crown Lands Legislation White Paper for comment.

The Government plans to develop consolidated, streamlined legislation to underpin the management of Crown land. The White Paper contains proposals to develop one new piece of legislation that will replace eight existing Acts and simplify the management of Crown reserves.

The SCCG surveyed Member Councils in relation to the review and is preparing a Submission based on responses received. Submissions are invited until **Friday 20 June 2014**.

Links [Government's Response](#) / [Review Report](#) / [White Paper](#) / [Have your say](#)

- **Moorings Review Issues Paper**

The Maritime Management Centre (MMC) in Transport for NSW is undertaking a review of the policy and regulatory framework governing the administration of moorings in NSW. MMC has produced an *Issues Paper* to assist scope the range of issues and potential reform options to be considered as part of the Review.

The SCCG surveyed Member Councils in relation to the review and is preparing a Submission based on responses received. Submissions are invited until **Friday 20 June 2014**.

**Link:** [Mooring Issues Review Paper](#)

**Resolved that** the SCCG incorporate final Member Councils' issues and concerns relating to Crown Lands Management Review Report and White Paper and the Moorings Review Issues Paper to finalise and distribute SCCG submissions.

## 11. TREASURER'S REPORT

### 11.1 Finance Statements for period 1 July 2013 to 30 April 2014

**Resolved that** the financial statements for the period 1 July 2013 – 30 April 2014 be received and adopted.

## 12. GENERAL BUSINESS

■ **Discussion Items** (Please note all General Business items must be submitted prior to the meeting).

- **2014 National General Assembly of Local Government**

Delegates noted that a number of SCCG's proposals were endorsed at the [2014 National General Assembly of Local Government](#)

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At the last meeting it was resolved to send member councils the pre election submission for their consideration when developing their "Call for Motions" to the General Assembly

#### Background:

In the lead up to the 2013 Federal Election, the SCCG resolved to request all relevant political parties contesting the election to outline their policy positions on the following seven key coastal management issues:

- A National Coastal Council or Commission for Australia
  - Implementing priority recommendations from the "Managing our Coastal Zone in a Changing Climate – The Time to Act is Now" report
- A consistent and coordinated approach to natural hazards management and climate change adaptation in the Australian coastal zone
  - Funding for Local Government and community coastal program
- A National Coastal Information System for Australian
  - Maintaining public ownership of and access to and along the coastal zone
  - A National Marine Management Strategy

ALL policy position were tabled at the National Assembly. Thanks to member councils for their support.

#### 12.1 Remaining 2014 Meeting dates / Next Meeting

##### Confirmed Dates

- Saturday 13 September (AGM) 2014 at 12 noon
- Saturday 6 December 2014 at 12 noon

##### Proposed Location

(Randwick Council – pending)  
(City of Sydney)

#### 12.2 Items for Press Release

**Resolved that** items for press release be considered.

#### 12.3 Agenda items for the next SCCG meeting

**Resolved that** delegates suggest additional agenda items including presentations for the next SCCG meeting proposed for 13 September 2014 starting at 12 noon.

#### 12.4 Next Meeting

**Resolved that** the next meeting of the Group be held on 13 September 2014 at Randwick City Council (pending confirmation).

Cr Griffin closed the meeting and thanked delegates for their attendance and contributions

The meeting closed at 4.20pm.

Confirmation of Minutes: .....  
/ /



Property No.154-158 Pacific Parade, Dee Why  
(Lot 1, DP 34753)

## PLANNING PROPOSAL

To formalise the permissibility of  
'commercial premises' on the property under  
Warringah Local Environmental Plan 2011

Prepared by Warringah Council  
August 2014

TRIM 2014/235419

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## Acronyms used in this Report

B2	B2 Local Centre Zone of WLEP2011
Council	Warringah Council
Department	Department of Planning and Environment (former Department of Planning and Infrastructure)
R3	R3 Medium Density Residential Zone of WLEP2011
SEPP	State Environmental Planning Policy
tbc	To be confirmed
The Site	Property No.158 Pacific Parade, Dee Why (Lot 1, DP 34753)
WLEP2011	Warringah Local Environmental Plan 2011
WDCP2011	Warringah Development Control Plan 2011

## Preliminaries

### Introduction

On 21 May 2014 a Planning Proposal Application for Property No.154-158 Pacific Parade, Dee Why (Lot 1, DP 34753) was lodged with Council on behalf of the landowner, to formalise the permissibility of 'commercial premises' on the property under Warringah Local Environmental Plan 2011 (WLEP2011),

Despite its predominantly residential zoning, most of the site is occupied by 'commercial premises' which are prohibited landuses in the R3 Zone (i.e. a real estate agent, restaurant and a 82m2 laundromat).

The land is located at the southern edge of the Dee Why beach front retail precinct. Lawfully established on the land are three businesses: an Indian restaurant, laundromat, and real estate agency.

Under WLEP2011 the land has two zones applying to it:

- 'R3 Medium Density Residential' (approximately 530m2 or 95%) and
- 'B2 Local Centre' (approximately 26 m2 or 5%).

The dual zoning is the result of a mapping anomaly rather than any planning intention for the land to have different land use functions.

Despite the land's predominantly residential zoning, it is occupied by 'commercial premises' which are prohibited land uses in the R3 Zone (i.e. a real estate agent, restaurant and laundromat).

To align the established existing uses and the zoning of the site, the Planning Proposal requests an amendment to WLEP2011 Schedule 1 – Additional Permitted Uses, to permit 'commercial premises' on the land.

### **Site Context and Location**

<b>Location</b>	Property No. 154-158 Pacific Parade, Dee Why
<b>Legal Description</b>	Lot 1, DP 34753
<b>Site Area</b>	543.8 m <sup>2</sup>
<b>Frontages</b>	The property is a triangular shaped 'island site' surrounded by Griffin Road to the east, Pacific Parade to the south and The Strand to the west
<b>Slope</b>	The site has a modest slope towards its northern corner

#### **Existing buildings on site consists of (Figures 2 & 3):**

- A single storey commercial building fronting the southern boundary of the site, currently containing a laundromat and Indian restaurant (zoned R3).
- A single storey residential dwelling (that adjoins the northern wall of the above mentioned building) with a north facing open garden area in the centre of the site (zoned R3).
- A second small single storey commercial building located within the northern corner of the site, currently occupied by a real estate agency (zoned in part R3 and B2).
- No existing car parking is provided on the site.

#### **Surrounding development consists of:**

- A service station including vehicle repair shop immediately to the west of the property.
- Three - four storey medium density residential apartment buildings with ground floor car parking to the south of the property and along Pacific Parade (zoned R3 Medium Density Residential under WLEP2011).
- A small reserve immediately to the east of the property, adjoining a four storey apartment building (inclusive of ground floor car parking).
- To the north along The Strand fronting Dee Why Beach, development is generally characteristic of mixed use three storey buildings with ground floor commercial and two storeys residential above (zoned B2 Local Centre under WLEP2011).
- There is an established bicycle route running north/south along The Strand / Griffin Road and Pacific Parade.
- The property is within 200m of bus stops on Pacific Parade and The Strand.

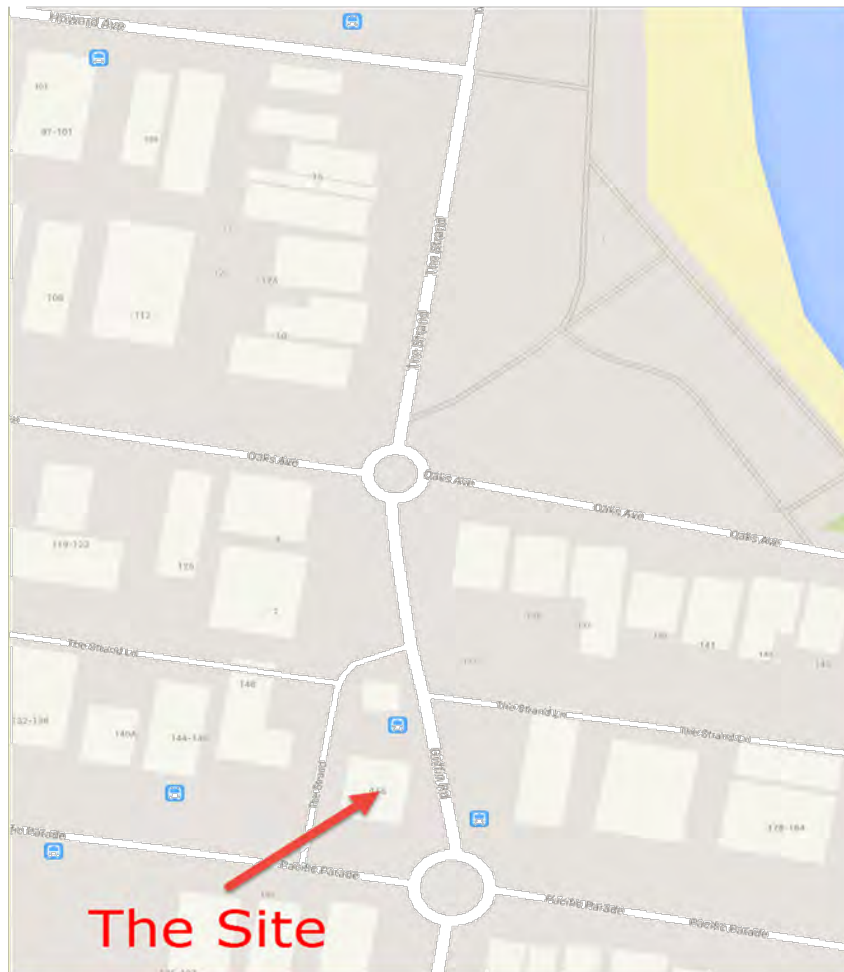


Figure 1: Site location Plan



Figure 2: Aerial photograph of the site



Figure 3: Photographs of the site extracted from Planning Proposal prepared by Robinson Urban Planning Pty Ltd, 2014.

## History of Development on the Site

Existing use rights for the commercial uses on the property have been identified via the following points, noting that the information provided here does not imply compliance with the conditions of consent that may or may not exist with regard to the operation of these uses:

- Council's records indicate that those buildings on the subject site having frontage to Pacific Parade were in existence in 1946 at the coming into effect of town planning legislation. Accordingly, Council has previously acknowledged that existing use rights under the provisions of the Environmental Planning and Assessment Act 1979 apply for use of those buildings as a butcher shop, a general store and a chemist.
- Consent No.240/79 was granted on 22 January 1979 for a butcher shop to occupy the premises.
- Development Consent No.7112 was granted on 19 January 1971 for a coin operated laundry to occupy the premises previously occupied by the chemist shop.
- Development Consent No.1586 was granted on 14 April 1999 for change of use from Butcher Shop to India take-away restaurant.
- Development Consent No.3464 was also granted on 2 March 2000 for a Change of Use from a Spice Store to a Butcher Shop.
- Consent No.82/19 was granted on 13 January 1982 for use of the building in the northern corner of the site as an office.

## Statutory Context

The majority of the site is zoned R3 Medium Density Residential, with a small northern portion of the site zoned B2 Local Centre under WLEP2011 (Figure 4).

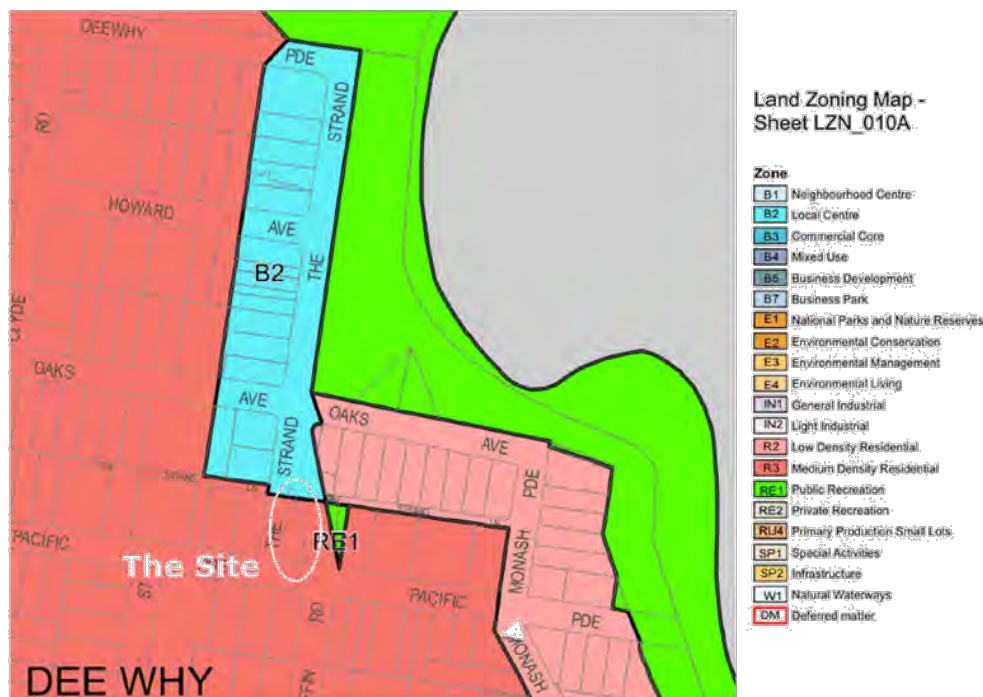


Figure 4: WLEP2011 Land Zoning Map.

The majority of the site is currently occupied by 'commercial premises' which are prohibited in the R3 Zone, however, permissible in the B2 Zone. These uses are all currently operating either fully (the restaurant and laundromat) or partially (the real estate agent) on the R3 zoned portion of the site under previous development consents.

With regard to the existing laundromat with a site area of 82m<sup>2</sup>, it is noted that neighbourhood shops are permissible in the R3 Zone (which may include a laundromat), however, in accordance with WLEP2011 Clause 5.4 a neighbourhood shop must not exceed 80m<sup>2</sup>. Therefore, this laundromat is currently not permissible in the R3 Zone.

The Planning Proposal requests a Schedule 1 Additional Permitted Use for 'Commercial Premises' to make Commercial Premises permissible with consent on the R3 zoned portion of the site.

Commercial Premises is defined as follows under WLEP2011:

**Commercial Premises** means any of the following:

- (a) business premises, (b) office premises, (c) retail premises.

**Business Premises means a building or place at or on which:**

- (a) an occupation, profession or trade (other than an industry) is carried on for the provision of services directly to members of the public on a regular basis, or
- (b) a service is provided directly to members of the public on a regular basis, and includes a funeral home and, without limitation, premises such as banks, post offices, hairdressers, dry cleaners, travel agencies, internet access facilities, betting agencies and the like, but does not include an entertainment facility, home business, home occupation, home occupation (sex services), medical centre, restricted premises, sex services premises or veterinary hospital.

**Note.** Business premises are a type of **commercial premises**—see the definition of that term in this Dictionary.

**Office Premises** means a building or place used for the purpose of administrative, clerical, technical, professional or similar activities that do not include dealing with members of the public at the building or place on a direct and regular basis, except where such dealing is a minor activity (by appointment) that is ancillary to the main purpose for which the building or place is used.

**Note.** Office premises are a type of **commercial premises**—see the definition of that term in this Dictionary.

**Retail Premises** means a building or place used for the purpose of selling items by retail, or hiring or displaying items for the purpose of selling them or hiring them out, whether the items are goods or materials (or whether also sold by wholesale), and includes any of the following:

- (a) bulky goods premises, (b) cellar door premises, (c) food and drink premises, (d) garden centres, (e) hardware and building supplies, (f) kiosks, (g) landscaping material supplies, (h) markets, (i) plant nurseries, (j) roadside stalls, (k) rural supplies, (l) shops, (m) timber yards, (n) vehicle sales or hire premises, but does not include highway service centres, service stations, industrial retail outlets or restricted premises.

**Note.** Retail premises are a type of **commercial premises**—see the definition of that term in this Dictionary.

The zone objectives for the R3 and B2 zones on the site are outlined as follows:

## 1 Zone R3 Medium Density Residential

### *Objectives of the zone*

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure that medium density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*
- *To ensure that medium density residential environments are of a high visual quality in their presentation to public streets and spaces.*

## 2 Zone B2 Local Centre

### *Objectives of the zone*

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To provide an environment for pedestrians that is safe, comfortable and interesting.*
- *To create urban form that relates favourably in scale and in architectural and landscape treatment to neighbouring land uses and to the natural environment.*
- *To minimise conflict between land uses in the zone and adjoining zones and ensure the amenity of any adjoining or nearby residential land uses.*

It is considered that maintaining the R3 residential zoning of the site whilst permitting commercial premises will serve to maintain the residential objectives of land along Pacific Parade whilst recognising the sites long established commercial function and relationship to Dee Why Beach Local Centre.

## Planning Analysis

Including 'commercial premises' as an additional permitted use on the site has been considered as follows:

- The site uniquely merges the characteristics and objectives of both the R3 and B2 zones at the interface of the Dee Why local centre to the north and the medium density residential environment to the south and east/west along Pacific Parade.
- The site has a long history of commercial land uses, generally providing facilities and services to meet the day to day needs of the residents.
- 'Commercial premises' as an additional permitted use would formalise the permissibility of existing and future commercial land uses under WLEP2011.
- Commercial premises are considered more suited to the ground floor of the site compared to residential development given the amenity issues resultant from the property being an island site surrounded by roads.
- As the property is an island site surrounded by roads, commercial premises is considered to have negligible environmental impact on the residential environment along Pacific Parade.
- A key objective of the Metro Strategy is to provide jobs close to home. The Planning Proposal would achieve this objective.
- Alternatively, rezoning the whole of the site to B2 would make other land uses in addition to commercial premises such as entertainment facilities, function centres, registered clubs and

restricted premises permissible with consent on the site. The impact of these land uses compared to commercial premises on the residential environment along Pacific Parade has not been assessed as part of this Planning Proposal.

- The following concerns have been raised by the landowner with regard to reliance on existing use rights:
  - *They provide insufficient certainty to the landowners and tenants.*
  - *They are complex, evolving and subject to a plethora of complex case law.*
  - *The fact that existing use right will be lost in situations where the use is abandoned for a period of 12 months or longer is an untenable risk for the land owner in the event of extended vacancy.*
  - *Any future change of use on the site would need to rely on existing use rights, exempt and Complying Development would not apply and any changes of use or minor alterations/additions would require a Development Application. This is anti-competitive and would discourage future tenants given inherent time, cost and uncertainty involved in obtaining development consent.*
  - *Existing use rights contradict the aims of Draft State Environmental Planning Policy (Competition) 2010.*

In summary, it is considered that maintaining the residential zoning of the site whilst permitting commercial premises will serve to maintain the residential objectives of land along Pacific Parade whilst recognising the sites long established commercial function and relationship to Dee Why Beach Local Centre.

## The Planning Proposal

This Planning Proposal comprises of the following seven parts that are consistent with the document titled *A guide to preparing Planning Proposals (October 2012)* and *A guide to preparing local environmental plans (April 2013)* by (former) NSW Department of Planning & Infrastructure and *Section 55 (2) of the Environmental Planning and Act 1979*:

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

### Part 1: Objectives or Intended Outcomes

Property No.158 Pacific Parade, Dee Why, functions predominantly as 'commercial premises', however, this established function is not reflected by current planning controls under WLEP2011.

This Planning Proposal seeks to address this inconsistency by formalising the permissibility of commercial premises on the property under WLEP2011. The intended outcome is to provide certainty for the landowner and existing/future tenants regarding the permissibility of commercial premises on the site, whilst maintaining the lands established employment and local service function.

## Part 2: Explanation of Provisions

The Planning Proposal would involve the following amendments to WLEP2011 on land legally described as Lot 1, DP 34753.

No.	Relevant sections of WLEP2011	Proposed Amendments
<b>1</b>	<b>Schedule 1 Additional Permitted Uses</b>	<p>Insert new Item No. (tbc) as follows:</p> <p><b>No.(tbc) Use of certain land at 158 Pacific Parade, Dee Why</b></p> <p>(1) This clause applies to certain land at 158 Pacific Parade, Dee Why, being Lot 1, DP 34753, shown as "Area (No. tbc)" on the <u>Additional Permitted Uses Map</u></p> <p>(2) Development for the purposes of commercial premises is permitted with consent.</p>
<b>2</b>	<b>Additional Permitted Uses Map</b>	<p>Include a new "Area (No.tbc)" identifying the subject property on the Additional Permitted Uses Map that corresponds with the above mentioned Schedule 1 of WLEP2011 (Attachment 3)</p>

## Part 3: Justification

### Section A - Need for the Planning Proposal.

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

This Planning Proposal is not the result of any strategic study or report. It was initiated by a Planning Proposal application submitted to Council on behalf of the landowner (Attachment 2).

The Planning Proposal application submitted on behalf of the landowner, in addition to Council's assessment to date, form the basis of this Planning Proposal.

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

A Planning Proposal is the best way of providing certainty for the landowner and existing/future tenants by formalising the permissibility of commercial premises on the subject property under WLEP2011 (as outlined in the 'Planning Analysis' section above).

### Section B - Relationship to Strategic Planning Framework.

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

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

##### 3.1 Draft Metropolitan Strategy 2031 (2013)

The Draft Metropolitan Strategy is the latest strategy released by the Department of Planning and Infrastructure to set the framework for Sydney's growth to 2031 and beyond.

The draft Strategy lays a strong and ambitious strategic planning foundation for the metropolitan region to put Sydney on course to cement its position as Australia's pre-eminent city. To achieve this, the focus of the Strategy is on boosting housing and jobs growth across Sydney.

As such, the Draft Metro Strategy sets an employment target (net additional) of 39,000 and a housing target (net additional) of 37,000 for the Northern Subregion by 2031 (comprising Hornsby, Ku-ring-gai, Manly, Pittwater and Warringah).

The Planning Proposal will retain existing jobs on the site and create a planning regime that will support and encourage additional employment. The Planning Proposal will also encourage investment on the site, consistent with the wider objectives, policies and actions in the Draft Metropolitan Strategy (p.10) which states that:

*The Metropolitan Strategy for Sydney will help to create and support new opportunities for investment. It encourages balanced growth throughout Sydney by stimulating housing growth in both infill and greenfield areas in a way that delivers a range of different housing types across the whole region, and close to jobs and services....*

*As a general policy, the Strategy's approach to balanced growth means housing renewals and developments will reflect market demand, development feasibility, and infrastructure, transport and services provisions.*

### 3.2 Metropolitan Plan for Sydney 2036 (2010)

The Metropolitan Plan was prepared with the vision that, by 2036, Sydney will be a more compact, networked city with improved accessibility, capable of supporting more jobs, homes and lifestyle opportunities within the existing urban footprint.

Relevant policies of the Metropolitan Plan of relevance to this Planning Proposal are:

- 760,000 more jobs by 2036
- 770,000 additional homes by 2036
- Build at least 80% of all new homes within the walking catchments of existing and planned centres of all sizes with good public transport
- Enable residential and employment growth in areas where there is available or planned public transport capacity
- Containing growth to protect environmentally sensitive land

The Planning Proposal is consistent with and supportive of these high level policies.

### 3.3 Draft North East Subregional Strategy (2007)

The Draft North East Subregional Strategy (Strategy) relates to the Local Government Areas of Warringah, Manly and Pittwater and identifies a subregional employment target of 19,500 additional jobs by 2031 (which equates to approximately 13,300 extra jobs between 2006 and 2031).

Dee Why - The Strand is nominated in the Strategy as a small village. The Strategy, Appendix 3 – Centre Types states the following in relation to smaller local centres, recognising their important economic and employment role:

*In addition to Strategic Centres, there over 500 Town Centres, Villages, Small Villages and Neighbourhood Centres in Sydney served by frequent public transport.*

*These other places are of a smaller scale and are most important to the people who live and work there.*

*Neighbourhoods, Villages and Town Centres are better managed by local government. Assistance from the State Government may be required to promote good urban design and provide infrastructure, or to initiate the process of renewal.*

*Smaller local centres contain a substantial proportion of employment and make a substantial contribution to the Sydney economy. Over 500,000 people are employed in these smaller centres which are focused on providing retail and small local business and personal services for nearby populations, business and industry.*

Retention of existing jobs on the site and the provision of a planning regime that will support the established and continued employment function of the land will contribute towards the achievement of the subregional employment targets and enhance the economic and employment role of Dee Why - The Strand Small Village.

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

Warringah's *Community Strategic Plan 2023* sets out the long term aspirations of the Warringah community. Economic growth and jobs are addressed in the Strategic Plan which notes that:

*Our local economy needs to be resilient and provide a range of businesses and services to meet the needs of the community. Small business is a big part of our economy and we should support and foster innovation and have access to areas that are well designed and vibrant. This will also provide opportunities for more residents to work locally.*

Relevant community objectives stated in the Strategic Plan in relation to Liveable Neighbourhoods that are supported by the Planning Proposal include the following:

- Attractive and functional centres that meet the needs of residents and businesses
- Diversity of businesses that provide a range of services and employment opportunities

#### 5 Is the Planning Proposal consistent with applicable state environmental planning policies (SEPP's)?

The Planning Proposal would enable existing and future commercial development on the site to be carried out as complying development pursuant to *SEPP (Exempt and Complying Development Codes) 2008*. As clause 1.18(1)(b) of the SEPP provides that complying development can only be carried out if the development is permissible with consent under an environmental planning instrument. This Planning Proposal would make commercial premises permissible with consent on the site, enabling complying development under the SEPP.

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

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

Ministerial Direction	Consistency	Comment
<b>1. Employment and Resources</b>	-	-
1.1 Business and Industrial Zones	Yes	The Planning Proposal will retain and promote employment in the area by retaining commercial uses on the site and providing a flexible and workable planning regime for future commercial land use improvements, changes of use and expansions.
<b>2. Environmental Heritage</b>	N/A	Not applicable
<b>3. Housing, Infrastructure and Urban</b>	-	-

Ministerial Direction	Consistency	Comment
<b>Development</b>		
3.1 Residential Zones	Yes	Residential uses (including multi dwelling housing and residential flat buildings) will continue to be permitted with consent on the R3 zoned component of the site.
3.4 Integrating Land Use and Transport	Yes	The Planning Proposal will retain existing jobs in a location that has access to housing and services and that can be readily accessed by walking, cycling and public transport.
<b>4. Hazards and Risks</b>	N/A	Not applicable
<b>5. Regional Planning</b>	N/A	Not applicable
<b>6. Local Plan Making</b>	N/A	Not applicable
<b>7. Metropolitan Planning</b>	-	-
7.1 Implementation of the Metropolitan Plan for Sydney 2036	Yes	The Planning Proposal is consistent with the Metropolitan Strategy as discussed above in Section B (3) of this report.

### **Section C - Environmental, Social and Economic Impact.**

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

Records indicate that the subject land does not contain critical habitat, threatened species populations, ecological communities or their habitats. Therefore, there is no likelihood of adverse affectation.

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

The subject land is not adversely affected by environmental issues such as riparian land, wetlands, wildlife corridors, slope / land slip, flooding, acid sulphate soils, bushfire hazard, European or Aboriginal heritage. This Planning Proposal will have a negligible environmental effect.

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

The Planning Proposal will retain the site's employment role which has a positive social and economic impact for the local community by maintaining its employment function - jobs close to home.

### **Section D - State and Commonwealth Interests.**

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

Yes, the Planning Proposal does not generate a need to upgrade or improve public infrastructure.

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

The Planning Proposal will have minimal impact, enabling an additional permitted use that will reflect the established 'commercial' function of the land. The views of State and Commonwealth agencies will be known after the gateway determination (noting that the only agency likely to have an interest in the Planning Proposal is NSW Department of Planning and Environment.

#### **Part 4: Maps**

Mapping included in this Planning Proposal comprises:

- Site location plan (Figure 1)
- Extract from WLEP2011 land zoning map, showing the sites split zoning (Figure 4)
- Site Identification Survey provided by the landowner (Attachment 2)
- Planning Proposal Maps (Attachment 3)

## Part 5: Community Consultation

Council placed the Planning Proposal on 'preliminary' public exhibition from 13 June 2014 until the 27 June 2014. Notification included:

- Advertisements over two Saturdays in the Manly Daily notifying of the public exhibition.
- Notification letters to surrounding land owners.
- Advertising signs on site.
- Information provided on Council website and at Council Civic Centre of the Planning Proposal as submitted to Council.

No submissions were received during the public exhibition period.

Following Gateway Determination it is recommended that the Planning Proposal be placed on public exhibition for a minimum period of 14 days given the low impact nature of this proposal.

## Part 6: Project Timeline

The anticipated gazettal of this LEP Amendment is April 2015. Noting that Council has no control over the Department's timeframes. The below table provides an estimated timeframe for the Planning Proposal as follows:

Planning Proposal Tasks		Anticipated Timeframes
1	Reporting the Planning Proposal to Council	August 2014
2	Referral to NSW Department of Planning and Environment for Gateway Determination (1 week)	September 2014
3	Gateway Determination (4 weeks)	October 2014
4	Timeframe for: <ul style="list-style-type: none"> <li>▪ Potential government agency consultation</li> <li>▪ Any required amendments to the Planning Proposal prior to exhibition</li> <li>▪ Public exhibition preparation</li> </ul> (4 weeks)	November 2014
5	Statutory Public Exhibition (14 days)	November 2014
6	Assess Submissions (1 week)	December 2014
7	Public Hearing (if required) (3 weeks)	December 2014
8	Report to Council	February 2015 (no Council meeting in January)
9	Council requests that a draft instrument be prepared under section 59(1) of the Act by emailing PCO. (1 weeks)	February 2015
10	Content of LEP finalised and Opinion issued by PCO that the plan can be made (4 weeks)	March 2015
11	Making of the WLEP2011 - Council advises the department that the plan has been made. Council requests the department to notify the plan. (2 weeks)	April 2015

## **Request for Written Authorisation to Exercise Delegation**

As per Council Resolution dated 26 August 2014 (Attachment 1):

*That Council formally requests written authorisation from the Department of Planning and Environment to exercise delegation to prepare and make the amending WLEP2011 for the Planning Proposal at 158 Pacific Parade, Dee Why (Lot 1 DP 34753), following the Gateway Determination and a resolution of Council to proceed to amend the WLEP2011.*

## **Conclusion**

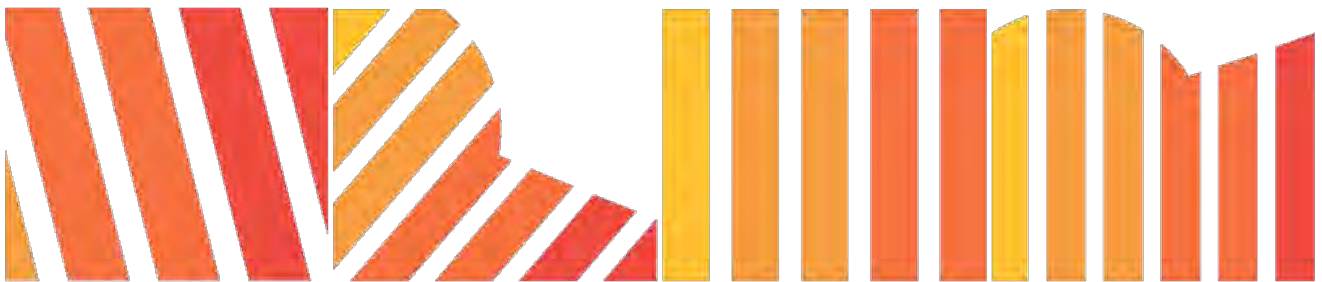
Council's assessment to date acknowledges the strategic justification for including 'commercial premises' as an additional permitted use under Schedule 1 of WLEP2011 for property No.158 Pacific Parade, Dee Why.

Council supports the progression of the Planning Proposal for Gateway Determination.



**Planning Proposal to insert a new Schedule 1 listing in Schedule 1 of  
Warringah Local Environmental Plan 2011**

154-158 Pacific Parade, Dee Why Beach



Submitted to Warringah Council

Prepared on behalf of Harrington Dee Why Pty Limited  
(ACN 163 345 702)

May 2014 | 14011

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## 1.0 Preliminaries

### 1.1 Introduction

This Planning Proposal is submitted to Warringah Council (the **Council**). It has been prepared by Robinson Urban Planning Pty Ltd on behalf of Harrington Dee Why Pty Limited (ACN 163 345 702) (the proponent and land owner). It relates to land at 154-158 Pacific Parade, Dee Why Beach (**the site**). Submission of the Planning Proposal follows a pre-lodgement meeting between the proponent and Council Officers on 6 May 2014.

Pursuant to Warringah Local Environmental Plan 2011 (**WLEP 2011**), the site is in the following two zones:

- Zone R3 - Medium Density Residential (which applies to most of the site)
- Zone B2 - Local Centre (which applies to the northern tip of the site).

Despite its predominantly residential zoning, most of the site is occupied by *commercial premises*<sup>1</sup> which are prohibited in Zone R3 (including a real estate agent's office, a restaurant and laundromat). To align the existing uses and the zoning of the site, the Planning Proposal requests a Schedule 1 – Additional Permitted Uses listing to permit *commercial premises* on the site.

The Planning Proposal explains the background to the requested amendment and consists of the following six parts (consistent with the document titled *A guide to preparing planning proposals*, by NSW Planning & Infrastructure, 2012):

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

It is accompanied by the following documents:

**Appendix A** Identification Survey

**Appendix B** Planning Proposal map (proposed amendment to the WLEP 2011 Additional Permitted Uses Map - Sheet APU\_010A)

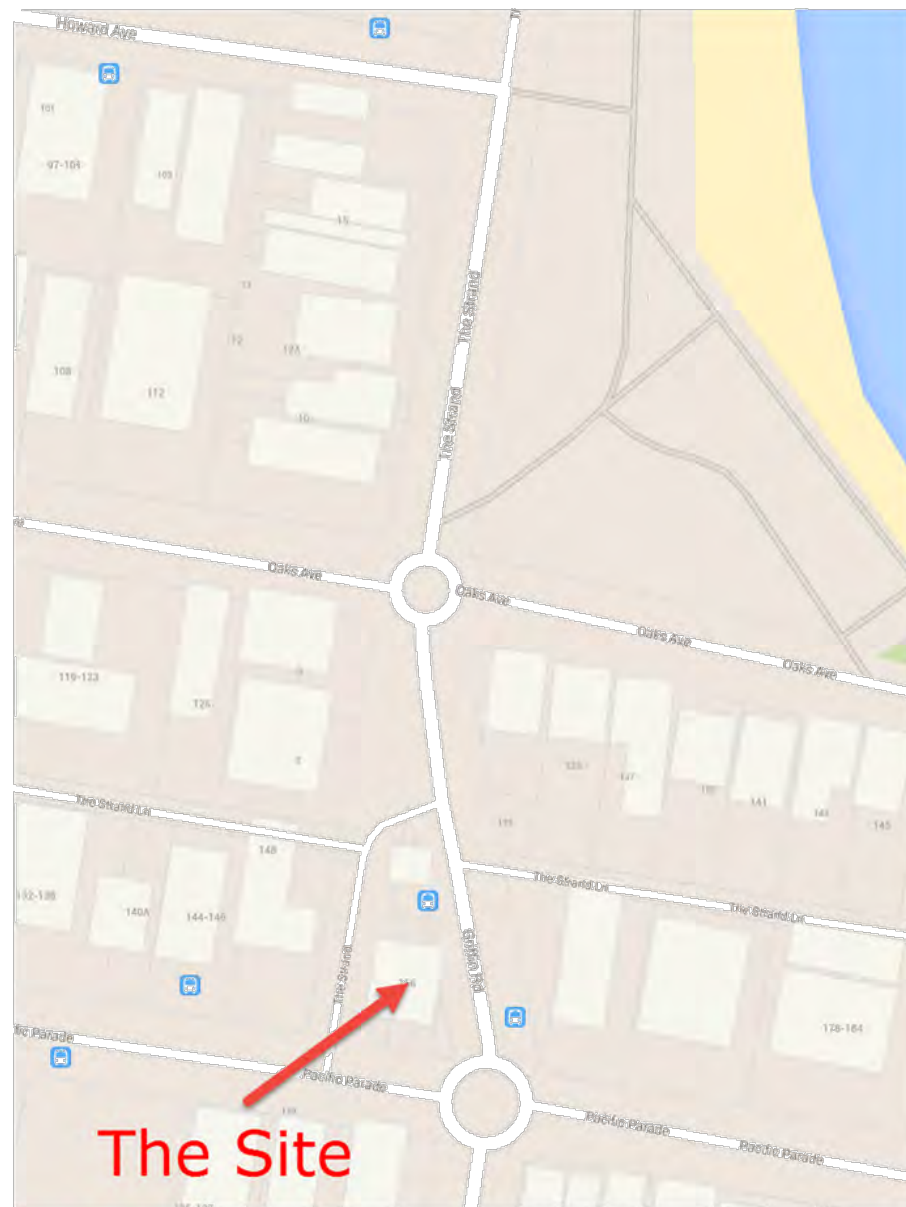
<sup>1</sup> Pursuant to WLEP 2011:

*commercial premises* means any of the following:

- (a) business premises,
- (b) office premises,
- (c) retail premises.

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**Figure 1 – Site location plan**

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Figure 2 – Aerial photograph of the site

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### 1.2 Brief description of the site

The key characteristics of the site are summarised below:

Location	154-158 Pacific Parade, Dee Why Refer to <b>Figure 1</b> – Site location plan
Legal description	Lot 1 in DP 34753 (Refer to Identification Survey at <b>Appendix A</b> )
Site area	543.8m <sup>2</sup>
Frontages	Pacific Parade – 14.995m The Strand – 50.5m Griffin Road – 36.3m (plus 16.32m located behind Lot 4 in DP 130602)
Existing use	The site is occupied by the following uses and buildings: <ul style="list-style-type: none"> <li>• Real estate agent (62m<sup>2</sup>) in a single storey commercial building located on land in Zone B2 and Zone R3 (a prohibited use in Zone R3)</li> <li>• Single storey building located on land in Zone R3 occupied by: <ul style="list-style-type: none"> <li>– Indian restaurant (93m<sup>2</sup>) which is a prohibited use in Zone R3</li> <li>– Laundromat (82m<sup>2</sup>) which is a prohibited use in Zone R3</li> </ul> </li> <li>• Dwelling house (88m<sup>2</sup>) which is a prohibited use in Zone R3</li> <li>• Open garden area in the centre of the site</li> </ul> Refer to <b>Figure 2</b> – Aerial photograph and photographs of the site at <b>Figure 3</b> .
Zoning	<ul style="list-style-type: none"> <li>• Zone R3 - Medium Density Residential (516m<sup>2</sup> which is 95% of the site area)</li> <li>• Zone B2 - Local Centre (27m<sup>2</sup> which is 5% of the site area)</li> </ul> Refer to <b>Figure 4</b> – Land zoning map
Surrounding development	<p><b>North</b> Dee Why Beach and Dee Why - The Strand Small Village are to the north of the site (refer to <b>Figure 5</b>). Mixed use development with ground floor cafes and residential above, addresses The Strand. As shown by <b>Figure 4</b>, sites on the western side of The Strand are in Zone B2 – Local Centre.</p> <p><b>South</b> Four storey residential flat buildings are to the south of the site, beyond Pacific Parade.</p> <p><b>East</b> Beyond Griffin Road, there is a small pocket park and a four storey residential flat building to the east.</p> <p><b>West</b> A service station is to the east of the site, access from The Strand. Located in Zone R3, the service stations is non-conforming use.</p>

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1. Real estate agent at the northern end of the site



2. Real estate agent facing The Strand



3. Laundromat and Indian restaurant facing Pacific Pd



4. Laundromat facing The Strand



5. Real estate, house and laundromat facing The Strand

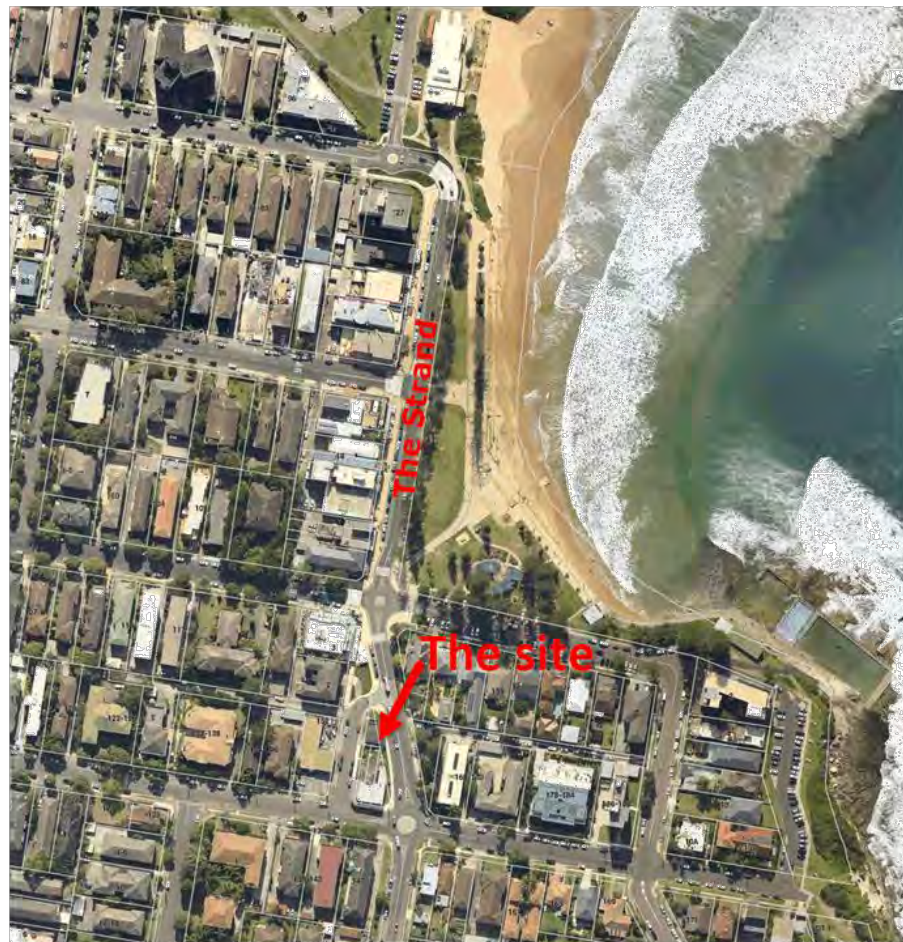


6. Indian restaurant facing Griffin Road

**Figure 3 – Photographs of the site**

**Planning Proposal to insert a new Schedule 1 listing in Schedule 1 of Warringah Local  
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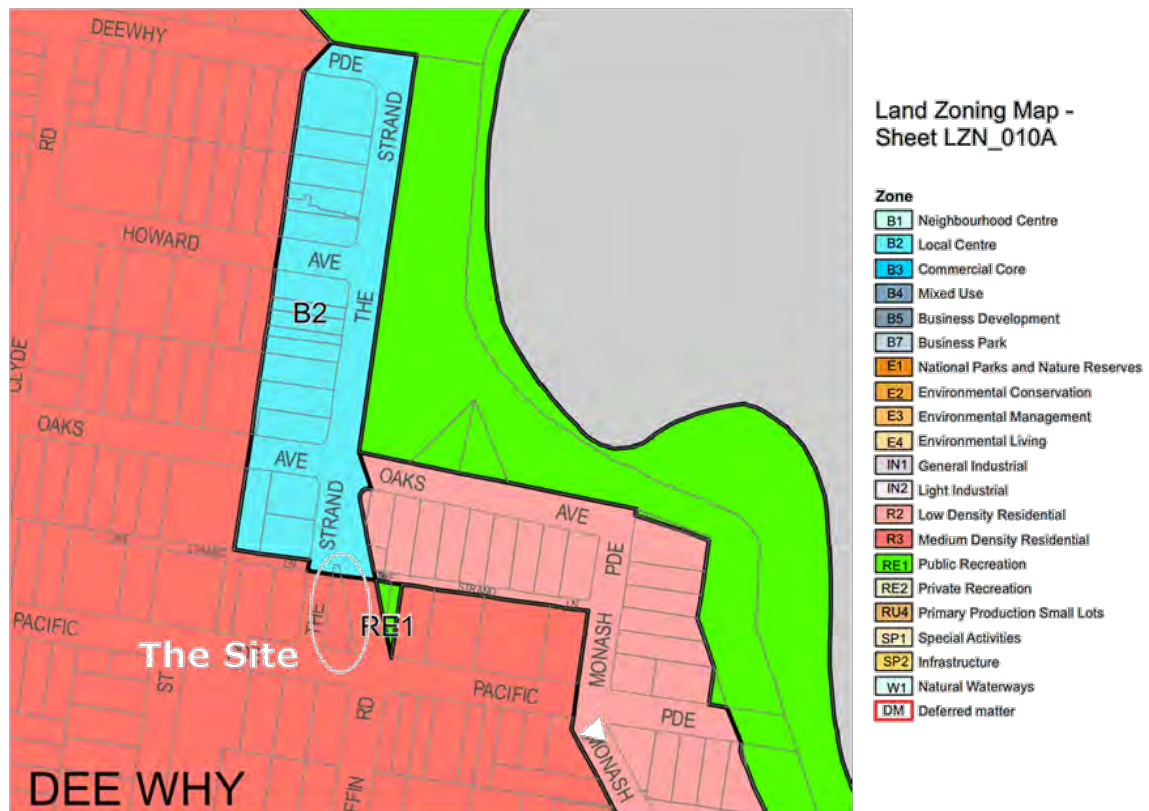
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**Figure 4 – Relationship of the site The Strand – Dee Why**

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**Figure 5 – Land zoning map, WLEP 2011**

### 1.3 Statutory context

An overview of the key planning provisions applying to the site under WLEP 2011 follows:

#### 1.3.1 Land use zoning

The site is in the following two zones (refer to **Figure 5**):

- Zone R3 – Medium Density Residential (516m<sup>2</sup> which equates to 95% of the site area)  
For Zone R3, the land use table shows the following objectives and permitted/prohibited uses:

#### **Zone R3 Medium Density Residential**

##### **1 Objectives of zone**

- To provide for the housing needs of the community within a medium density residential environment.
- To provide a variety of housing types within a medium density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To ensure that medium density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.
- To ensure that medium density residential environments are of a high visual quality in their presentation to public streets and spaces.

##### **2 Permitted without consent**

*Home-based child care; Home occupations*

##### **3 Permitted with consent**

*Attached dwellings; Bed and breakfast accommodation; Boarding houses; Boat sheds; Building identification signs; Business identification signs; Child care centres; Community facilities; Dual occupancies; Dwelling houses; Educational establishments; Emergency services facilities; Environmental protection works; Exhibition homes; Group homes; Home businesses; Multi dwelling housing; Neighbourhood shops; Places of public worship; Recreation areas; Residential flat buildings; Respite day care centres; Roads; Seniors housing; Veterinary hospitals*

##### **4 Prohibited**

*Any development not specified in item 2 or 3*

The existing restaurant, laundromat, real estate agent and dwelling house are all prohibited uses in Zone R3.

- Zone B2 Local Centre (27m<sup>2</sup> which equates to 5% of the site area)

For Zone B2, the land use table shows the following objectives and permitted/prohibited uses:

#### **Zone B2 Local Centre**

##### **1 Objectives of zone**

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

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- To create urban form that relates favourably in scale and in architectural and landscape treatment to neighbouring land uses and to the natural environment.
- To minimise conflict between land uses in the zone and adjoining zones and ensure the amenity of any adjoining or nearby residential land uses.

**2 Permitted without consent**

*Home-based child care; Home occupations*

**3 Permitted with consent**

*Boarding houses; Child care centres; Commercial premises; Community facilities; Educational establishments; Entertainment facilities; Function centres; Information and education facilities; Medical centres; Passenger transport facilities; Recreation facilities (indoor); Registered clubs; Respite day care centres; Restricted premises; Roads; Service stations; Shop top housing; Tourist and visitor accommodation; Any other development not specified in item 2 or 4*

**4 Prohibited**

*Advertising structures; Agriculture; Air transport facilities; Animal boarding or training establishments; Boat building and repair facilities; Boat sheds; Camping grounds; Caravan parks; Cemeteries; Charter and tourism boating facilities; Correctional centres; Crematoria; Depots; Eco-tourist facilities; Environmental facilities; Exhibition villages; Extractive industries; Forestry; Freight transport facilities; Heavy industrial storage establishments; Highway service centres; Home occupations (sex services); Industrial retail outlets; Industrial training facilities; Industries; Marinas; Mooring pens; Moorings; Open cut mining; Port facilities; Recreation facilities (major); Recreation facilities (outdoor); Research stations; Residential accommodation; Rural industries; Sex services premises; Storage premises; Transport depots; Vehicle body repair workshops; Vehicle repair stations; Waste or resource management facilities; Water recreation structures; Wharf or boating facilities; Wholesale supplies.*

Approximately half of the real estate agent (27m<sup>2</sup> of 62m<sup>2</sup>) is located in Zone B2 where it is permitted with consent.

**1.3.2 Definitions**

**Table 1** summarises the relevant definitions for each of the existing uses on the site and notes whether the uses are permitted or prohibited. It shows that the existing uses are prohibited on the site, other than a very small portion of the real estate agent located in Zone B2. **Table 1** also demonstrates that the generic term *commercial premises* captures each of the existing non-conforming retail uses on the site.

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**Table 1 – Zoning/permisibility summary**

Use	Specific WLEP 2011 definition	Generic WLEP 2011 definition(s)	Zone	Permitted/Prohibited on the site
Real estate agent	<i>business premises</i>	<i>commercial premises</i>	Zone B2 Zone R3	Permitted in Zone B2 Prohibited in Zone R3
Indian restaurant	<i>food and drink premises</i>	<i>retail premises</i> <i>commercial premises</i>	Zone R3	Prohibited
Laundromat	<i>business premises</i>	<i>commercial premises</i>	Zone R3	Prohibited
Dwelling	<i>dwelling house</i>	<i>residential accommodation</i>	Zone R3	Prohibited

The existing uses and terms shown in **Table 1** are defined as follows in the Dictionary to WLEP 2011:

- Real estate agent:
 

***business premises*** means a building or place at or on which:

(a) an occupation, profession or trade (other than an industry) is carried on for the provision of services directly to members of the public on a regular basis, or

(b) a service is provided directly to members of the public on a regular basis, and includes a funeral home and, without limitation, premises such as banks, post offices, hairdressers, dry cleaners, travel agencies, internet access facilities, betting agencies and the like, but does not include an entertainment facility, home business, home occupation, home occupation (sex services), medical centre, restricted premises, sex services premises or veterinary hospital.

**Note.** Business premises are a type of **commercial premises**—see the definition of that term in this Dictionary.
- Indian restaurant:
 

***food and drink premises*** means premises that are used for the preparation and retail sale of food or drink (or both) for immediate consumption on or off the premises, and includes any of the following:

(a) a restaurant or cafe,

(b) take away food and drink premises,

(c) a pub,

(d) a small bar.

**Note.** Food and drink premises are a type of **retail premises**—see the definition of that term in this Dictionary.
- Laundromat:
 

***business premises*** - see above

***neighbourhood shop*** means premises used for the purposes of selling general merchandise such as foodstuffs, personal care products, newspapers and the like to provide for the day-to-day needs of people who live or work in the local area, and may include ancillary services such as a post office, bank or dry cleaning, but does not include restricted premises.

**Note.** See clause 5.4 for controls relating to the retail floor area of neighbourhood shops. [WLEP 2011, cl. 5.4 specifies an 80m<sup>2</sup> retail area standard for neighbourhood shops whereas the existing Laundromat on the site has an area of 82m<sup>2</sup>]

*Neighbourhood shops are a type of shop—see the definition of that term in this Dictionary.*

- Dwelling:

**dwelling house** means a building containing only one dwelling.

**Note.** Dwelling houses are a type of **residential accommodation**—see the definition of that term in this Dictionary.

- Other terms relevant to the site and planning proposed include the following:

**commercial premises** means any of the following:

- (a) business premises,
- (b) office premises,
- (c) retail premises.

**retail premises** means a building or place used for the purpose of selling items by retail, or hiring or displaying items for the purpose of selling them or hiring them out, whether the items are goods or materials (or whether also sold by wholesale), and includes any of the following:

- (a) bulky goods premises,
- (b) cellar door premises,
- (c) food and drink premises,
- (d) garden centres,
- (e) hardware and building supplies,
- (f) kiosks,
- (g) landscaping material supplies,
- (h) markets,
- (i) plant nurseries,
- (j) roadside stalls,
- (k) rural supplies,
- (l) shops,
- (m) timber yards,
- (n) vehicle sales or hire premises,

but does not include highway service centres, service stations, industrial retail outlets or restricted premises.

**Note.** Retail premises are a type of **commercial premises**—see the definition of that term in this Dictionary.

**residential accommodation** means a building or place used predominantly as a place of residence, and includes any of the following:

- (a) attached dwellings,
- (b) boarding houses,
- (c) dual occupancies,
- (d) dwelling houses,
- (e) group homes,
- (f) hostels,
- (g) multi dwelling housing,
- (h) residential flat buildings,
- (i) rural workers' dwellings,

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- (j) secondary dwellings,
  - (k) semi-detached dwellings,
  - (l) seniors housing,
  - (m) shop top housing,
- but does not include tourist and visitor accommodation or caravan parks.

#### 1.3.3 Height of buildings

The site is subject to the following two height of building standards:

- 11m in Zone R3
- 13m in Zone B2.

#### 1.3.4 Floor space ratio

WLEP 2011 does not adopt a floor space ratio standard.

#### 1.3.5 Development control plan

WLEP 2011 is supplemented by *Warringah Development Control Plan 2011 (WDCP 2011)* which provides guidelines on detailed aspects of development (including controls in relation to landscaped open space, number of storeys, floor to ceiling heights and setbacks).

For The Strand at Dee Why, WDCP 2011, Part F1 - Local and Neighbourhood Centres states the following requirements:

#### **13. The Strand, Dee Why**

Ground floor premises along The Strand, Dee Why will be characterised by restaurants, cafes, shops and leisure-related uses that create active building fronts and contribute to the life of the streets. Housing will characterise upper floors.

Despite Requirement 2, the minimum floor to ceiling height for buildings on land zoned B2 Local Centre at The Strand, Dee Why, is to be 3.6 metres for ground floor levels and 2.7 metres for upper storeys.

The interrelationship between the beach and park and development along The Strand is an important aspect of the character of the area. The design of buildings and shopfronts will have a strong complementary relationship to their beach and parkland setting and help create comfortable, interesting and safe pedestrian environments. Outdoor eating areas in particular will be encouraged.

Above the second storey, buildings will step back from The Strand, Oaks and Howard Avenues and Dee Why Parade and building height will be restricted to maintain solar access to the parklands and ensure the scale of buildings does not dominate public spaces or views from the park or beach.

The corners of Howard Avenue and The Strand, however, are to be strongly defined by virtue of building height and design. Vehicular access for the purposes of servicing at the rear of commercial premises along The Strand needs to be retained.

## 2.0 Planning proposal

### 2.1 Part 1 - Objectives or intended outcomes

At Dee Why, the existing zoning boundary between land in Zone R3 and Zone B2 follows the east-west alignment of The Strand Lane (refer to **Figure 3**). This boundary does not reflect the long standing commercial uses on the site and its inclusion in The Stand - Dee Why Small Village. The objective of the Planning Proposal is to regularise the existing and any future non-residential uses on the site by making them permissible with consent on the entire site including the portion in Zone R3. The intended outcome is to provide certainty for the land owner and existing/future tenants on the site.

### 2.2 Part 2 – Explanation of provisions

The objective and intended outcome set out above will be achieved by the following amendments to WLEP 2011.

#### 2.2.1 Amend Schedule 1 – Additional permitted use

Amendment of Schedule 1 – Additional Permitted Use is proposed by inserting the following new listing:

##### **20 Use of certain land at 154-158 Pacific Parade, Dee Why**

- (1) This clause applies to part of the land at 154-158 Pacific Parade, Dee Why, being part of Lot 1, DP 34753, shown as "Area 20" on the Additional Permitted Uses Map.
- (2) Development for the purposes of commercial premises is permitted with consent.

#### 2.2.2 Amend the Additional Permitted Uses Map

Amendment of the Additional Permitted Uses Map - Sheet APU\_010A is proposed to identify part of the site as Area 20. A copy of the Planning Proposal map is included in **Appendix B**. Note that the Schedule 1 listing should only apply to the portion of the site in Zone R3 (being 95% of the site area).

### 2.3 Part 3 – Justification

#### A. Need for the Planning Proposal

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

The Planning Proposal is not the result of any strategic study or report. Instead, the Planning Proposal is needed to ensure that existing non-residential uses on the site can continue, improve, grow and/or change. As detailed by the following points, there are sound justifications for a Planning Proposal:

##### (a) Existing use rights provide insufficient certainty for the land owner and tenants

The Department of Planning Circular titled *Changes to Existing Use Rights* (PS 06-007, dated 31 March 2006) encourages Councils to make development that would have existing use rights permissible, stating that:

*Where feasible, councils will be encouraged to identify development that would have existing use rights and include 'permitted additional uses' on that land in their LEP, so that the land use is no longer prohibited (in effect, remove existing use rights).*

Existing use rights are complex, evolving and subject to a plethora of complex case law including a Land and Environment Court Planning Principle (as set out in *Fodor Investments v Hornsby Shire Council* [2005] NSWLEC 71 and *Stromness Pty Limited v Woollahra Municipal Council* [2006] NSWLEC 587).

Furthermore an existing use right will be lost in situations where the use is abandoned for a period of 12 months or longer. This is an untenable risk for the land owner in the event of an extended vacancy.

Given this, existing use rights provide inadequate certainty for the site's landowner and existing/future tenants.

**(b) Existing use rights would lead to unreasonable bureaucracy and is anti-competitive**

As any future change of use on the site would need to rely on existing use rights, complying development would not apply and any changes of use or minor alterations/additions would require a development application (DA). Contrary to contemporary planning practice that strives to streamline approval processes, this would discourage future tenants given the inherent time, cost and uncertainty involved in obtaining development consent.

Other commercial premises in the Dee Why Beach Village would not be subject to the same bureaucracy, precluding a level and competitive playing field between landowners. Such an outcome would contradict the aims of *Draft State Environmental Planning Policy (Competition) 2010* which state:

*The aims of this Policy are:*

*(a) to promote economic growth and competition, and*

*(b) to remove anti-competitive barriers in environmental planning and assessment.*

**(c) The zoning boundary should not be based upon an arbitrary line**

Rather than applying the alignment of The Strand Lane as an arbitrary land use boundary (that splits the site's zonings and ignores existing/long standing commercial uses on the site and its place in Dee Why - The Strand Small Village), it is appropriate to extend the permissibility of non-residential uses southwards to include all of the site. Such a change would reflect the actual boundaries of Dee Why - The Strand Small Village and ensure that existing non-residential uses on the site need not rely on existing use rights.

**(d) The proposed amendment would preserve the site as employment lands**

The site is a recognised part of the Dee Why - The Strand Small Village. Existing uses on the site provide employment for around 13 people. The Planning Proposal would ensure that this employment role is protected.

**(e) The site does not have any adjoining residential lands**

As an island site, the land is bounded on all sides by roads (except for Lot 4 in DP 130602 which is a small triangular parcel of vacant land owned by Council). Given this, any existing or future non-residential uses should not give rise to adverse amenity impacts.

**(f) Promotion of Council's vision for The Strand - Dee Why**

As noted above at Section 1.3.5, WDCP 2011 notes that:

*Ground floor premises along The Strand, Dee Why will be characterised by restaurants, cafes, shops and leisure-related uses that create active building fronts and contribute to the life of the streets.*

The existing planning regime for the site contradicts this desired character as changes of use on the site would be constrained by existing use rights legislation. For example, it may not be possible to change the laundromat and real estate tenancies to a café or shop as existing uses are allowed to continue but not change to another non-conforming use.

In contrast, the Planning Proposal will enable the site to contribute to this desirable character as it will secure the existing non-residential uses on the site and promote future

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improvements and changes of use that are consistent with the existing and desired future character of The Strand.

**2. Is the Planning Proposal the best means of achieving the objective or intended outcomes or is there a better way?**

Alternatives to the Planning Proposal, that are not achievable in the circumstances, include the following:

- Rely on existing use rights  
As demonstrated above, reliance on existing use rights provides the applicant, existing tenants and future tenants with inadequate certainty. It would frustrate the proponent's plan to continue, improve, grow and/or change the existing non-residential uses on the site.
- Compliance with the permitted uses in Zone R3  
The existing non-residential uses on the site have existed for approximately 60 years and to the proponent's knowledge, have not been the subject of any resident complaints. The uses provide a valuable service to the local community and provide employment for around 13 people. Compliance with the permitted uses in Zone R3 would severely constrain the existing uses and would limit redevelopment options on the site to one of the permitted uses (eg. *Multi dwelling housing* or *residential flat buildings*). The proponent intends to retain and improve non-residential uses on the site and this cannot be adequately accommodated in existing Zone R3.
- Rely on the definition of neighbourhood shops which are permitted with consent in Zone R3  
*Neighbourhood shops* are a permitted non-residential use in Zone R3. The consistency of the existing non-residential uses with the definition and standards for *neighbourhood shops* follows (refer Section 1.3.2 above):
  - Real estate agent – The real estate agent does not sell general merchandise and is not an ancillary service described in the definition of *neighbourhood shops*. Instead, it is defined as *business premises* which is a type of *commercial premises*. *Business premises/commercial premises* are prohibited in Zone R3.
  - Indian restaurant – The restaurant does not sell general merchandise and it exceeds the 93m<sup>2</sup> retail floor area standard for *neighbourhood shops* (WLEP 2011, cl. 5.4(7)).
  - Laundromat – The laundromat use may be consistent with the ancillary services listed in the definition of *neighbourhood shops* as dry cleaning is included in the dictionary. However, with an area of 82m<sup>2</sup>, it is just above the 80m<sup>2</sup> retail floor area standard for *neighbourhood shops* (WLEP 2011, cl. 5.4(7)).

Given the above limitations, a Planning Proposal is the best mechanism to achieve the objectives and intended outcome set out in Part 1 above.

**B. Relationship to strategic planning framework**

**3. Is the Planning Proposal consistent with the objectives and actions of the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?**

**Assessment Criteria**

- a. Does the proposal have strategic merit and:
- Is consistent with a relevant local strategy endorsed by the Director General or
  - Is consistent with the relevant regional strategy or Metropolitan Plan or

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- Can it other demonstrate strategic merit, giving consideration to the relevant section 117 Directions applying to the site and other strategic considerations (e.g. proximity to existing urban areas, public transport and infrastructure accessibility, providing jobs closer to home etc)

Relevant strategies and an assessment of consistency follows:

- *Metropolitan Strategy for Sydney to 2036*

The *Metro Strategy* policies and outcomes include:

- Accommodating 70-80% of new growth in established areas
- Containing growth to protect environmentally sensitive land
- Identifying and coordinating growth with infrastructure
- A global arc of economic development
- A hierarchy of existing and future centres

The Planning Proposal is consistent with these high level policies. Notably, it will not affect the hierarchy of existing and future centres as the site already presents and functions as part of Dee Why - The Strand Small Village (identified in the *Draft North East Subregional Strategy*).

- *Draft Metropolitan Strategy for Sydney to 2031* (which has been exhibited)

The Draft Metro Strategy sets an employment target (net additional) of 39,000 for the Northern Subregion by 2031 (comprising Hornsby, Ku-ring-gai, Manly, Pittwater and Warringah). The Planning Proposal will retain existing jobs on the site and create a planning regime that will support and encourage additional employment opportunities.

The Planning Proposal will also encourage investment on the site, consistent with the wider objectives, policies and actions in the Draft Metro Strategy (p. 10) which state that:

*The Metropolitan Strategy for Sydney will help to create and support new opportunities for investment. It encourages balanced growth throughout Sydney by stimulating housing growth in both infill and greenfield areas in a way that delivers a range of different housing types across the whole region, and close to jobs and services....*

*As a general policy, the Strategy's approach to balanced growth means housing renewals and developments will reflect market demand, development feasibility, and infrastructure, transport and services provisions.*

For the Northern Subregion, the Draft Metro Strategy (p. 91) states the following for the Brookvale-Dee Why Major Centre:

- *strengthen as a location for integrated retail, office, employment and service centre for the Northern Beaches and wider subregion*
- *continue to support the mixed-use renewal of Dee Why*
- *provide capacity for at least 3,000 additional jobs to 2031*

Although Dee Why - The Strand is a Small Village and not part of the Dee Why Major Centre, its proximity to the Major Centre supports the protection of existing and the provision of new jobs on the site.

- **Draft North East Subregional Strategy (DNESS)**

The DNESS related to the LGAs of Warringah, Manly and Pittwater and identified a subregional employment target of 19,500 additional jobs by 2031 (which equated to approximately 13,300 extra jobs between 2006 and 2031).

Dee Why - The Strand is nominated in the DNESS as a small village (Figure 11 – Centres an extract of which is shown in **Figure 6** below).

The DNESS, Appendix 3 – Centre Types states the following in relation to smaller local centres, recognising their important economic and employment role:

**SMALLER LOCAL CENTRES**

*In addition to Strategic Centres, there over 500 Town Centres, Villages, Small Villages and Neighbourhood Centres in Sydney served by frequent public transport.*

*These other places are of a smaller scale and are most important to the people who live and work there.*

*Neighbourhoods, Villages and Town Centres are better managed by local government. Assistance from the State Government may be required to promote good urban design and provide infrastructure, or to initiate the process of renewal.*

*Smaller local centres contain a substantial proportion of employment and make a substantial contribution to the Sydney economy. Over 500,000 people are employed in these smaller centres which are focused on providing retail and small local business and personal services for nearby populations, business and industry.*

Retention of existing jobs on the site and the provision of a planning regime that will promote new employment opportunities will contribute towards the achievement of the subregional employment targets and enhance the economic and employment role of Dee Why - The Strand Small Village.

Warringah is now in the North Subregion. New Subregional Delivery Plans will be prepared, replacing the draft subregional strategies.

- **Northern Beaches Regional Action Plan (NBRAP)**

The NBRAP relates to the LGAs of Pittwater, Warringah, Manly and Mosman and identifies actions the NSW Government will prioritise. It identifies a need to assist Warringah Council to prepare a transport study to accommodate job growth and road congestion in the district (particularly the Brookvale/Dee Why Major Centre). The NBRAP is not directly relevant to the Planning Proposal.

Relevant s. 117 directions are considered later in **Table 2**.

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**Figure 6 – Extract from Draft North East Subregional Strategy, Figure 11 – Centres in the North East Subregion**

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- b. Does the proposal have site-specific merit and is it compatible with the surrounding land uses, having regard to the following:
- the natural environment (including known significant environmental values, resources or hazards) and
  - the existing uses, approved uses, and likely future uses of land in the vicinity of the proposal and
  - the services and infrastructure that are or will be available to meet the demands arising from the proposal and any proposed financial arrangements for infrastructure provision

There are no natural environmental constraints or issues relevant to the Planning Proposal.

As demonstrated above in the Justification at Section 2.3, the Planning Proposal has site specific merit and is compatible with surrounding land uses noting that:

- The site functions and presents as part of Dee Why - The Strand Small Village and the planning regime should reflect this
- The Planning Proposal maintains the status quo in terms of existing land use, standards and controls and infrastructure demand
- The site has excellent access to recreation facilities (notably Dee Why Beach), transport, jobs and community services. Section 94 contributions could be levied on future development applications (if relevant).

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

Warringah's *Community Strategic Plan 2023* sets out the long term aspirations of the Warringah community. Economic growth and jobs are addressed in the Strategic Plan which notes that:

*Our local economy needs to be resilient and provide a range of businesses and services to meet the needs of the community. Small business is a big part of our economy and we should support and foster innovation and have access to areas that are well designed and vibrant. This will also provide opportunities for more residents to work locally.*

Relevant community objectives stated in the Strategic Plan in relation to Liveable Neighbourhoods that are supported by the Planning Proposal include the following:

- Attractive and functional centres that meet the needs of residents and businesses
- Diversity of businesses that provide a range of services and employment opportunities

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

The Planning Proposal is consistent all relevant State Environmental Planning Policies (SEPPs), notably it will enable certain development on the site to be carried out as complying development pursuant to *SEPP (Exempt and Complying Development Codes)* 2008. Relevantly, clause 1.18(1)(b) of the SEPP provides that complying development can only be carried out if the development is permissible with consent under an environmental planning instrument. As the majority of the non-residential uses are prohibited on the site (noting the exceptions discussed above in Section 1.3), complying development is not presently available to the existing tenants (and any future replacement tenants). The Planning Proposal would rectify this obstruction.

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

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

**Table 2 – Consistency with Relevant Ministerial Directions**

Direction	Consistency	Comment
<b>1. Employment and Resources</b>		
1.1. Business & Industrial Zones	Yes	The Planning Proposal retains non-residential uses on the site and provides a flexible and workable planning regime for future non-residential use improvements, changes of use and expansions. Therefore the planning proposal will retain and promote employment in the area.
<b>2. Environmental Heritage</b>	N/A	Not applicable
<b>3. Housing, Infrastructure &amp; Urban Development</b>		
3.1. Residential Zones	Yes	Residential uses (including <i>multi dwelling housing</i> and <i>residential flat buildings</i> ) will continue to be permitted with consent on the site.
3.4. Integrating Land Use & Transport	Yes	The Planning Proposal will retain existing and provide for improved non-residential uses and jobs in a location that has access to housing and services and that can be readily accessed by walking, cycling and public transport.
<b>4. Hazard and Risk</b>	N/A	Not applicable
<b>5. Regional Planning</b>	N/A	Not applicable
<b>6. Local Plan Making</b>	N/A	Not applicable
<b>7. Metropolitan Planning</b>		
7.1. Implementation of the Metropolitan Plan for Sydney 2036	Yes	The Planning Proposal is consistent with the Metropolitan Strategy as discussed above in Section 2.3, B above.

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### C. Environmental, social and economic impact

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

No.

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

No.

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

The planning proposal will retain and potentially enhance the site's employment role which has a positive social and economic impacts for the local community.

### D. State and Commonwealth interests

10. Is there adequate public infrastructure for the Planning Proposal?

It is considered that the Planning Proposal will have no adverse effect on the demand or availability of public infrastructure. Additional section 94 contributions can be levied (if relevant) at the development application stage for any future improvements or additions.

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

The views of State and Commonwealth agencies will be known after the gateway determination (noting that the only agency likely to have an interest in the Planning Proposal is NSW Planning and Infrastructure (P&I)).

### 2.4 Part 4 – Mapping

Mapping included in the Planning Proposal comprises:

- Site location plan (Figure 1) and Aerial photographs (Figures 2 and 4)
- Extract from WLEP 2011, Land Zoning Map - Sheet LZN – 010A showing the site's split zoning (Figure 5)
- Site Identification Survey (Appendix A)
- Planning Proposal map (proposed amendment to WLEP 2011 Additional Permitted Uses Map - Sheet APU\_010A) (Appendix B).

### 2.5 Part 5 – Community consultation

Community consultation will be undertaken in accordance with Council's guidelines and any specific requirement made by the P&I's gateway determination. At this stage, public exhibition of the Planning Proposal is likely to be undertaken in the following manner:

- Notification in a newspaper that circulates in the area affected by the Planning Proposal
- Notification on Council's website
- Notification in writing to affected and adjoining landowners.

It is considered that the Planning Proposal is a "low impact proposal"<sup>2</sup> requiring exhibition for 14 days.

<sup>2</sup> Pursuant to A guide to preparing local environmental plans p. 24 (Planning & Infrastructure, April 2013)

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## 2.6 Part 6 – Project timeline

An indicative timeline for the Planning Proposal is set out below:

- |  |                |
|--|----------------|
| • Submission of Planning Proposal to Council                       | May 2014       |
| • Reporting of Planning Proposal to Council                        | June 2014      |
| • Referral to Minister for Gateway determination                   | July 2014      |
| • Date of Gateway determination                                    | July 2014      |
| • Public exhibition period (14 days)                               | August 2014    |
| • Timeframe for government agency consultation                     | August 2014    |
| • Timeframe for consideration of submissions                       | September 2014 |
| • Reporting of exhibition of Planning Proposal                     | October 2014   |
| • Date of submission to Department to finalise LEP                 | October 2014   |
| • Anticipated date RPA will make plan                              | November 2014  |
| • Anticipated date RPA will forward to Department for notification | November 2014  |

A 'low' impact planning proposal is a planning proposal that, in the opinion of the person making the Gateway determination is:

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

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**Appendix A**  
Identification Survey

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## Appendix B

Planning Proposal map (proposed amendment to WLEP 2011 Additional Permitted  
Uses Map - Sheet APU\_010A)

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## Planning Proposal Map Amendment - 154-158 Pacific Parade, Dee Why



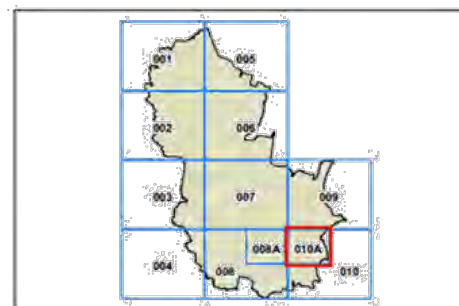
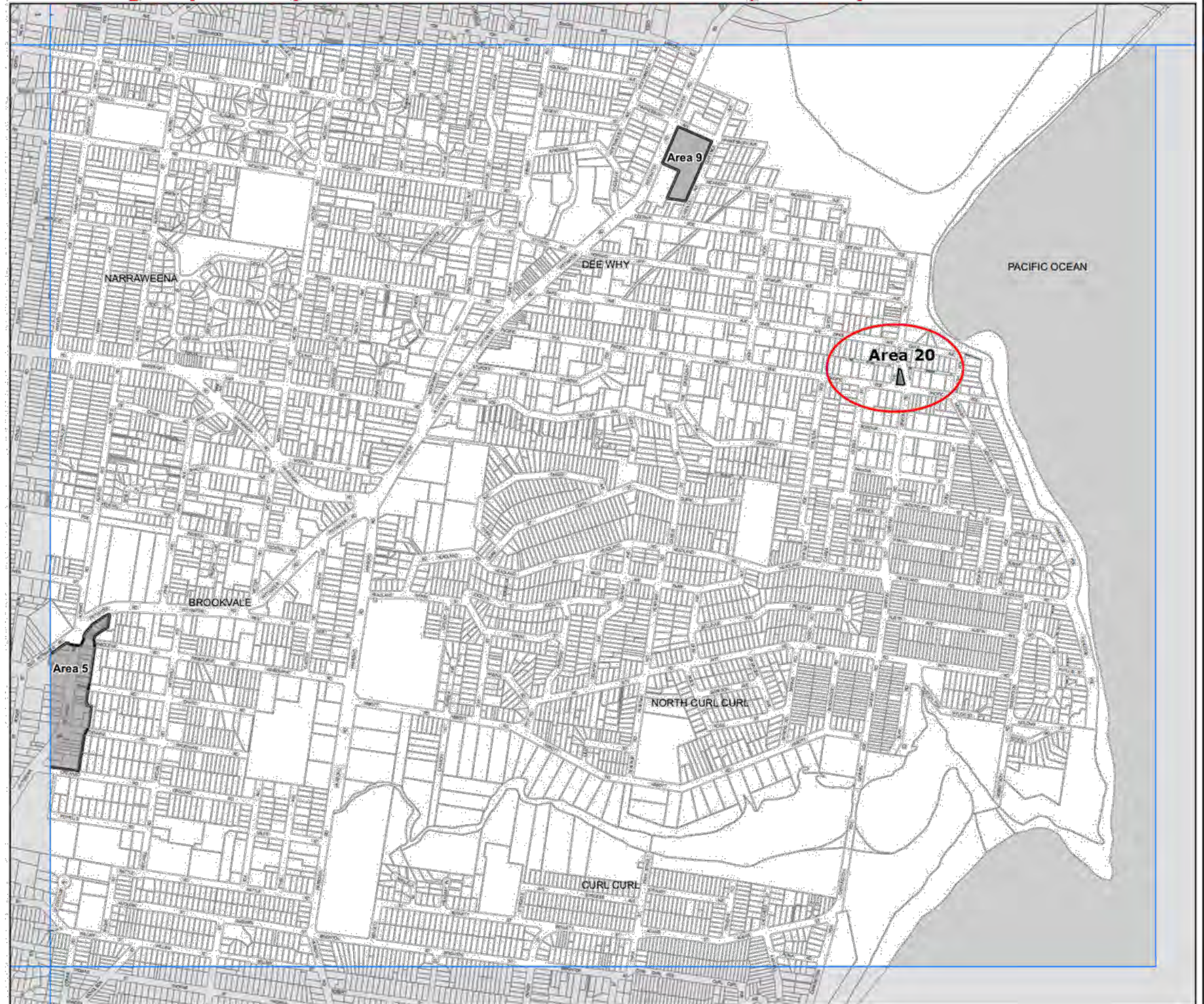
**Warringah Local  
Environmental  
Plan 2011**

Additional Permitted Uses Map  
Sheet APU\_010A

Additional Permitted Uses

Cadastral

Cadastral 05/04/2013 © Warringah Council



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Scale 1:10,000 @ A3

Projection: GDA 1994  
Zone 56  
Map identification number: 1800\_COM\_APU\_010A\_010\_20130405



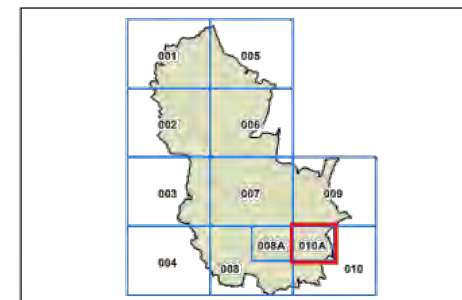
**Warringah Local  
Environmental  
Plan 2011**

**Additional Permitted Uses Map -  
Sheet APU\_010A**

Additional Permitted Uses

Cadastre

Cadastre 30/07/2014 © Warringah Council

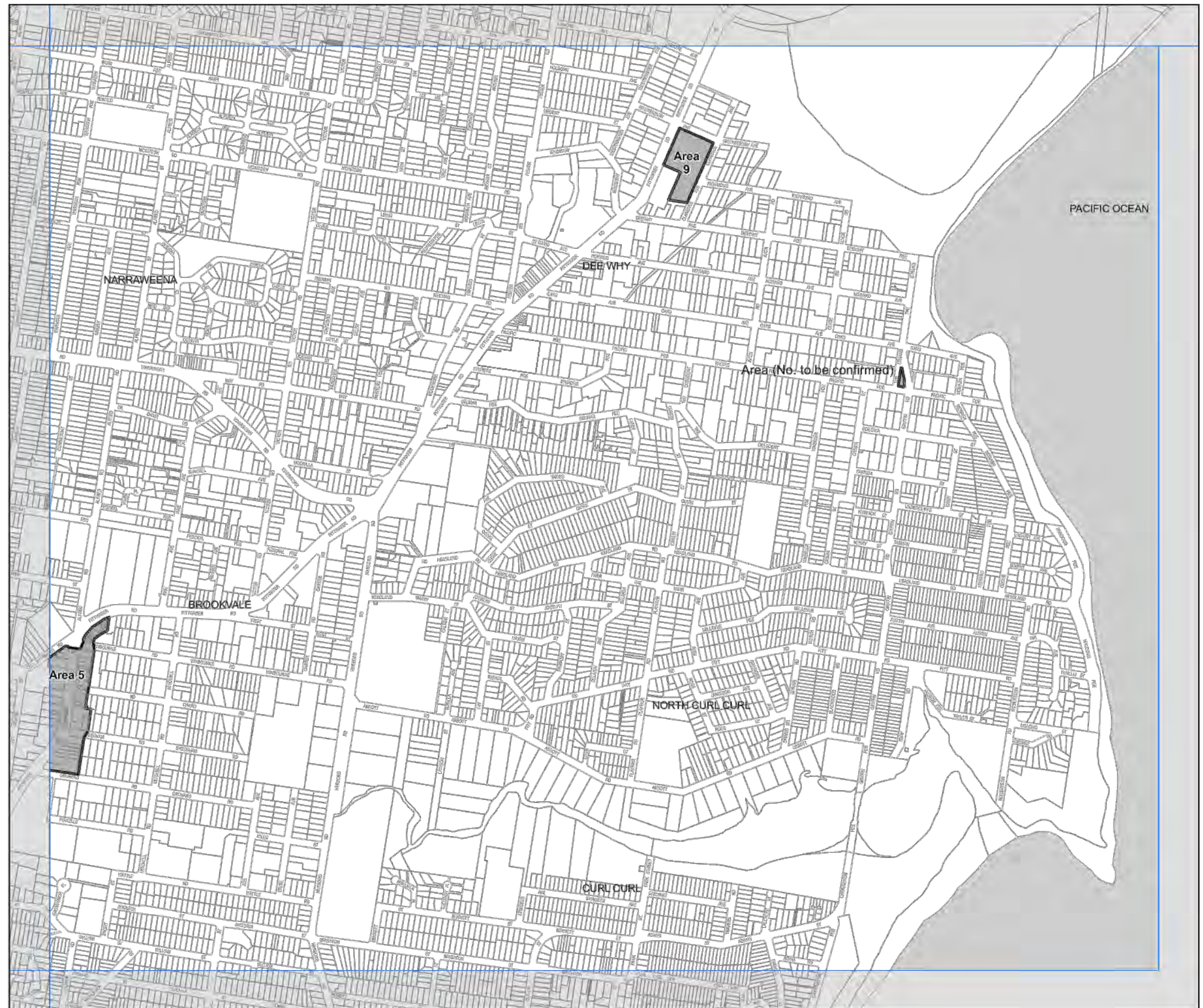


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Zone 56

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**Additional Permitted Uses Map**

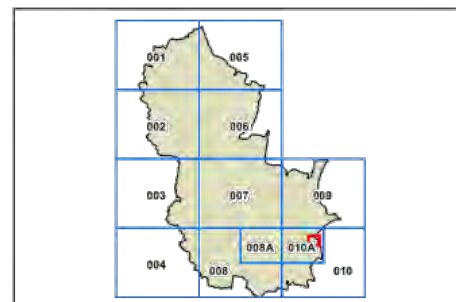
158 Pacific Parade,  
 Dee Why (Lot 1, DP 34753)

**Draft Additional Permitted Uses**

Additional Permitted Uses

**Cadastre**

Cadastre 30/07/2014 © Warringah Council



50 Metres

Scale: 1:2,500 @ A3

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