



## C12.1 Warriewood Valley Open Space - Southern Component of Central Local Park (Sector 9)

**Meeting:** Sustainable Towns and Villages Committee

**Date:** 19 March 2016

---

### COMMUNITY STRATEGIC PLAN STRATEGY:

- Recreational Management
- Corporate Management Strategy

### COMMUNITY STRATEGIC PLAN OBJECTIVE:

- To develop, manage and maintain recreational facilities to best practice standards in a cost effective and sustainable manner
- To provide the community with a broad range of quality natural and built assets in a sustainable manner to meet the needs of current and future generations

### DELIVERY PROGRAM ACTION:

- To provide planning, design, investigation and enhancement of recreational facilities
  - Continue to implement Council's suite of developer contributions plans
- 

## 1.0 EXECUTIVE SUMMARY

### 1.1 BACKGROUND

- 1.1.1 In 2008 Council resolved to purchase 9 Fern Creek Road to facilitate the delivery of the southern half of the Central Local Park in Warriewood Valley (commonly referred to as Fern Creek Park). 9 Fern Creek Road is within Sector 9 of the Warriewood Valley Release Area. The parcel is rectangular in shape and approximately 1.15 hectares in area and adjoins Fern Creek. The property is directly south of the northern portion of the Central Local Park which was delivered several years ago through the development of Sector 8.
- 1.1.2 At the time 9 Fern Creek Road was purchased the form and layout of development in Sector 9 was still uncertain and as such Council resolved that the land remain classified as Operational Land under the *Local Government Act 1993* to retain some flexibility around the future development of the sector.
- 1.1.3 In 2013, Australand (now known as Frasers Property), the owner of adjoining land parcels 11, 12 and 13 Fern Creek Road, put a formal land swap proposal to Council which would facilitate the development of its land holdings as well as achieve Council's preferred open space layout for the sector. This proposal involved swapping generally the northern portions of its three properties for the southern portion of Council's property (refer to **Attachment 2**).
- 1.1.4 Between May 2014 and May 2015 significant consultation occurred with the adjoining landowners and the Warriewood Residents Association (WRA) to examine Frasers' proposal as well as other potential options for the southern portion of the Central Local Park.
- 1.1.5 A revised concept plan with a larger area provided for the park was endorsed a by Council for the land swap on 18 May 2015 when it authorised the General Manager to commence negotiations with Frasers (refer to **Figure 1** and **Figure 2**).

- 1.1.6 This revised concept included an additional 1,800 square metres for the park area (not including creek line corridor) and an increase in the width of the park in comparison to the original Frasers proposal by moving the roadway further from the creek line corridor.

## 1.2 OUTCOME OF NEGOTIATIONS

- 1.2.1 Following Council's decision of 18 May 2015, Council and Frasers have negotiated to finalise the terms of the land swap agreement.
- 1.2.2 In October 2015 the respective General Managers of Frasers and Council signed a Memorandum of Understanding addressing the key aspects of the transaction.
- 1.2.3 Both parties have received independent valuation advice and have negotiated and reached an agreement on an appropriate cash adjustment based on the proposed land transfers. The monetary gain as a result of the land swap is required to be reinvested into the Section 94 fund to implement the plan endorsed by Council and assist with delivering the remaining infrastructure and services required by the Release Area.
- 1.2.4 In terms of the area of land to be transferred between the parties, the land swap will involve:
- Approximately 5,374 square metres of Council land being transferred to Frasers, and
  - Approximately 11,826 square metres of land, made up of 5,984 square metres of land for public reserve and 5,842 metres of land for creek line corridor, being transferred to Council.
- 1.2.5 The proposed land swap will mean:
- Council will be able to deliver a park approximately 600 square metres larger than could be achieved on the current lot – approximately 9,900 square metres (excluding creek line corridor land). 9 Fern Creek Road in its current configuration is approximately 9,300 square metres (excluding creek line corridor land).
  - Frasers delivering important infrastructure which is critical to unlocking development opportunities for the northern half of Sector 9, including:
    - the extension of Fern Creek Road and the construction of a new east-west road connecting Fern Creek Road with the eastern half of Sector 9.
    - the section of stormwater infrastructure within the Fern Creek Road extension.
  - The capacity to underground the high voltage power lines that currently run along the boundary of 9 and 12 Fern Creek Road, with the costs agreed to be shared between Council and Frasers. Note negotiations are currently underway with other landholders.
- 1.2.6 Following agreement on the key terms of the proposed transaction, Council and Frasers have worked to finalise a Deed of Agreement which stipulates the details of how the land swap transaction will occur. This document once signed will be legally binding on the parties. The deed represents the final agreed position of Council staff and Frasers (refer to **Attachment 5**). Attached to the deed is the agreed land swap plan referred to as Annexure A.

## 1.3 NEXT STEPS

- 1.3.1 In order for the land swap to occur an amendment to Pittwater Local Environmental Plan 2014 and development application will be required.

- 1.3.2 Council's Commercial Property and Projects Business Unit will engage an independent planning consultant to prepare and lodge these applications on Council's behalf. To mitigate potential probity issues, an independent planning consultant will also be engaged to assess these applications on behalf of Council's Planning and Assessment Business Unit.
- 1.3.2 The transfer of land and funds will take place at the completion of these steps. It is estimated that it could take up to 9 to 12 months for these aspects of the transaction to be completed.

---

## **2.0 RECOMMENDATION**

1. ***That Council note:***
  - a. ***The comprehensive community engagement that has occurred in relation to this matter***
  - b. ***The terms of the Memorandum of Understanding***
  - c. ***The independent valuation advice***
  - d. ***The terms of the Deed of Agreement***
  - e. ***That the cash adjustment from the proposed land transfers will be reinvested into the Section 94 fund to implement the plan as endorsed by Council.***
  - f. ***The findings of the probity report prepared by Procure Group (Attachment 6).***
2. ***That Council endorse the proposed terms of the land swap and authorise the General Manager to sign the deed of agreement for the land swap (Attachment 5).***
3. ***That Council support the progression of the land swap agreement, comprising:***
  - a. ***Preparation and lodgement of a Planning Proposal to amend Pittwater LEP 2014 to reallocate dwelling yield and rezone the future park to a recreation zone as outlined in the Deed of Agreement,***
  - b. ***Preparation and lodgement of a development application to subdivide/consolidate the existing land parcels to enable the transfer of land to occur.***
4. ***That a future report be brought to Council at the completion of the transaction.***
5. ***That Council endorse the concept masterplan for the southern component of the Central Local Park (Figure 2) to enable it to be progressed following the land swap.***

---

## **3.0 BACKGROUND**

### **3.1 PURPOSE**

In accordance with Council's resolution of 18 May 2015, the purpose of this report is to:

- Inform Council of the outcomes of the negotiations with Frasers Property (Frasers).
- Outline the key terms of the Memorandum of Understanding.
- Inform Council of the valuation advice received and the financial adjustment agreed between the parties.
- Outline the key terms of the Deed of Agreement.
- Present the probity advisor's audit report on the negotiations.
- Outline the next steps to finalise the land swap agreement.

## 3.2 BACKGROUND

### 3.2.1 Open Space Requirements in Warriewood Valley

To ensure that the wider Pittwater community is not burdened as a result of the development of the Warriewood Valley Release Area, the Warriewood Valley Section 94 Contributions Plan (Section 94 Plan) has been prepared to enable Council to impose as a condition of development consent a requirement to make a contribution toward the provision of public infrastructure and services.

In relation to open space and recreation facilities, the Section 94 Plan identifies a demand for a total of 18.7 hectares of open space and recreation facilities for both passive and active use to service the forecast population of Warriewood Valley. The Section 94 Plan identifies that within Sectors 8 and 9 of the Release Area, either side of Fern Creek, approximately 2.1 hectares (exclusive of creek line corridor land) of passive open space land will be delivered. This open space area is referred to as the Warriewood Central Local Park.

As outlined in previous reports to Council, it is Council's intention that the Central Local Park be generally linear in shape, with a central bulge either side of Fern Creek, connected by a pedestrian/cyclist bridge, providing for passive recreation opportunities.

The northern portion of the Central Local Park was delivered several years ago as part of the development of Sector 8 by Australand. The northern half of the park includes a playground component, a large open grassed area, picnic facilities including barbeques, a public amenities facility and associated car parking.

The southern portion of the Central Local Park is still to be delivered. Council's intention is that the southern portion of the park mirrors the shape of the northern half of the park.

### 3.2.2 Purchase of 9 Fern Creek Road

In 2008 an opportunity arose to acquire a parcel of land within Sector 9. The property, 9 Fern Creek Road, is rectangular in shape and approximately 1.15 hectares in area and adjoins Fern Creek and is directly south of the northern portion of the Central Local Park. At the time, the parcel of land was considered to be the most appropriate available land in Sector 9 for open space purposes.

On 21 April 2008 Council resolved to purchase 9 Fern Creek Road to facilitate the delivery of the remaining half of the park. The Council resolved that the land remain classified as Operational Land under the *Local Government Act 1993* upon acquisition to retain some flexibility around the future development of Sector 9.

### 3.2.3 Land swap proposal and Council resolution of 19 May 2014

Unlike Sector 8, the development of Sector 9 has not been progressed via a sector approach. In recognition of the protracted and unsuccessful attempts by landowners to rezone the sector for residential development, Council initiated the rezoning of the sector, allowing individual land parcels within the sector to develop independently.

Frasers own three parcels of land at the northern end of Sector 9, adjoining Fern Creek – 11, 12 and 13 Fern Creek Road (refer to **Attachment 1**). Although zoned for residential development the parcels are land locked and, as such, in order to be developed would need to establish legal access.

In 2013, Australand (now known as Frasers Property and to avoid confusion referred to as Frasers Property from this point in the report), the owner of adjoining land parcels 11, 12 and 13 Fern Creek Road, put a formal land swap proposal to Council to facilitate both the development of their land holdings as well as Council's preferred open space layout for the sector (refer to **Attachment 2**).

On 19 May 2014 this initial proposal was put forward to Council for consideration. Council resolved as follows:

- “1. That Council give in principle support for the development of a large local park in Sector 9 of Warriewood Valley.*
- 2. That the General Manager enter into discussions with surrounding land owners with a view to achieving an understanding of the possibilities within that area.*
- 3. That Lot 5 // DP 736961 be valued at its highest and best use.*
- 4. That at the conclusion of discussions, and before reaching a final agreement, the General Manager is to report back to Council.*
- 5. That in parallel to the General Manager’s negotiations that community consultation is undertaken with residents of Warriewood Valley and any other interested parties with regard to a large local park.”*

### **3.2.4 Updated and larger land swap proposal following community consultation**

Following this meeting extensive consultation occurred with the surrounding land owners and the Warriewood Residents Association. This consultation included:

- Mail out to every resident and land owner in Warriewood Valley advising of the preliminary land swap proposal.
- Notification on Council’s website and in Manly Daily.
- Public meeting held on 17 October 2014.
- Discussions with owners of 11, 12 and 13 Fern Creek Road (Australand), 4 Fern Creek Road (private owner), 5 Fern Creek Road (private owner), 2 Fern Creek Road (ABAX Contracting) and 1 Fern Creek Road (Dragon Eye Properties).
- Numerous meetings with Warriewood Residents Association to discuss land swap proposal as well as the group’s alternate proposal

Following considerable consultation and negotiation with the adjoining land owners and community, the land swap as initially proposed by Frasers was modified to increase the width of the open space component to maximise the recreational utility of the future park and ensure that there is no net loss of public open space.

A revised concept plan with a larger area provided for the park was endorsed by Council for the land swap on 18 May 2015 when it authorised the General Manager to commence negotiations with Frasers (refer to Figure 1 and Figure 2).

This revised concept included an additional 1,800 square metres for the park area (not including creek line corridor) and an increase in the width of the park in comparison to the original Frasers proposal by moving the roadway further from the creek line corridor.

The consultation provided an opportunity to analyse Frasers’ initial proposal, consider all other alternatives and incorporate pertinent issues into a revised park layout. Through this consultation it was confirmed that in the context of Council’s limited resources and the other competing infrastructure priorities in the Valley, the land swap proposal, as modified, remains the preferred outcome for the sector.

On 18 May 2015 a concept plan for the proposal was put forward to Council for endorsement for the purpose of progressing negotiations with Frasers on the other aspects of the agreement. Council’s resolution is as follows:

- “1. That the Concept Layout Plan for the Central Local Park, in particular the southern half located within Sector 9 be endorsed as an indicative plan only and the General Manager be authorised to enter into negotiations with Australand, the owner of the adjoining lands to progress this outcome.*
- 2. That the transaction be captured by a Memorandum of Understanding between the parties and be based on the following:*

- *The valuation of the lands to be swapped being based on highest and best use.*
  - *A financial adjustment to be made noting the difference in land valuations.*
  - *The undergrounding of the overhead power where practical as per Ausgrid requirements.*
  - *That undergrounded stormwater management along the drainage easement be included.*
  - *The direct provision of full width road infrastructure (excluding parking bays on the reserve side) by Australand.*
  - *The land being swapped to be rezoned to be consistent with the intended future land use. In this regard:*
    - I. *the part of the land owned by Council currently zoned residential with no dwelling yield would be rezoned to residential with a potential yield of 32 dwellings per developable hectare;*
    - II. *the part of the land owned by Australand currently zoned for residential would be rezoned to recreational and the adjoining land not being swapped provided a pro-rata development potential where this is already a lower fixed yield.*
  - *That the landswap area be calculated from the edge of the riparian zone (at 25m).*
3. *The creekline corridor acquisition is completed as a separate financial transaction as per the S94 Plan prior to the landswap to establish net areas of land involved.*
  4. *An area for area swap of land so that the net open space compared to the current rectangle is not reduced.*
  5. *That an updated valuation be obtained from an independent Valuer to ascertain the likely land values of the various parcels involved in the overall transaction.*
  6. *That a probity advisor be appointed to oversee and report on this transaction.*
  7. *That a report be brought back to Council detailing the negotiation, the Memorandum of Understanding and the financial aspects of the transaction."*

A copy of the concept plan endorsed by Council on 18 May 2015 is attached to report (refer to **Attachment 3**).

### 3.3 POLICY IMPLICATIONS

The proposed land swap has implications for layout of the southern portion of the Central Local Park but also the future roads within the sector. The land swap proposal therefore has implications for the layout of developments at the northern end of the sector and, in turn, the assessment of development applications against Pittwater 21 Development Control Plan (DCP).

Due to the ongoing uncertainty around the shape of the southern portion of the Central Local Park and the location of the future east-west road within the sector a number of developments within Sector 9 have been unable to be progressed beyond a certain point. It is now critical that the park and road layout for the sector be confirmed to enable the development of the sector to proceed.

### 3.4 RELATED LEGISLATION

*Environmental Planning and Assessment Act 1979*

*Environmental Planning and Assessment Regulation 2000*

*Local Government Act 1993*

*Pittwater Local Environmental Plan 2014*

## 3.5 FINANCIAL ISSUES

### 3.5.1 Budget

As agreed and outlined in the deed, the majority of costs associated with the land swap agreement are to be shared equally between the parties.

The monetary gain as a result of the land swap is required to be reinvested into the Section 94 fund to assist with delivering the remaining infrastructure and services required by the Release Area as endorsed by Council.

### 3.5.1 Resources Implications

As stated above, the monetary gain as a result of the land swap is required to be reinvested into the Section 94 fund to assist with delivering the remaining infrastructure and services required by the Release Area as endorsed by Council.

## 4.0 KEY ISSUES

### 4.1 SUMMARY OF NEGOTIATIONS

Following Council's decision of 18 May 2015, Council and Frasers have negotiated to finalise the terms of the land swap agreement.

#### 4.1.1 Key amendments to land swap agreement

Following Council's meeting of 18 May 2015, discussions commenced with Frasers to confirm the area of land to be swapped as part of the agreement. Based on Council's endorsed concept plan, a detailed land swap plan was prepared identifying the areas of land to be swapped and retained by the parties. This Plan ultimately formed Annexure A to the Memorandum of Understanding (MOU) that was later negotiated and agreed to by the parties.

The key differences between the land swap plan originally proposed by Frasers in 2013/14 (**Attachment 2**) and the land swap plan now agreed to between the parties are as follows:

- The park area is increased by over 1,800 square metres (not including creek line corridor land) and the development area has been reduced.
- The width of the park has been increased along its length – at the narrowest point the width of the park has been increased by approximately 17 metres (not including creek line corridor land) and at its widest point the park has been increased by approximately 8 metres (not including creek line corridor land).

#### 4.1.2 Memorandum of Understanding

Once the land swap areas were agreed to, Council and Frasers worked to finalise a MOU which would guide the further work that needed to be done to finalise the agreement. The MOU was not intended to be legally binding, but rather address the main issues related to the transaction and identify the terms of a future deed of agreement, which would be binding on the parties once signed.

In October 2015 the respective General Manager of Frasers and Council signed a MOU addressing the following matters:

- Area of land to be swapped,
- Creek line corridor dedication and offset,
- Undergrounding of high voltage power lines,
- Road and stormwater construction,
- Necessary amendments to Pittwater LEP 2014,
- Development application to subdivide/consolidate existing lots,
- Costs,
- Probity advisor.

A copy of the agreed MOU is attached to this report (**Attachment 4**).

### 4.1.3 Deed of Agreement

Since October 2015 Council and Frasers have worked to finalise a Deed of Agreement which stipulates the details of how the land swap transaction will occur. This document once signed will be legally binding on the parties.

During this time a surveyor was also engaged by Council to review the land swap proposal and confirm the areas of the land that would be swapped and retained by the parties.

The Deed of Agreement is attached to this report (refer to **Attachment 5**). This deed represents the final agreed position of Council staff and Frasers. Attached to the deed is the agreed land swap plan referred to as Annexure A. The figures in this plan as based on the figures provided by Council's surveyor.

The key terms of the deed are discussed in detail at section 4.2 of this report.

## 4.2 KEY TERMS OF DEED

### 4.2.1 Area of land to be swapped

Figure 1 identifies the area of land to be swapped between Council and Frasers as well as the area of land that will be retained by each party. Figure 1 should be read in conjunction with Table 1, which specifies the exact area of land proposed to be swapped and retained by the parties. In summary, the two indicate that under the proposal:

- Approximately 5,374 square metres of Council land being transferred to Frasers, and
- Approximately 11,826 square metres of land, made up of 5,984 square metres of land for public reserve and 5,842 metres of land for creek line corridor, being transferred to Council.
- At its narrowest point, the park will be 25 metres wide (not including the creek line corridor). Combined with the creek line corridor, the park will be 50 metres wide at its narrowest point.
- At its widest point, the park will be 51 metres wide (not including the creek line corridor land). Combined with the creek line corridor, the park will be 76 metres wide at its widest point.
- At the centre of the park, at the point where the two halves of the park will be joined by a bridge, the Central Local Park will be approximately 175 metres wide and approximately 280 metres long.

Table 2 details the land use areas proposed under the land swap agreement. In summary, Table 2 indicates that under the proposal:

- The public park (excluding creek line corridor land) will be approximately 9,900 square metres.
- Combined, the public park and creek line corridor will total approximately 18,000 square metres.
- The developable land, including the public road, will total approximately 12,600 square metres.

Compared to 9 Fern Creek Road in its current configuration which is approximately 9,300 square metres (excluding creek line corridor land), the proposed park will be increased by over 600 square metres – approximately 9,900 square metres (excluding creek line corridor land).

Based on this proposal, Council staff have developed a concept masterplan for the southern component of the Central Local Park (refer to Figure 2). It is intended that the southern half of the Central Local Park will complement the northern half. As indicated on Figure 2, the intention is to provide a large grassed area with a perimeter shared path, picnic shelters, barbecues, car parking and landscaping.

The two halves of the park will be connected by a bridge and paths wide enough for pedestrians and cyclists.

The embellishment of the park will be funded through the Section 94 Plan, and therefore the timing of these works will be subject to the availability of funds.

In addition, Frasers will fund a number of infrastructure improvements as described in section 4.2.4 below.

**Table 1: Summary of land proposed to be swapped and retained by land owners**

Legal Description	Address	Land owner	Land to be swapped (m <sup>2</sup> )	Land to be retained (m <sup>2</sup> )	Total (m <sup>2</sup> )
5/736961	9 Fern Creek Road	Pittwater Council	5,374.3	6,215.8 <i>(3898.8 exclusive of creek line land)</i>	11,590.1
11/1092788	11 Fern Creek Road	Frasers Property	5,801.4 <i>(3161.4 exclusive of creek line corridor land)</i>	3,174	8,975.4
12/1092788	12 Fern Creek Road	Frasers Property	3,917.8 <i>(2408.8 exclusive of creek line corridor land)</i>	4,075.8	7,993.6
13/1092788	13 Fern Creek Road	Frasers Property	2,106.3 <i>(413.3 exclusive of creek line corridor land)</i>	0	2,106.3
<b>Pittwater Council Total</b>			5,374.3	6,215.8 <i>(3898.8 exclusive of creek line land)</i>	11,590.1
<b>Frasers Property Total</b>			11,825.5 <i>(5986.5 exclusive of creek line corridor land)</i>	7,249.8	19,075.3
<b>Total (m<sup>2</sup>)</b>			17199.8	13465.6	30,665.4

**Table 2: Summary of proposed land use areas**

Legal Description	5/736961	11/1092788	12/1092788	13/1092788	Total (m <sup>2</sup> )
Address	9 Fern Creek Road	11 Fern Creek Road	12 Fern Creek Road	13 Fern Creek Road	
Land owner	Pittwater Council	Frasers Property	Frasers Property	Frasers Property	
Creek line corridor land (m <sup>2</sup> )	2,317	2,640	1,509	1,693	8,159
Public park (m <sup>2</sup> )	3,898.8	3,161.4	2,408.8	413.3	9,882.3
Public road (m <sup>2</sup> )	1,847.3	789.5	675.3	0	3,312.1
Development land (m <sup>2</sup> )	3,527	2,384.5	3,400.5	0	9,312
Total (m <sup>2</sup> )	11,590.1	8,975.4	7,993.6	2,106.3	30,665.4

Figure 1: Proposed areas to be swapped and retained by land owners



**Figure 2: Concept Masterplan for Central Local Park**

**4.2.2 Creek line corridor transfer**

The Warriewood Valley Section 94 Contributions Plan identifies sections of creek line land within the catchment to be acquired and reconstructed in order to manage stormwater runoff and flooding issues generated by the development within the Release Area. The creek land within 11, 12 and 13 Fern Creek Road currently owned by Frasers is also proposed to be transferred to Council as part of the land



swap agreement in order to facilitate the integrated development of the southern portion of the Central Local Park.

The creek line corridor transfer will be undertaken in accordance with the Section 94 Plan and be based on the current rates outlined in the Plan.

**4.2.3 Valuation advice and financial adjustment**

Both parties have received independent valuation advice and have negotiated and reached an agreement on an appropriate cash adjustment based on the proposed land transfers.

*Refer to the corresponding Confidential Report in the Council Agenda.*

#### 4.2.4 **Infrastructure provision**

In relation to the provision of infrastructure, the parties have agreed:

- Frasers will fund and construct both the extension of Fern Creek Road and the construction of a new east-west road connecting Fern Creek Road with the eastern half of Sector 9.
- Frasers will fund and construct the section of stormwater infrastructure that is required to be located within the Fern Creek Road extension.
- Council will fund and construct the section of stormwater infrastructure between Fern Creek Road (as constructed by Frasers) and Fern Creek.
- The cost of undergrounding the high voltage power lines that current run along the parties' common boundary at 9 and 12 Fern Creek Road will be shared equally. This work will be undertaken by a third party contractor, likely in conjunction with the undergrounding of the other sections of high voltage wires within the sector. Note negotiations are currently underway with other landholders.

The details related to these arrangements will be captured in a Planning Agreement that will accompany the future development application (this is discussed in further detail at section 4.4.3).

#### 4.3 **PROBITY AUDIT OF NEGOTIATIONS**

Given their previous involvement in several key projects related to the Warriewood Valley Release Area, Procure Group was engaged to oversee the land swap negotiations.

The tasks undertaken by Procure Group have included:

- Overseeing negotiations and where required providing probity advice and services in regard to the negotiations.
- Attendance at all meetings between Frasers and Council officers where it could be deemed that Council has a potential conflict of interest.
- Undertaking of a probity audit at the conclusion of the negotiations and preparation of a probity report summarising the management of probity matters.

The report prepared by Procure Group is attached to report (refer to **Attachment 6**).

## 4.4 NEXT STEPS

### 4.4.1 Deed of Agreement

If supported by Council, the General Manager and the relevant executive/s from Frasers will sign the Deed of Agreement which will establish the legal framework and the risk and obligations of each party to enable the transaction to be completed.

### 4.4.2 Planning Proposal

As outlined in the MOU and the deed, a Planning Proposal will be required to reallocate dwelling yields to the reconfigured land parcels, amend the maximum building height permitted and rezone the proposed park to a recreation zone.

In regard to the reallocation of dwelling yields:

- The part of land owned by Council and proposed to be transferred to Frasers will be allocated a dwelling yield based on a density of 32 dwelling per hectare.
- The part of the land currently and to be retained by Frasers will be allocated a pro-rata yield based on the current density, which varies from between 10 and 32 dwelling per hectare.

Council's Commercial Property and Projects Business Unit will engage an independent planning consultant to prepare and lodge the Planning Proposal on Council's behalf. To mitigate potential probity issues, an independent planning consultant will also be engaged to assess the Planning Proposal on behalf of Council's Planning and Assessment Business Unit

A future report will be brought to Council after the lodgement and assessment of the Planning Proposal.

### 4.4.3 Development Application

Also outlined in the MOU and deed is the need for a future development application to subdivide and consolidate the parcels of land to allow the relevant parcels of land to be transferred between the parties.

As outlined above at section 4.2.4, a Planning Agreement is required to be entered into by the parties to capture the infrastructure works that will be undertaken by Frasers as part of this transaction. The draft Planning Agreement will be lodged and exhibited with the development application. Once agreed to by Council, the obligations of the Planning Agreement will carry to the title of each new parcel of land created.

Again, Council's Commercial Property and Projects Business Unit will engage an independent planning consultant to prepare and lodge this application and a separate planning consultant will be engaged assess the application.

### 4.4.4 Settlement

The transfer of land and funds will take place following:

- Notification of LEP amendment by Department of Planning and Environment,
- Approval of development application by Council,
- Entering into of the Planning Agreement, and
- Registration of the Planning Agreement on title.

It is estimated that it could take up to 9 to 12 months for these aspects of the transaction to be completed.

---

## **5.0 ATTACHMENTS / TABLED DOCUMENTS**

**Attachment 1** – Aerial image of Sector 9

**Attachment 2** – Original land swap proposal – Reported to Council 19 May 2014

**Attachment 3** – Concept Plan – Endorsed by Council 18 May 2015

**Attachment 4** – Signed Memorandum of Understanding

**Attachment 5** – Deed of Agreement

**Attachment 6** – Probity Report by Procure Group

---

## **6.0 SUSTAINABILITY ASSESSMENT**

### **6.1 GOVERNANCE & RISK**

#### **6.1.1 Community Engagement**

As per the Council recommendation of 19 May 2014, Council staff have extensively engaged with Sector 9 land owners, the local resident group (Warriewood Residents Association) and the broader community. The land swap proposal was amended to respond to the concerns raised by the stakeholders during this consultation.

#### **6.1.2 Risk Management**

Strict probity protocols have been put in place throughout the negotiations to manage these risks. Council intends to continue to engage a probity advisor to oversee the completion of the transaction, in particular the assessment of the Planning Proposal and development application.

### **6.2 ENVIRONMENT**

#### **6.2.1 Environmental Impact**

The creek line corridors through the Warriewood Valley generally have a 50 metre wide central corridor that contains riparian habitat as well as shared path connections. These corridors provide important continuous wildlife connections from the escarpment to the Warriewood Wetlands.

The Central Local Park is dissected by Fern Creek as a central environmental feature. The northern half of this corridor has already been acquired and co-joins the recreational open space. The southern half of the creekline corridor will be acquired through this transaction and will adjoin the recreation space within the southern half of the park. This will ensure there is a broad expanse of adjoining open space that can suitably integrate both environmental and recreational requirements, providing a gateway to the escarpment to the west

#### **6.2.2 Mitigation Measures**

The environmental impact of the proposed recreational area is minimal and will generally be similar to the impact of the current grassed paddocks, albeit better maintained. The proposed perimeter pathway also provides a managed edge between the riparian plantings and the recreational area. The riparian corridor will provide an important connection to the escarpment, providing habitat for aquatic and terrestrial species. In this regard it will be important that cats and dogs of the adjoining residential development are effectively managed to prevent fauna loss.

## 6.3 SOCIAL

### 6.3.1 Address Community Need & Aspirations

The land swap proposal, in reconfiguring the open space provision along the creek line, will facilitate a better open space and development outcome for the northern part of Sector 9 by integrating the open space with the existing park in Sector 8 and unlocking the development opportunity of the remaining portion of 9 Fern Creek Road and allowing development to be more appropriately positioned on surrounding properties. The proposal will result in a similar open space layout to the existing arrangement on the northern side of Fern Creek (within Sector 8), thereby achieving a more integrated and cohesive open space arrangement with the existing park.

### 6.3.2 Strengthening local community

The land swap proposal, in reconfiguring the open space provision along the creek line, will facilitate a better open space and development outcome for the northern part of Sector 9. In conjunction with the bridge connection and other pathways, the proposal will significantly strengthen the local communities to the south, north and east adding to the liveability and appeal of Warriewood Valley.

## 6.4 ECONOMIC

### 6.4.1 Economic Development

The land swap, in reconfiguring the open space provision along the creek line, will facilitate a better open space and development outcome for the northern part of Sector 9 by integrating the open space with the existing park in Sector 8 and unlocking the development opportunities within Sector 9. Unlocking the development opportunities in Sector 9 is vitally important to ensuring the timely delivery of infrastructure under the Section 94 Plan.

The monetary gain as a result of the land swap is required to be reinvested into the Section 94 fund to assist with delivering the remaining infrastructure and services required by the Release Area. These could be utilised specifically to achieve other identified open space outcomes, in particular the potential acquisition of land in the Southern Buffer for future playing fields.

Report prepared by  
Tija Stagni, Local Infrastructure Coordinator

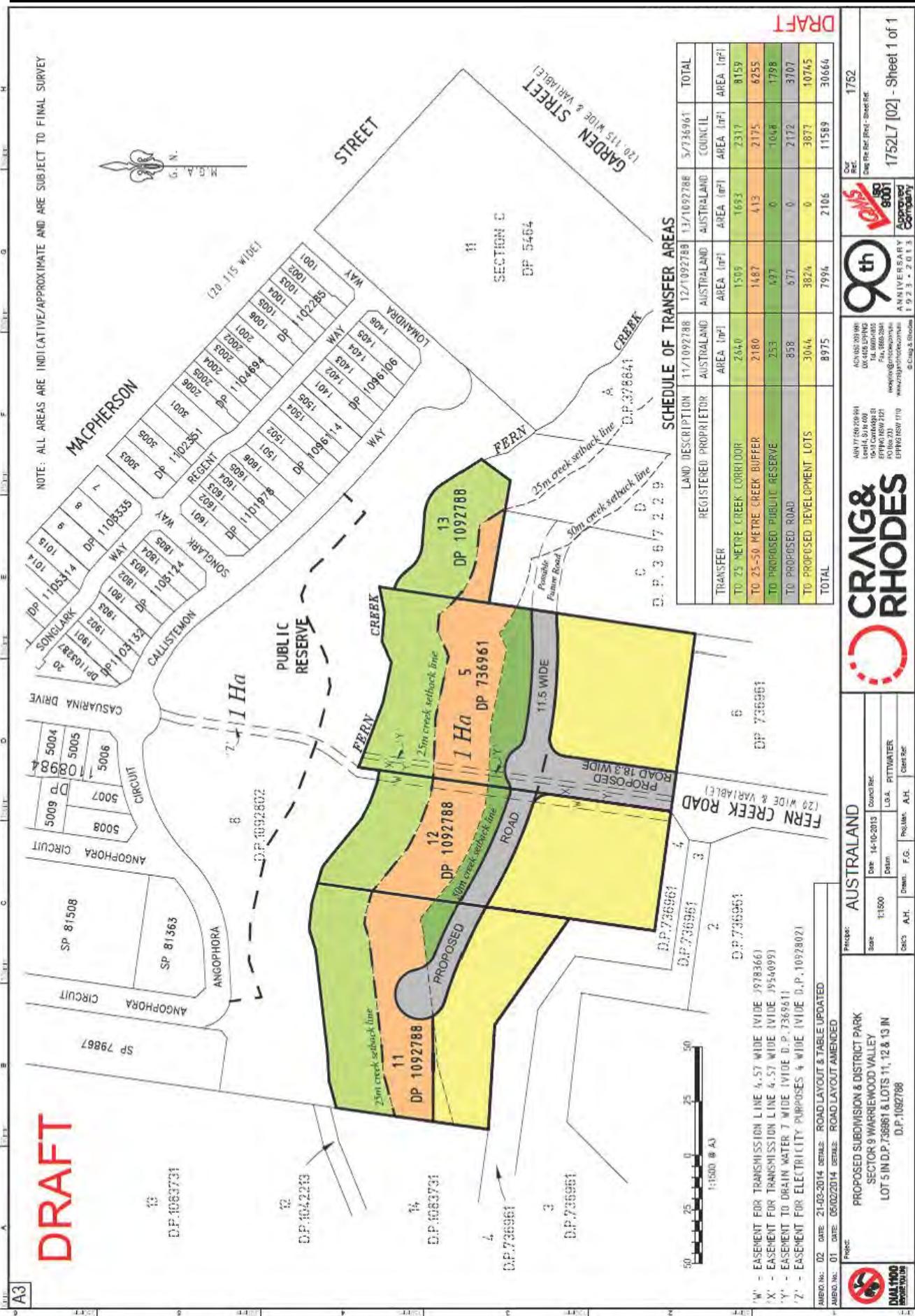
Arianna Henty  
**MANAGER, COMMERCIAL PROPERTY & PROJECTS**



Aerial Photography - 2015  
Licensed from NearMap.  
This plan is not survey accurate.

**Sector 9 Land Ownership**





**DRAFT**

**DRAFT**

**A3**  
 FIGURE NO. 02 DATE: 21-03-2014 DETAILS: ROAD LAYOUT & TABLE UPDATED  
 FIGURE NO. 01 DATE: 05-02-2014 DETAILS: ROAD LAYOUT AMENDED  
 PROJECT: AUSTRALAND  
 DATE: 14-10-2013 Council Ref.  
 SCALE: 1:1500  
 DRAWN: A.H. CHECKED: A.H.  
 PROJECT NO. F.G.

PROPOSED SUBMISSION & DISTRICT PARK  
 SECTOR 9 WARRIEWOOD VALLEY  
 LOT 5 IN D.P. 736961 & LOTS 11, 12 & 13 IN D.P. 1092788

ANU (1) 06 03 04 81  
 14/14  
 15/15 CONTRACT 81  
 16/16 CONTRACT 82  
 17/17 CONTRACT 83  
 18/18 CONTRACT 84  
 19/19 CONTRACT 85  
 20/20 CONTRACT 86  
 21/21 CONTRACT 87  
 22/22 CONTRACT 88  
 23/23 CONTRACT 89  
 24/24 CONTRACT 90  
 25/25 CONTRACT 91  
 26/26 CONTRACT 92  
 27/27 CONTRACT 93  
 28/28 CONTRACT 94  
 29/29 CONTRACT 95  
 30/30 CONTRACT 96  
 31/31 CONTRACT 97  
 32/32 CONTRACT 98  
 33/33 CONTRACT 99  
 34/34 CONTRACT 100

CRAIG & RHODES  
 90th  
 A MEMBER OF THE  
 90th  
 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50  
 1752L7 [02] - Sheet 1 of 1  
 1752  
 Our Ref: 1752L7 [02]  
 Client Ref: 1752L7 [02]



SECTOR 8 & 9 OPEN SPACE MASTERPLAN - Concept Plan



06 May 2015 - SCALE 1:500 @ A3  
0 10 20 30 40 50m

**MEMORANDUM OF UNDERSTANDING**

**Lot 11 DP 1092788 (FP) / Lot 12 DP 1092788 (FP) / Lot 5 DP 736961 (PC) / Lot 13 1092788 (FP)**

1	<b>Parties Identity</b>	Pittwater Council (PC) and Fraser's Property Limited (FP)
2	<b>Form of Contract</b>	Land Swap Agreement relating to land in Sector 9 within the Warriewood Valley Release Area, between Pittwater Council and FP. The lot details are identified in Item 3.
3	<b>Properties</b>	Land owned by FP to be acquired by PC: That part of Lot 11 DP 1092788, part of Lot 12 DP 1092788 and part of Lot 13 DP 1092788, each currently owned by FP and identified as being acquired by PC in Annexure A  Land owned by PC to be acquired by FP: That part of Lot 5 DP 736961 currently owned by PC and identified as being acquired by FP in Annexure A.
4	<b>Terms of Memorandum of Understanding (MOU)</b>	The intent of this MOU is to set out and identify the terms of the proposed future deed of agreement between PC and FP. This MOU should not be construed by either party as being legally binding.  The parties agree to work together in good faith to address and incorporate the items identified in the Council resolution of 18 May 2015 (Item C12.4) and in this MOU in any future deed of agreement.
5	<b>Valuation and Negotiations</b>	Each party agrees to undertake an independent valuation of the proposed land swap identified in Item 3 above. Each valuation is to be based on an agreed brief that values the land at its highest and best use. Specifically, part of Lot 5 DP 736961 currently owned by PC and identified to be acquired by FP in Annexure A is to be valued on the basis of it having a dwelling yield of 32 dwellings per developable hectare. The valuer must have current NSW registration, be a member of the Australian Property Institute with the appropriate classification and have at least 5 years of experience.  Both parties are to pay their own costs in relation to the services of an independent valuer. The parties are to come to a negotiated outcome in relation to any financial adjustment as a result of the overall land swap transaction. Any financial adjustment is to take place on settlement.
6	<b>Creek line Corridor</b>	The transfer of creek-line corridor land owned by FP identified to be acquired by PC in Annexure A is to be completed as a separate financial transaction in accordance with the Warriewood Valley Section 94 Contributions Plan. The value of the creek line corridor land is to be based on the value specified in the Warriewood Valley Section 94 Contribution Plan in force at the date signing of the deed of agreement. The financial transaction is to be a separate item in the deed of agreement but is to be consolidated in the overall land swap transaction.  Following any financial adjustment that is to be undertaken as outlined in item 5 above, the parties agree that the compensation set out in this item 6 is to be paid to FP.  This compensation can be used to offset any amount FP owes to PC.
7	<b>Undergrounding of Overhead Power</b>	PC to provide Ausgrid's approved design and costings to FP for the undergrounding of the existing High Voltage (HV) overhead cabling.  The undergrounding of the overhead power where practical will be in

## MEMORANDUM OF UNDERSTANDING

**Lot 11 DP 1092788 (FP) / Lot 12 DP 1092788 (FP) / Lot 5 DP 736961 (PC) / Lot 13 1092788 (FP)**

		<p>accordance with Ausgrid requirements.</p> <p>The parties agree to share the cost of the undergrounding of the existing overhead HV cabling and if required based on Ausgrid's advice, the cost of any associated infrastructure requirements within the properties proposed to be swapped on a 50/50 basis.</p> <p>If there are any additional electrical undergrounding or upgrading required by Ausgrid outside of the land-swap proposed area, these costs will be the to be borne by PC.</p>
8	<b>Road works</b>	<p>The full road width construction, including stormwater infrastructure, are to be completed by FP at its sole cost. These roads are to be dedicated to PC as part of the future residential subdivision of the land.</p> <p>The parties are to consult in good faith in relation to whether a Planning Agreement under section 93F of the Environmental Planning &amp; Assessment Act will be required to affect this aspect of the transaction.</p> <p>Note:</p> <p>Northern extension of Fern Creek Road: This road is only required to be 16m wide as per a "Local Road" under Warriewood Valley Roads Masterplan. In accordance with the Warriewood Valley Landscape Masterplan a 2.1m shared path is to be provided along the eastern side of this road, in lieu of the 1.5m footpath required by the Warriewood Valley Roads Masterplan. The 2.1m wide shared path is all inclusive of the 16m wide road reserve requirement for Fern Creek Road extension.</p> <p>New east-west road: This road is required to comply with the requirements of a "Local Road" under the Warriewood Valley Roads Masterplan. FP is required to construct a dish drain to the edge of the road treatment, however is not required to construct the parking bays and verge on the reserve side of the road.</p>
9	<b>Pittwater LEP Amendment</b>	<p>PC agrees to prepare and lodge a Planning Proposal to amend Pittwater LEP 2014 as follows:</p> <ul style="list-style-type: none"> <li>(a) The part of Lot 5 DP 736961 owned by PC and identified in Annexure A to be acquired by FP will be allocated a maximum building height of 10.5 metres and a maximum yield of 17 dwellings based on a density of 32 dwellings per developable hectare;</li> <li>(b) The Lot 13 DP 1092788 and the part of Lot 11 DP 1092788 and part of Lot 12 DP 1092788 owned by FP and identified in Annexure A to be acquired by PC will have no dwelling yield allocated to it and will be rezoned to RE1 Public Recreation; and</li> <li>(c) The part of Lot 11 DP 1092788 owned by FP and identified in Annexure A to be retained by FP is to be allocated a yield of 3 dwellings based on a density of 10 dwellings per developable hectare; and</li> <li>(d) The part of Lot 12 DP 1092788 owned by FP and identified in Annexure A to be retained by FP is to be allocated a yield of 13 dwellings based on a density of 32 dwellings per developable</li> </ul>

Page | 2  
Final 28/09/2015

## MEMORANDUM OF UNDERSTANDING

**Lot 11 DP 1092788 (FP) / Lot 12 DP 1092788 (FP) / Lot 5 DP 736961 (PC) / Lot 13 1092788 (FP)**

		<p>hectare.</p> <p>PC will engage an independent consultant to prepare and progress the LEP amendment. All costs and relevant application fees in connection with the LEP amendment are to be borne equally by both parties.</p> <p>In the event that the proposed LEP amendment is not successful, the parties agree that the land swap contemplated by this MOU cannot occur and the proposed land swap arrangements will be at an end. In this event, all costs incurred, except as otherwise specified in Item 16, will be borne equally by both parties.</p>
10	<b>Subdivision</b>	<p>Following gazettal of the LEP amendment by Department of Planning &amp; Environment, PC agrees to prepare and lodge a development application to subdivide the land to reflect the change in ownership proposed by this MOU.</p> <p>PC will engage a consultant to prepare and progress the development application. All costs and relevant application fees in connection with the development application are to be borne equally by both parties.</p>
11	<b>Settlement</b>	<p>Settlement of the land swap is conditional on the following:</p> <ul style="list-style-type: none"> <li>(a) Registration of subdivision certificate in accordance with the development application described in Item 10; and</li> <li>(b) Gazettal of the LEP Amendment identified in Item 9.</li> </ul> <p>Settlement will occur within 30 days of the successful completion of both (a) and (b) above.</p>
12	<b>Storm-water infrastructure</b>	<p>An underground stormwater pipe is to be provided from the existing cul-de-sac in Fern Creek Road to Fern Creek. This pipe is to be constructed along the alignment of the existing drainage easement and is to be constructed to a standard specified by PC. The construction of this stormwater pipe is to be undertaken concurrent with the road construction. Each party is responsible for costs associated with undergrounding the section of stormwater infrastructure within their own land.</p> <p>The existing drainage easement is to be extinguished and replaced by a new easement along the same alignment and is to be of a suitable width specified by Council.</p> <p>All stormwater infrastructure required to service the future residential development is to comply with Pittwater 21 DCP, Control C6.21 Provision of Infrastructure.</p>
13	<b>Probity</b>	PC to appoint probity advisor to oversee and report on this transaction.
14	<b>Other Issues: Contamination</b>	<p>Both parties agree that as at the date of agreement of this MOU neither party is aware of any contamination affecting the properties identified in Item 3 which would make that property unsuitable for their intended use.</p> <p>FP and PC must not bring any materials or land fill onto their properties during the land swap transaction period which may cause contamination and will not allow any materials to be located on the properties which may cause contamination or detrimentally affect the land for its intended use.</p>
15	<b>Other Issues: Legal Documentation</b>	<p>PC is to prepare all legal documentation associated with this land swap.</p> <p>All reasonable costs associated with drafting and amending the legal</p>

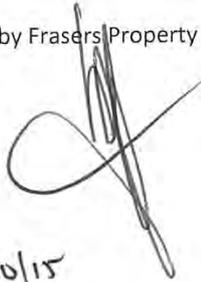
Page | 3  
Final 28/09/2015

## MEMORANDUM OF UNDERSTANDING

Lot 11 DP 1092788 (FP) / Lot 12 DP 1092788 (FP) / Lot 5 DP 736961 (PC) / Lot 13 1092788 (FP)

		documents leading to their signing are to be borne equally by both parties.
16	<b>Other Issues: Other Costs and Invoicing</b>	Both parties to pay their own respective legal costs, except as otherwise outlined in Item 15 above.  All other costs, except as otherwise outlined in this MOU, are to be borne equally by both parties. In relation to these costs, PC agrees to pay these costs and invoice FP monthly. FP will be consulted prior to PC accepting any quotes for services for which the costs are to be borne equally.
17	<b>Other Issues: Council endorsement</b>	The parties acknowledge that the future land swap contemplated by this MOU is subject to endorsement by the elected Council and Board approval by FP.

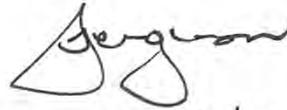
Agreed by Frasers Property Ltd



Date:

1/10/15

Agreed by Pittwater Council



Date:

29/9/15

# ANNEXURE A

LAND DESCRIPTION	11/1092788	12/1092788	13/1092788	5/736961	TOTAL
REGISTERED PROPRIETOR	FRASERS PROPERTY LTD	FRASERS PROPERTY LTD	FRASERS PROPERTY LTD	PITTWATER COUNCIL	
LAND	AREA (m <sup>2</sup> )				
TO 25 METRE CREEK CORRIDOR	2640 *	1509 *	1693 *	2317	8159
TO PROPOSED PUBLIC RESERVE	3162 *	2409 *	413 *	0	8882
TO PROPOSED ROAD	790	675	0	1847	3312
TO PROPOSED DEVELOPMENT LOTS	2394	3400	0	3527	9311
TOTAL	8976	7993	2106	11589	30664

★ LAND TO BE ACQUIRED BY PITTWATER COUNCIL  
 □ LAND TO BE ACQUIRED BY FRASERS PROPERTY LTD



**PROPOSED LANDSWAP**  
 SECTOR 9 WARRIWOOD VALLEY  
 LOT 5 IN D.P. 736961 & LOTS 11, 12, 13 IN  
 D.P. 1092788



© Urban Infrastructure David Munro Projects 2015-16/18/19/20 - Sector 9 Park\1702.10 [0] Amended Rev 3.dwg

## LAND SWAP DEED

---

**PITTWATER COUNCIL**

("Council")

and

**FRASERS PROPERTY LIMITED**

("FP")

**MatthewsFolbigg**  
Lawyers

Matthews Folbigg Pty Ltd  
"The Barrington" Level 7  
10-14 Smith Street Parramatta 2150  
PO Box 248 Parramatta 2124  
DX 8233 Parramatta  
T 9635 7966 | F 9633 9400

## CONTENTS

<b>PARTIES</b> .....	<b>2</b>
<b>RECITALS AND BACKGROUND</b> .....	<b>2</b>
<b>OPERATIVE PART</b> .....	<b>3</b>
<b>1. DEFINITIONS AND INTERPRETATION</b> .....	<b>3</b>
<b>2. CONDITIONS PRECEDENT</b> .....	<b>6</b>
<b>3. COUNCIL'S OBLIGATIONS</b> .....	<b>6</b>
<b>4. FP'S OBLIGATIONS</b> .....	<b>8</b>
<b>5. LAND SWAP</b> .....	<b>9</b>
<b>6. COMPLETION</b> .....	<b>10</b>
<b>7. UNDERGROUNDING OF OVERHEAD POWER</b> .....	<b>10</b>
<b>8. DUTY AND LEGAL COSTS</b> .....	<b>11</b>
<b>9. GST</b> .....	<b>11</b>
<b>10. MISCELLANEOUS PROVISIONS</b> .....	<b>12</b>
<b>11. DISPUTE RESOLUTION</b> .....	<b>13</b>
<b>12. NOTICES</b> .....	<b>14</b>
<b>ANNEXURE "A"</b> .....	<b>15</b>
<b>EXECUTION</b> .....	<b>16</b>

## LAND SWAP DEED

---

Deed dated

2015

### PARTIES

**PITTWATER COUNCIL (ABN 61 340 837 871)** of 1 Park Street, Mona Vale NSW 2103

("Council")

**FRASERS PROPERTY LIMITED (ACN 008 443 696)** of 1 Homebush Bay Drive, Rhodes NSW 2138

("FP")

### RECITALS AND BACKGROUND

- A Due to the population increase associated with the Warriewood Valley and in order to deliver greater open space by the provision of a 2 hectare Central Local Park, Council acquired an existing 1.15 hectare parcel of land (9 Fern Creek Road) in order to facilitate the southern half of the Central Local Park.
- B Due to the shape and location of such lot not matching the preferred layout for the open space land, it has been agreed that in order to better reflect and facilitate the final layout plan for such open space, that Council and FP transact a land exchange and for such acquired land by Council to be rezoned RE 1 Public Recreation by the amendment of Council's Local Environmental Plan ("LEP").
- C Council owns the Council Land and FP the FP Land.
- D Subject to the amendment of Council's LEP, Council and FP have agreed to subdivide the Council Land and FP Land respectively owned by them so as to enable:
  - (a) Council to transfer the Council Development Land to FP, being an area measuring approximately 5,374.4 square metres; and
  - (b) FP to transfer to Council the FP Public Reserve Land and the FP Creek Line Corridor Land, being an area measuring approximately 11,825.5 square metres, as shown in the plan attached at Annexure A.
- E To enable the transaction contemplated by these Recitals, Council and FP have agreed to enter into this deed.

## OPERATIVE PART

### 1. DEFINITIONS AND INTERPRETATION

---

#### 1.1 Definitions

The following meanings apply unless the contrary intention appears:

**Business Days** means a day on which banks are open for general banking business in Sydney, New South Wales (not being a Saturday, Sunday or public holiday in that place).

**Completion Date** means the date which is on or before the date which is 30 Business Days after Council issues the notice to FP under clause 2.1(b).

**Council Development Land** means that part of the Development Land comprised in Lot 5 in Deposited Plan 736961.

**Conditions Precedent** has the meaning given to it in clause 2.1 of this deed.

**Council Land** means Lot 5 Deposited Plan 736961 (folio identifier 5/736961).

**Creek Line Corridor Land** means the land shown in dark green and marked "To 25 Metre Creek Corridor" on the plan attached to this deed as Annexure A.

**Creek Line Corridor Purchase Price** means an amount equal to \$ [REDACTED] per square metre of the FP Creek Line Corridor Land (being approximately \$ [REDACTED]).

**Creek Line Corridor Transfer** means a transfer of land in a registerable form in relation to the transfer of the FP Creek Line Corridor Land from FP to Council.

**Development Land** means the land shown in yellow and grey and marked "To Proposed Road" and "To Proposed Development Lots" on the plan attached to this deed as Annexure A.

**Development Land Transfer** means a registrable transfer of land form in relation to the transfer of the Council Development Land from Council to FP.

**Development Land Purchase Price** means [REDACTED]

**Duty** means any stamp, transaction or registration duty or similar charge which is imposed by the New South Wales Office of State Revenue and includes any interest, fine, penalty, charge or other amount which is imposed in relation to that duty or charge.

**FP Creek Line Corridor Land** means that part of the Creek Line Corridor Land comprised in Lots 11, 12 and 13 in Deposited Plan 109278.

**FP Land** means Lots 11, 12 and 13 in Deposited Plan 1092788 (folio identifiers 11/1092788, 12/1092788 and 13/1092788).

**FP Public Reserve Land** means that part of the Public Reserve Land comprised in Lots 11, 12 and 13 in Deposited Plan 109278.

**GST** has the meaning given to it in the GST Act.

**GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cwlth).

**GST Law** has the meaning given in the GST Act.

**LPI** means Land & Property Information, New South Wales.

**Plan of Subdivision** means the proposed plan to subdivide the FP Land and the Council Land prepared by Council and approved by FP in accordance with clause 3.2.

**Planning Agreement** means a planning agreement between Council and FP on terms acceptable to the parties (acting reasonably) and in accordance with section 93F of the *Environmental Planning & Assessment Act 1979 (NSW)* in relation to the future residential subdivision of the Development Land which includes the provisions of the MOU made and agreed to between the parties dated 1 October 2015.

- (a) construction of stormwater infrastructure in relation to the land;
- (b) extension of Fern Creek Road; and
- (c) construction of New East-West Road.

**Planning Proposal** means the planning proposal to the Department of Planning and Environment to amend Council's LEP prepared by Council and approved by FP in accordance with clause 3.1.

**Public Reserve Land** means the land shown in light green and marked "To Proposed Public Reserve" on the plan attached to this deed as Annexure A.

**Public Reserve Transfer Form** means a registrable transfer of land form in relation to the transfer of the FP Public Reserve Land from FP to Council.

**Sunset Date** means 31 December 2018.

**Undergrounding Works** means the works associated with the undergrounding of the overhead power cables and lines along Council and FP's common boundary between Lot 5 in Deposited Plan 736961 and Lot 12 in Deposited Plan 1092788.

## **1.2 References to certain general terms**

Unless the contrary intention appears, in this deed:

- (a) a reference to a document (including this contract) includes any variation or replacement of it;
- (b) a reference to a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this contract;
- (c) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) the word "law" includes common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them);
- (e) the singular includes the plural and vice versa;

- (f) the word “person” includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association, or any authority;
- (g) a reference to a particular person includes a reference to the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (h) a reference to a body or authority includes a reference, if that body or authority ceases to exist, to the body or authority which has substantially the same functions and objects as the first body or authority;
- (i) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them individually;
- (j) an agreement, representation or warranty by two or more persons binds them jointly and each of them individually;
- (k) a reference to a group of persons or things is a reference to any two or more of them jointly and to each of them individually;
- (l) a reference to Australian dollars, dollars, A\$ or \$ is a reference to the lawful currency of Australia;
- (m) if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (n) a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (o) a reference to accounting standards is a reference to the accounting standards as defined in the Corporations Act, and a reference to an accounting term is a reference to that term as it is used in those accounting standards, or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia;
- (p) the words, “including”, “for example” or “such as” when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
- (q) if an act under this contract to be done by a party on or by a given day is done after 5.30pm on that day, it is taken to be done on the next day;
- (r) a reference to time is a reference to time in New South Wales; and
- (s) a reference to any thing (including any amount) is a reference to the whole and each part of it.

### **1.3 Headings**

Headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this deed.

## **2. CONDITIONS PRECEDENT**

---

### **2.1 Completion conditions**

- (a) Both parties agree that their respective obligations to transfer the FP Public Reserve Land, the Council Development Land and FP Creek Line Corridor Land are subject to and conditional upon:
  - (i) the Department of Planning and Environment approving the Planning Proposal;
  - (ii) registration of the Plan of Subdivision at the LPI;
  - (iii) the parties entering into the Planning Agreement; and
  - (iv) registration of the Planning Agreement at the LPI,(together the "**Conditions Precedent**").
- (b) Council must notify FP in writing within ten 10 Business Days after the Conditions Precedent have been satisfied.

### **2.2 Date for Completion**

The parties must complete the transfers of the FP Public Reserve Land, the Council Development Land and the FP Creek Line Corridor Land on the Completion Date.

### **2.3 Sunset Date**

The parties agree that if the Condition Precedent at 2.1(a)(i) is not satisfied by the Sunset Date, then either party may rescind this deed by serving a notice on the other.

### **2.4 Release**

If this deed is rescinded under clause 2.3 then each party releases other party from any liability or loss arising in connection with the rescission of this deed, except in relation to prior breaches and the sharing of costs contemplated under clauses 4(a), 4(b) and 4(c).

## **3. COUNCIL'S OBLIGATIONS**

---

### **3.1 Planning Proposal**

The Council must:

- (a) procure the preparation of the Planning Proposal to achieve the following:
  - (i) that the Council Development Land be allocated a maximum building height of 10.5 metres and a maximum yield of 17 dwellings based upon a density of 32 dwellings per developable hectare;
  - (ii) that the Public Reserve Land be rezoned RE 1 Public Recreation;
  - (iii) that the part of the Development Land currently contained within Lot 11 DP 1092788 be allocated a development yield of 3 dwellings based on

- a density of 10 dwellings per developable hectare; and
- (iv) that the part of Development Land currently contained within Lot 12 DP 1092788 be allocated a development yield of 13 dwellings based upon a density of 32 dwellings per developable hectare; and
- (b) give FP a copy of the Planning Proposal at least 10 Business Days before Council lodges the Planning Proposal with Council's planning and assessment department; and
- (c) consult with FP in connection with any comments, suggestions or objections which FP makes or seeks to make in connection with the Planning Proposal prior to lodgement with Council's planning and assessment department; and
- (d) not lodge the Planning Proposal with Council's planning and assessment department without FP's written consent (which may be withheld until Council has complied with clauses 3.1(b) and (c), but otherwise must not be unreasonably withheld if the application is consistent with the requirements set out in clauses 3.1(a)(i) – 3.1(a)(iv)); and
- (e) lodge the Planning Proposal with Council's planning and assessment department for approval within 5 Business Days after FP consents to the Planning Proposal; and
- (f) must not seek to amend the Planning Proposal after it has been lodged with Council's planning and assessment department without FP's written consent (which must not be unreasonably withheld if the amendment is consistent with the requirements set out in clauses 3.1(a)(i) – 3.1(a)(iv));

### **3.2 Plan of Subdivision**

The Council must:

- (a) prepare the Plan of Subdivision in a form suitable for registration at the LPI to achieve the following:
  - (i) create separate lots comprising the Council Development Land, the FP Public Reserve Land and the FP Creek Line Corridor Land to allow the transfers contemplated under this deed; and
  - (ii) create the easements for transmission and draining shown on the Plan; and
- (b) prepare a development application in connection with the Plan of Subdivision and provide a copy of the Plan of Subdivision and any supporting documents (including any appropriate instrument under Section 88B of the *Conveyancing Act 1919 (NSW)* to FP and consult with FP in connection with the terms of such application and documentation.
- (c) not lodge the Plan of Subdivision or any supporting documents with the LPI without FP's written consent (which may be withheld until Council has complied with clauses 3.2 (b) but otherwise must not be unreasonably withheld if the application is consistent with the requirements set out in clauses 3.2(a)(i) – 3.2(a)(ii));

- (d) lodge the Plan of Subdivision with the LPI within 5 Business Days after FP consents in writing to the Plan of Subdivision;

#### **4. FP'S OBLIGATIONS**

---

FP must:

- (a) provide its consent to the lodgement in relation to the development application for the Plan of Subdivision once the Council's obligations in 3.2(b) have been satisfied and simultaneously submit the Planning Agreement to Council.
- (b) contribute 50% towards Council's reasonable and properly incurred costs of preparation and submission (including application fees) of the Planning Proposal to amend Council's LEP within 5 Business Days of receipt of a valid tax invoice from Council;
- (c) contribute 50% towards Council's reasonable and properly incurred legal costs associated with the drafting, negotiations and execution of this deed (plus GST and disbursements) and Council's surveyors costs.
- (d) contribute 50% towards Council's reasonable and properly incurred costs of engaging a consultant to prepare and progress a development application with respect to the subdivision of Council's and FP's Land within 5 Business Days of receipt of a valid tax invoice from Council;
- (e) contribute 50% towards the reasonable and properly incurred costs of the approved design and construction (including any associated infrastructure required by Ausgrid) of the Undergrounding Works within 5 Business Days of receipt of a valid tax invoice from Council;
- (f) provided that Council have complied with clause 3.2 of this deed, execute any documents necessary to facilitate registration of the Plan of Subdivision within 5 Business Days of receipt from Council or its solicitors and return such executed documents to Council or its solicitor;
- (g) procure the consent of any mortgagee of the FP Land to the Plan of Subdivision and arrange for the execution by any such mortgagee of any documents necessary to facilitate registration of the Plan of Subdivision;
- (h) produce, or procure production by any mortgagee of the certificates of Title for the FP Land at LPI NSW to facilitate the registration of the Plan of Subdivision;
- (i) remove at FP's cost any caveat or other encumbrance on the land being transferred by it which may prohibit registration of the Plan of Subdivision; and
- (j) do anything reasonably required of it to assist the Council in the obtaining of any necessary approval for registration of the Plan of Subdivision, including compliance with any requisition raised by LPI NSW relating to the Plan of Subdivision.

## 5. LAND SWAP

---

### 5.1 Transfers of the Development and Public Reserve Land

Subject to the satisfaction of the Conditions Precedent, the parties agree that FP will transfer all its estate and interest in the FP Public Reserve Land to Council and pay the Development Land Purchase Price (less any applicable credits that FP receives under clause [5.2] below) to Council on the Completion Date in exchange for the Council simultaneously transferring its estate and interest in the Council Development Land to FP in accordance with the procedures set out in this deed.

### 5.2 Acquisition of the Creek Line Corridor Land

- (a) Subject to satisfaction of the Conditions Precedent, Council agrees to acquire the FP Creek Line Corridor Land from FP on the Completion Date at a value of the Creek Line Corridor Price in accordance with the Warriewood Valley Section 94 Contributions Plan (Plan 15) (Amendment 16) (Revision 1).
- (b) The parties agree that the Creek Line Corridor Price payable by Council for the acquisition of the FP Creek Line Corridor Land must be utilised by FP by way of an offset against the Development Land Purchase Price payable by FP to Council under clause [5.1].

### 5.3 Interdependence

The transactions described in clauses [5.1] and [5.2] are interdependent. If one party defaults in respect of its obligation in clause [5.1] or [5.2] the other party need not comply with its obligation unless and until the first party remedies its default. If the transactions described in clause [5.1] or [5.2] do not proceed, any party which has carried out an action in anticipation of those transactions proceeding may undo such action.

### 5.4 Instruments of transfer

In respect of:

- (a) the transfer contemplated under clause [5.1] Council must deliver the stamped Development Land Transfer duly executed by Council to FP at least 5 Business Days before the Completion Date;
- (b) the transfer contemplated under clause [5.1] FP must deliver the stamped Public Reserve Transfer duly executed by FP to Council at least 5 Business Days before the Completion Date; and
- (c) the transfer contemplated under clause [5.2] Council must deliver the stamped Creek Line Corridor Transfer duly executed by Council to FP at least 5 Business Days before the Completion Date.

### 5.5 Acknowledgement

For the purposes of Section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991 (NSW)* it is acknowledged that the agreement contained in this deed is an agreement on all relevant matters relating to the acquisition by the Council of FP Public Reserve Land and the FP Creek Line Corridor Land and that no other compensation whatsoever will be payable by the Council to FP.

## 5.6 No adjustments

No adjustment will take place between the Council and FP in relation to any council rates or charges, water and sewer rates and charges or any land tax that may be charged upon the FP Public Reserve Land or the FP Creek Line Corridor Land provided that FP must pay all such outgoings in respect of the FP Public Reserve Land or the FP Creek Line Corridor Land owned by it for the rate periods current as at the Completion Date.

## 6. COMPLETION

---

### 6.1 Completion

On the Completion Date:

- (a) Council must:
  - (ii) deliver the stamped and fully executed Development Land Transfer to FP along with a direction addressed to LPI in favour of FP authorising the issuing of the resultant Certificate of Title directly to FP; and
  - (iii) ensure that the certificate of title for the Council Development Land is placed on deposit at LPI; and
- (b) FP must:
  - (i) deliver the stamped and fully executed Public Reserve Land Transfer and the Corridor Creek Transfer to Council along with a direction addressed to LPI in favour of Council authorising the issuing of the resultant Certificate of Title directly to Council;
  - (ii) ensure that the certificates of title for the FP Public Reserve Land and the FP Corridor Creek Transfer are placed on deposit with LPI; and
  - (iii) subject to clause 5.2(b) a Settlement Cheque for an amount equal to the Development Land Purchase Price less the Creek Line Corridor Purchase Price.

## 7. UNDERGROUNDING OF OVERHEAD POWER

---

- (a) Council must procure Ausgrid's approved design and construction estimates in relation to the Undergrounding Works and provide them to FP as soon as reasonably practicable.
- (b) The parties agree that the Undergrounding Works will be undertaken by a third party contractor appointed by Council (and approved by FP acting reasonably). The costs of the Undergrounding Works will be paid for directly by Council. FP will contribute to those costs in accordance with clause 4(e).

## **8. DUTY AND LEGAL COSTS**

---

### **8.1 Duty**

In relation to Duty chargeable, payable or assessed in relation to this agreement or any transaction contemplated by this agreement:

- (a) FP agrees to pay the Duty in relation to the transfer of the Council Development Land and indemnifies and must keep indemnified Council against any liability to Duty which is the responsibility of FP pursuant to this clause 8.1(a); and
- (b) Council agrees to pay the Duty in relation to the transfer of the FP Public Reserve Land and the FP Creek Line Corridor Land and indemnifies and must keep indemnified FP against any liability to Duty which is the responsibility of Council pursuant to this clause 8.1(b)

**8.2** Except as otherwise provided for in this agreement, each party will be responsible for its own legal fees in relation to:

- (a) the negotiation and execution of this agreement; and
- (b) otherwise in relation to the transfer of the Council Land and FP Land.

## **9. GST**

---

### **9.1 Consideration GST inclusive**

Aside from the consideration payable for the transfers contemplated in clause 5.1 all amounts payable or consideration to be provided under this agreement are exclusive of GST.

### **9.2 Payment of GST**

Subject to clause 9.3 if GST is payable on any supply made under this agreement, for which the consideration is not expressly stated to include GST, the recipient agrees to pay to the supplier an additional amount equal to the GST payable at the same time that the consideration for the supply, or the first part of the consideration for the supply (as the case may be), is to be provided.

### **9.3 Tax invoice**

The supplier must issue a tax invoice to the recipient of a taxable supply at the same time that the supplier makes a taxable supply.

### **9.4 Adjustments**

If the amount of GST payable in relation to a taxable supply varies from the amount paid, or set off by, by the recipient in accordance with this clause agreement, then the supplier will provide a corresponding refund or credit to, or will be entitled to receive an additional amount of GST from, the recipient and the supplier will issue an adjustment note.

## **9.5 Reimbursements**

If a party is required under this agreement to indemnify another party, or pay or reimburse costs of another party, that party agrees to pay the relevant amount less any input tax credits to which the other party (or to which the representative member for a GST group of which the other party is a member) is entitled.

## **9.6 Interpretation**

For the purposes of this clause<sup>9</sup>

- (a) a term which has a defined meaning in the GST Act has the same meaning when used in this clause<sup>9</sup> and
- (b) each periodic or progressive component of a supply to which section 156-5(1) of the GST Act applies will be treated as though it is a separate supply.

## **10. MISCELLANEOUS PROVISIONS**

---

### **10.1 Governing Law**

This Deed shall be governed by and construed in accordance with the laws of the State of New South Wales.

### **10.2 Jurisdiction**

Any legal action or proceedings with respect to this Deed against any party or any of its property and assets may be brought in the Courts of the State of New South Wales and, by execution and delivery of this Deed that party accepts, for itself and in respect of its property and assets, generally and unconditionally the jurisdiction of the Courts of that State.

### **10.3 Variations**

Any amendments, variation or modification to or of, or consent to departure by any party from the terms of this Deed shall have no force or effect unless effected by a document executed by the parties.

### **10.4 Third Parties**

This Deed shall confer rights and benefits only upon a person expressed to be a party and not upon any other person.

### **10.5 Assignment**

A party shall not transfer or assign its rights or obligations under this Deed without the prior consent in writing of the other party.

### **10.6 Waivers**

The failure to exercise or delay in exercising by any party of any right conferred by this Deed shall not operate as a waiver and the single or partial exercise of any right by that party shall not preclude any other or further exercise of that or any other right by that party.

### **10.7 Remedies**

The rights of a party conferred by this Deed are cumulative and are not exclusive of any rights provided by law.

### **10.8 Entire agreement**

This deed constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter except for the provisions related to and to be contained within the Planning Agreement.

### **10.9 Further Assistance**

Each party shall execute all documents and perform all acts necessary to give full effect to this deed.

### **10.10 Severability**

Any provision of this Deed which is prohibited or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of that prohibition or unenforceability, without invalidating the remaining provisions of this deed or affecting the validity or enforceability of that provision in any other jurisdiction.

### **10.11 Counterparts**

This deed may be executed in any number of counterparts, all of which taken together shall be deemed to constitute one and the same document.

## **11. DISPUTE RESOLUTION**

---

**11.1** All disputes or differences arising out of this deed will be resolved in accordance with this clause 10, unless:

- (a) a party is seeking urgent interlocutory relief or a remedy where a delay in commencing proceedings in Court could prejudice the party's entitlement to seek that remedy;
- (b) an incident has arisen that requires urgent resolution which mediation might not resolve; or
- (c) the process in the remainder of this clause 10 has been exhausted.

### **11.2 Notice of Dispute**

Either party may at any time notify the other party in writing that there is a dispute or difference concerning any matter in this deed (**Notice of Dispute**). That Notice of Dispute must:

- (a) identify the subject matter of the dispute;
- (b) identify the relevant provisions of this deed;
- (c) annex copies of any correspondence, or background material and information relevant to that dispute; and

- (d) contain any particulars of quantification of the dispute.

### **11.3 Parties to Confer**

The parties must, within twenty-one (21) days of the service of the Notice of Dispute, meet in an attempt to discuss, and to reach a mutually acceptable decision, on the matter of the dispute.

### **11.4 Referral to Mediation**

If:

- (a) the matter in dispute is not settled within ten (10) business days of the meeting referred to in the preceding paragraph, or such later date as the parties may agree; or
- (b) either party refuses to attend a meeting in accordance with clause 11.3; then
- (c) the difference or dispute must be the subject of a mediation administered by the Australian Commercial Dispute Centre (**ACDC**) conducted and held in accordance with the mediation rules of the ACDC in force at the time of the appointment of a mediator.

### **11.5 The mediator will be appointed:**

- (a) by the parties, from a panel suggested by the ACDC within twenty-eight (28) days of the referral of the difference or dispute for mediation; or
- (b) if a mediator is not appointed by agreement within that period, by the Secretary-General of the ACDC at the request of either party.

10.6 The costs of and associated with formal mediation before a mediator under this clause are to be paid by the parties to the mediation in such proportions as they may agree among themselves or, failing agreement, in equal shares.

## **12. NOTICES**

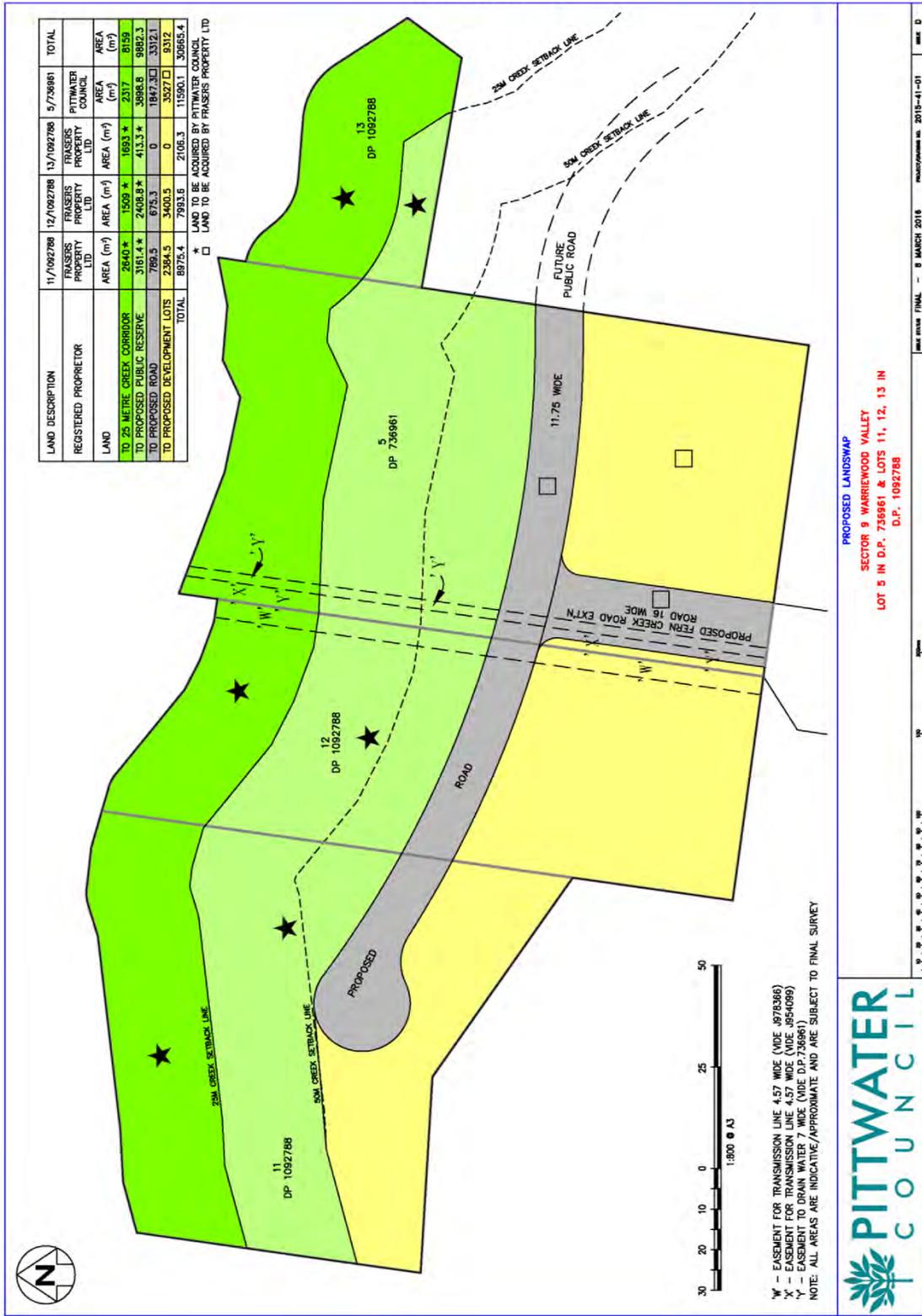
---

Any notice given under this deed:

- (a) must be in writing addressed to the intended recipient at the address shown in the Deed or at the address last notified by the intended recipient to the sender;
- (b) must be signed by a person duly authorised by the sender;
- (c) will be taken to have been given when delivered, received or left at the address shown in this deed.

If delivery or receipt occurs on a date when business is not generally carried on in the place to which the notice is sent, or is sent later than 4.00pm (local time), it will be taken to have been duly given at the commencement of business on the next day when business is generally carried on in that place.

ANNEXURE "A"



**EXECUTION**

**Executed as Deed**

Executed by the General Manager on behalf of **PITTWATER COUNCIL (ABN 61 340 837 871)** pursuant to a delegation dated under section 377 of the *Local Government Act 1993* (NSW):

\_\_\_\_\_  
Signature of Witness

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

\_\_\_\_\_  
Name of Witness [BLOCK LETTERS]

\_\_\_\_\_  
Name of General Manager [BLOCK LETTERS]

\_\_\_\_\_  
Address of Witness

\_\_\_\_\_

EXECUTED by **FRASERS PROPERTY LIMITED (ACN 008 443 696)** in accordance with the requirements of section 127(1) of the *Corporations Act 2001* by:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

Name of Director

Name of Secretary



PITWATER COUNCIL

NEGOTIATIONS FOR A LAND SWAP IN  
WARRIWOOD VALLEY

PROBITY COMPLIANCE REPORT – 14 MARCH 2016

## DOCUMENT INFORMATION

Client	Pitwater Council
Project	Negotiations for a land swap in Warriewood Valley
Report status	Final
Prepared for	Mr Mark Ferguson General Manager Pitwater Council
Prepared by	Vic Baueris 
Approved by	Warwick Smith 

### STATEMENT OF RESPONSIBILITY

This probity report has been prepared for the purpose of assisting Pittwater Council in its decision making regarding negotiations for a land swap in Warriewood Valley. Procure has compiled the report on the basis of

- (a) information it has been given and which it has reviewed;
- (b) the processes and procedures it has observed; and
- (c) the issues raised with it.

The conclusion stated in section 2 of this report is based upon the work performed as documented in it. While Procure has identified probity risks and considered the controls, environment and action taken by Pittwater Council to address those risks, probity issues may nevertheless have arisen that have not been identified. While Procure may provide input into processes followed, Pittwater Council retains responsibility for the probity of its personnel and processes. The report cannot be relied upon by any other party or for any other purpose.

## CONTENTS

1. INTRODUCTION .....	4
2. SCOPE AND METHODOLOGY .....	4
3. WORK PERFORMED.....	6
4. PROBITY ISSUES .....	7
5. CONCLUSION.....	8

# 1. INTRODUCTION

Procure Group Pty Ltd (Procure) was engaged by Pittwater Council (Council) on 1 July 2015 to provide probity advisory services for Council in relation to the conduct of negotiations between Council and Frasers Property (formerly Australand) (Frasers) for a land swap in the Warriewood Valley.

The properties the subject of the negotiations are 9 Fern Creek Road (owned by Council) and 11, 12 and 13 Fern Creek Road (owned by Frasers). The intention of the land swap is to facilitate the development of Frasers' land holdings (11 and 12 Fern Creek Road are currently both land locked with no public road access) as well as help Council to achieve the desired shape and layout for the southern portion of the Central Local Park in Warriewood Valley.

This matter was reported to the Council Meeting held on 18 May 2015 where the Council endorsed a concept plan for the land swap and authorised the General Manager to enter into negotiations with Frasers. The Council's resolution is attached to this report (Attachment 1). The resolution includes a requirement *that a probity adviser be appointed to oversee and report on this transaction.* (Point 4).

Council officers have prepared a report for consideration at the Council meeting scheduled for 19 March 2016 where Council will consider endorsement of the outcome achieved as a result of the negotiations. This probity report will be presented to Council at the same time.

# 2. SCOPE AND METHODOLOGY

## 2.1 ROLE OF PROBITY ADVISER

In its publication *Probity and Probity Advising* (November 2005) the Independent Commission Against Corruption (ICAC) describe a probity adviser as:

*an individual or organisation engaged to observe, review and provide guidance on the probity framework and/or processes of a project. Agencies use internal or external probity advisers to verify that the processes followed are consistent with government regulations, policies, guidelines and best practice principles. A probity adviser provides opinions and guidance on probity risks and issues that may arise during the process and confirms, in writing, whether the concluded process is consistent with the requirements outlined in a probity plan as well as general probity fundamentals. If probity requirements are not being or have not been met, the adviser identifies the*

*non-conformities and any reasons for these in a written report, and if necessary, suggests solutions and monitors their implementation.*

*A probity adviser is chiefly concerned with ensuring the integrity of the procedures and processes of the project, rather than project outcomes. That is, the focus is on the means, not the ends of the project. The probity advising role is essentially preventive.*

## 2.2 PROBITY FUNDAMENTALS

In undertaking the probity advisory role, Procure general has regard to the “probity fundamentals” described in the ICAC publication. These probity fundamentals are:

- Maintaining impartiality
- Managing conflicts of interest
- Maintaining accountability and transparency
- Maintaining confidentiality
- Obtaining value for money.

## 2.3 BRIEF FOR THE PROBITY ADVISER

The Brief outlined by Council was for Procure to undertake the following tasks:

- Oversee and where required provide probity advice and services in regard to the negotiations.*
- Attend meetings with Frasers and Council officers where it may be deemed that Council has a potential conflict of interest. In the event that attendance is not possible, review meeting notes of such meetings that have been held.*
- At the conclusion of the negotiations, undertake a probity audit of the negotiations and prepare a report in regard to the management of the probity matters. It is envisaged that this report will be provided to the Council when this matter is reported back to Council at the conclusion of the negotiations.*

This probity report relates to the work of the Council officers in conducting the negotiations and preparing a final recommendation to Council. The probity report does not deal with the actions of the elected Council members, Frasers (other than as recorded in this report) or any other Government agencies.

### 3. WORK PERFORMED

In undertaking tasks required by the Brief, Procure has completed the following:

- Noted the decision of Council, at its meeting held on 18 May 2015 which included authorisation for the General Manager of Council to enter into negotiations with Frasers with a view to achieving the land swap under a series of conditions to be captured by a Memorandum of Understanding (MOU). The full text of the Council decision is Attachment 1 to this report.
- Reviewed the Draft MOU and plan of the proposed land provided by Council officers on 20 August 2015. On the same date, these documents were forwarded to Frasers and to Council's solicitors for their consideration and comment.
- Noted that the Draft MOU as prepared by Council was consistent with the requirements of the Council decision of 18 May 2015.
- Attended the meeting held with Frasers on 25 September 2015 to discuss comments and proposed amendments to the MOU as provided by Frasers. Procure explained its role to Frasers and all parties agreed that Procure will receive copies of all communications whether by email or letter.
- Noted that subsequent to this meeting, agreement was reached in relation to the wording of the MOU. The MOU was signed by the General Manager of Council on 29 September and by the authorised representative of Frasers on 1 October 2015. The MOU addressed the following matters, consistent with the Council resolution of 18 May 2015:
  - Area of land to be swapped
  - Creek line corridor dedication and offset
  - Undergrounding of high voltage power lines
  - Road and stormwater construction
  - Necessary amendments to Pittwater LEP 2014
  - Development application to subdivide and consolidate existing lots
  - Costs
  - Engagement of the Probity Advisor,
- Noted the agreement that each party would obtain a separate valuation of the land to be swapped. Further noted that Council advised that its policy required that the valuation received by Council not be made available to Frasers.
- Noted that on 28 September 2015, Council provided Frasers with a package of information to be conveyed to Frasers' land valuers in order to ensure that both Parties received valuations based on identical information.
- Noted that by email on 19 November 2015, the General Manager of Council determined the range of price negotiation to be conducted by Council officers. The range was based on the advice provided by Council's independent valuers.

- Attended the meeting held with Frasers on 20 November 2015 where Council officers presented the Council's position in regard to the financial transfer to Council required from Frasers for the land swap to proceed. Noted that justification provided by Council officers was the value of the increased yield available to Frasers resulting from the proposed land swap.
- Further noted that there was a substantial difference between Frasers and Council in relation to the proposed payment to Council and Frasers agreed to give the issues related to the basis of valuation further consideration.
- Noted that on 24 November 2015, Council provided further information related to dwelling yields and planning controls to Frasers for their consideration.
- Noted that on 16 December 2015, Frasers advised Council by letter of an increased financial offer.
- Noted that further correspondence ensued between Council and Frasers in January 2016 and subsequently by letters dated 2 February 2016 from Council and 16 February 2015 from Frasers and that agreement was reached on the level of payment to be made by Frasers. As stated in the letter from Council, the agreement was subject to endorsement by the elected Council and by the Board of Frasers.
- Contacted representatives of Frasers by email on 9 March 2016 to confirm that they did not have any probity concerns with the manner in which Council conducted the negotiations. No probity concerns have been raised.
- Noted that this agreement was to be finalised by the enactment of a Deed of Agreement which had been drafted by Council's legal advisers and provided to Frasers for comment. Noted that on 8 March 2016, Frasers advised that they had no further comments and were in agreement with the Deed of Agreement as then worded.
- Attended Council premises on 9 March 2016 to review relevant documentation held by Council. Confirmed with the Council officers responsible for the negotiations that no conflict of interest issues or other probity concerns had arisen during the negotiations.
- Reviewed the draft report to Council on the outcome of the land swap negotiations and confirmed that it was an accurate representation of the process followed and outcomes achieved.

## 4. PROBITY ISSUES

Procure was engaged by Council due to Council's wish to ensure that negotiations regarding Council-owned land are conducted with due transparency, impartiality and achieve value for money. The elected Council will be accountable for the final decision.

It is important in this context to recognise the issues that face councils in dealing with council-owned land. The ICAC has recognised that in this circumstance councils face a conflict of roles which is not the same as a conflict of interest. The risk is that the matters in which a council has a direct role may not be dealt with impartially. An important means to mitigate this risk is to ensure that decision-making related to council-owned land is consultative and transparent to the community.

In this context, Procure notes:

- That the proposed development of this and surrounding land was first considered by Council in May 2014 and over the following 12 months substantial consultation with affected landowners was undertaken.
- That a public meeting will be held on 17 March 2016 to discuss the outcome of the negotiations prior to the report to an open Council meeting on 19 March 2016.

## 5. CONCLUSION

Based upon our work performed and detailed in this report, no issues of a probity nature have come to our attention that would lead us to conclude that the process followed in the conduct of negotiations by Council officers with Frasers regarding the land swap in the Warriewood Valley has not been conducted in an accountable and transparent manner and with due regard to addressing the probity fundamentals.

Attachment 1

C12.4 Warriewood Valley Open Space- Southern Component of Central Local Park (Sector 9)

Meeting: Sustainable Towns & Villages Committee Date: 18 May 2015

COMMITTEE RECOMMENDATION

1. That the Concept Layout Plan for the Central Local Park, in particular the southern half located within Sector 9 be endorsed as an indicative plan only and the General Manager be authorised to enter into negotiations with Australand, the owner of the adjoining lands to progress this outcome.
2. That the transaction be captured by a Memorandum of Understanding between the parties and be based on the following:
  - the creekline corridor acquisition is completed as a separate financial transaction as per the S94 Plan prior to the landswap to establish net areas of land involved.
  - an area for area swap of land so that the net open space compared to the current rectangle is not reduced.
  - the valuation of the lands to be swapped being based on highest and best use.
  - a financial adjustment to be made noting the difference in land valuations.
  - the undergrounding of the overhead power where practical as per Ausgrid requirements.
  - that undergrounded stormwater management along the drainage easement be included.
  - the direct provision of full width road infrastructure (excluding parking bays on the reserve side) by Australand.
  - the land being swapped to be rezoned to be consistent with the intended future land use. In this regard: I. the part of the land owned by Council currently zoned residential with no dwelling yield would be rezoned to residential with a potential yield of 32 dwellings per developable hectare; II. the part of the land owned by Australand currently zoned for residential would be rezoned to recreational and the adjoining land not being swapped provided a prorata development potential where this is already a lower fixed yield.
  - that the landswap area be calculated from the edge of the riparian zone (at 25m).
3. That an updated valuation be obtained from an independent Valuer to ascertain the likely land values of the various parcels involved in the overall transaction.
4. That a probity advisor be appointed to oversee and report on this transaction.
5. That a report be brought back to Council detailing the negotiation, the Memorandum of Understanding and the financial aspects of the transaction.

# COUNCIL MEETING

# MINUTES

19 March 2016

Meeting commenced at 9.00am

held at Mona Vale Memorial Hall,  
Mona Vale

M J Ferguson  
General Manager



## ATTENDANCE

### Members

Townsend, J (Mayor & Chairperson)  
Ferguson, K (Deputy Mayor)  
Grace, B  
Griffith, S  
McTaggart, A  
Millar, K  
White, I  
Young, S

### Officers

Ferguson, M (General Manager)  
Hewitt, M (DGM, Environmental Planning & Community)  
Taylor, B (DGM, Urban & Environmental Assets)  
Lawrence, W (Manager, Administration & Governance)  
Griffith, N (Manager, Place Management)  
Mulroney, J (Manager, Community Engagement)  
Henty, A (Manager, Commercial Property & Projects)  
Stagni, T (S94 Coordinator)  
Tasker, P (Administration Officer/ Minute Secretary)

# Council Meeting

## TABLE OF CONTENTS

Item No	Item	Page No
<b>Council Meeting</b>		<b>5</b>
1.0	Public Forum	5
2.0	Resident Questions	5
3.0	Apologies	5
4.0	Declarations of Pecuniary and Conflict of Interest including any Political Donations and Gifts	6
5.0	Confirmation of Minutes	6
6.0	Public Addresses	6
7.0	Councillor Questions with Notice	6
8.0	Mayoral Minutes	6
9.0	Business by Exception	7
<b>Sustainable Towns and Villages Committee</b>		<b>7</b>
12.0	Sustainable Towns and Villages Committee Business	7
C12.1	Warriewood Valley Open Space- Southern Component of Central Local Park (Sector 9)	7
C12.2	Minutes of the Sustainable Towns and Villages Reference Group Meeting held on 17 February 2016	8
<b>Council Meeting</b>		<b>9</b>
10.0	Council Meeting Business	9
C10.1	Notice of Motion - NSW Government Merger Proposals (Submitted by Cr Grace)	9
<b>Leading and Learning Committee</b>		<b>10</b>
11.0	Leading and Learning Committee Business	10
C11.1	6 Month Management Report - July-December 2015	10

<b>Item No</b>	<b>Item</b>	<b>Page No</b>
C11.2	Investment Balances as at 29 February 2016	10
C11.3	Tender T12/15 - Operation & Management of Monthly Markets at Governor Phillip Park, Palm Beach	11
C11.4	Report on Conference Attendance - NSW Public Libraries Association SWITCH 2015 - Cr Julie Hegarty	11
C11.5	Public Exhibition of the Avalon to Palm Beach Floodplain Risk Management Study and Plan	11
C11.6	Minutes of the Avalon to Palm Beach Floodplain Risk Management Study and Plan Working Group Meeting held on 18 February 2016	12
C11.7	Minutes of the McCarrs Creek, Mona Vale & Bayview Flood Study Community Working Group Meeting held on 4 February 2016	12
C11.8	Minutes of the Audit and Risk Committee Meeting held on 16 February 2016	12
C11.9	Minutes of the Leading and Learning Reference Group Meeting held on 24 February 2016	12
<b>Council Meeting</b>		<b>13</b>
<b>13.0</b>	<b>Adoption of Leading and Learning Committee Recommendations</b>	<b>13</b>
<b>14.0</b>	<b>Adoption of Sustainable Towns and Villages Committee Recommendations</b>	<b>13</b>

**Notes:**

1. The Council Meeting commenced at 9.00am and adjourned at 9.09am, recommenced at 9.34am and adjourned at 10.12am, recommenced at 10.17am and adjourned at 10.33pm, recommenced at 10.48am and concluded at 10.50am.
2. The Sustainable Towns and Villages Committee Meeting commenced at 9.10am and concluded at 9.33am.
3. The Leading and Learning Committee Meeting commenced at 10.34am and concluded at 10.47am.

---

**Council Meeting**

---

**1.0 Public Forum**

Nil.

---

**2.0 Resident Questions**

Nil.

---

**3.0 Apologies**

**COUNCIL DECISION**

That apologies be received and accepted from Cr Hegarty and leave of absence be granted from the Council Meeting held on 19 March 2016.

(Cr Millar / Cr Ferguson)

---

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

Cr Millar declared a less than significant non pecuniary interest in Item C12.1 – Warriewood Valley Open Space – Southern Component of Central Local Park (Sector 9) and elected to remain in the meeting and to take part in discussion and voting on this item. The reason given by Cr Millar was:

*“I live in Warriewood Valley, however this should not exclude me from participating in discussion and debate.”*

---

#### **5.0           Confirmation of Minutes**

##### **COUNCIL DECISION**

That the Minutes of the Council Meeting held on 7 March 2016 copies of which were circulated to all Councillors be and are hereby confirmed as a true and accurate record of the proceedings of that meeting.

(Cr Ferguson / Cr Millar)

---

#### **6.0           Public Addresses**

**C12.1 – Warriewood Valley Open Space – Southern Component of Central Local Park (Sector 9)** – with the leave of the Council Mr Chris Hornsby (President, Warriewood Residents Association) addressed the meeting speaking in support of the recommendation on this item.

---

#### **7.0           Councillor Questions with Notice**

Nil.

---

#### **8.0           Mayoral Minutes**

Nil.

---

## 9.0 Business by Exception

### COUNCIL DECISION

That Items C11.2, C11.4, C11.6 and C11.7 be dealt with by exception and the recommendations contained in the reports for these items be adopted.

(Cr White / Cr Ferguson)

---

### Procedural Motion (COUNCIL DECISION)

That the Council Meeting be adjourned and the Sustainable Towns and Villages Committee Meeting now commence.

(Cr White / Cr Millar)

### Notes:

1. The Council Meeting adjourned at 9.09am and the Sustainable Towns and Villages Committee Meeting commenced at 9.10am.
2. Cr Griffith assumed the Chair.

---

## Sustainable Towns and Villages Committee

---

### 12.0 Sustainable Towns and Villages Committee Business

---

#### C12.1 Warriewood Valley Open Space- Southern Component of Central Local Park (Sector 9)

### COMMITTEE RECOMMENDATION

1. That Council note:
  - a. The comprehensive community engagement that has occurred in relation to this matter
  - b. The terms of the Memorandum of Understanding
  - c. The independent valuation advice
  - d. The terms of the Deed of Agreement
  - e. That the cash adjustment from the proposed land transfers will be reinvested into the Section 94 fund to implement the plan as endorsed by Council.
  - f. The findings of the probity report prepared by Procure Group (Attachment 6).
2. That Council endorse the proposed terms of the land swap and authorise the General Manager to sign the deed of agreement for the land swap.

3. That Council support the progression of the land swap agreement, comprising:
  - a. Preparation and lodgement of a Planning Proposal to amend Pittwater LEP 2014 to reallocate dwelling yield and rezone the future park to a recreation zone as outlined in the Deed of Agreement,
  - b. Preparation and lodgement of a development application to subdivide/consolidate the existing land parcels to enable the transfer of land to occur.
4. That a future report be brought to Council at the completion of the transaction.
5. That Council endorse the concept masterplan for the southern component of the Central Local Park (Figure 2) to enable it to be progressed following the land swap.
6. That Council include stakeholders in the design of the southern component of the Central Local Park (Sector 9).

(Cr Millar / Cr Ferguson)

**Note:**

Cr Millar declared a less than significant non pecuniary interest in Item C12.1 – Warriewood Valley Open Space – Southern Component of Central Local Park (Sector 9) and elected to remain in the meeting and to take part in discussion and voting on this item. The reason given by Cr Millar was:

*“I live in Warriewood Valley, however this should not exclude me from participating in discussion and debate.”*