

AGENDA

Notice is hereby given that an Ordinary Meeting of Council will be held at the Civic Centre, Dee Why on

Tuesday 30 May 2017

Beginning at 6.30pm for the purpose of considering and determining matters included in this agenda.



Mark Ferguson
General Manager

Issued: 25/05/2017

ITEM 9.5	PLANNING PROPOSAL (PP0002/16) FOR CENTRAL LOCAL PARK WARRIEWOOD - 9,11,12 AND 13 FERN CREEK ROAD, WARRIEWOOD
REPORTING MANAGER	GENERAL MANAGER PLANNING PLACE AND COMMUNITY
TRIM FILE REF	2017/129216
ATTACHMENTS	<ol style="list-style-type: none"> 1 Assessment Report (Included In Attachments Booklet) 2 Probity Report (Included In Attachments Booklet) 3 Signed MOU and Land Swap Deed (Included In Attachments Booklet) 4 Council Report and Resolution (Included In Attachments Booklet) 5 Fern Creek PP - Aerial Map (Included In Attachments Booklet)

EXECUTIVE SUMMARY

PURPOSE

The purpose of this report relating to a Planning Proposal (PP0002/16) lodged for 9, 11, 12 and 13 Fern Creek Road, Warriewood, is to:

1. Present the assessment report prepared by an external planning consultant (MBWA Consulting)
2. Present the Probity Audit Report prepared by a Probity Advisor (Procure Group)
3. Respond to any submission that raises concerns on the submitted Draft Voluntary Planning Agreement (VPA) documentation.

SUMMARY

Northern Beaches Council received a Planning Proposal (PP0002/16) from GLN Planning, on behalf of Council's Property Management & Commercial Business Unit, relating to 9, 11, 12 and 13 Fern Creek Road, Warriewood.

The Planning Proposal seeks to amend the Pittwater Local Environmental Plan (PLEP) 2014 to enable the creation of the southern portion of the planned Central Local Park. A secondary objective is to enable the development of the remaining land in an orderly and economic manner for housing. This will be achieved through an amendment to the Land Zoning map, the Height of Building map, and the dwelling provisions contained in Part 6 Clause 6.1(3) PLEP 2014.

The amended Planning Proposal, received on 17 January 2017, did not change in terms of the proposed amendments to the PLEP 2014 but responded to Council's request for additional information, addressing issues raised in its consultant's preliminary assessment and the submissions. A significant piece of new information accompanying this amended Planning Proposal was a preliminary 'draft version' of the Voluntary Planning Agreement (VPA) and Explanatory Note, "*in the interest of clarity and transparency at this non-statutory exhibition phase*"¹. The Draft Voluntary Planning Agreement (Draft VPA) and Explanatory Note formed part of the documentation package that was released for preliminary (non-statutory) exhibition.

¹ P.3 of Cover Letter, dated 17 January 2017, prepared & submitted by GLN Planning

The preparation of a Draft VPA originated from the Memorandum of Understanding between the then Pittwater Council and Frasers Property (formerly Australand) for the subject properties (now the subject of this Planning Proposal) in October 2015. On 19 March 2016, Council resolved, to authorise the General Manager to sign the Deed of Agreement where the parties are to enter into a future Planning Agreement as part of the completion conditions stipulated by the Deed.

On 18 April 2017, following the conclusion of the the second preliminary (non-statutory) notification period for the Planning Proposal, the applicant formally withdrew the draft version of the VPA

Council is the landowner of 9 Fern Creek Rd and the proponent for this application. An external planning consultant, MBWA Consulting, was engaged to assess the application on behalf of Council's Strategic Land-Use Planning Business Unit. The assessment report, prepared by MBWA Consulting is in Attachment 1.

Procure Group was engaged to undertake a probity audit of the assessment by MBWA Consulting and the roles of Council in the assessment process. A Probity Audit Report is available in Attachment 2.

For the purpose of transparency, submissions raising specific issues with the Draft VPA and the Explanatory Note are addressed by this report prepared by Council officers. There is no assessment on the merits the Draft VPA, and it does not form part of the Planning Proposal.

RECOMMENDATION OF GENERAL MANAGER PLANNING PLACE & COMMUNITY

That Council:

- A. Note the contents of this report.
 - B. Endorse the recommendations of Council's engaged Independent Planning Consultant, MBWA Consulting, as outlined in Attachment 1.
 - C. Note the report prepared by Council's Probity Advisor, Procure Group, as outlined in Attachment 2.
-

REPORT

BACKGROUND

Background to Memorandum Of Understanding (Mou)

Council purchased 9 Fern Creek Road in 2008 which is rectangular in shape and adjoins Fern Creek, although not ideal in shape for the purpose of expanding Central Local Park to create a more linear shaped open space area for the community. Council waited for the opportunity of using this land as a means to achieve this desired shape through possible land swap. This opportunity came in 2013 when Fraser Property, the owner of adjoining land parcels 11, 12 and 13 Fern Creek Road, put forward a formal land swap proposal to Council which would facilitate the development of 9 Fern Creek Rd's land holdings as well as achieving Council's preferred open space layout for the sector. This proposal involved swapping the northern portions of Fraser Property's three properties for the southern portion of Council's property.

Between May 2014 and May 2015, 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 which resulted in a concept plan that was endorsed by Council for the land swap on 18 May 2015 and the General Manager was authorised to commence negotiations with Fraser Property.

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 which ultimately formed Annexure A to the Memorandum of Understanding (MOU) that was later agreed to by the parties. 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.

In October 2015 the respective General Managers of Frasers and Council signed a MOU, including a Land Swap Plan (Annexure A) that shows and addresses the following matters:

- Area of land to be swapped
- Creek line corridor dedication and offset
- Services: undergrounding of high voltage power lines, road & stormwater infrastructure
- Necessary amendments to Pittwater LEP 2014
- Development Application to subdivide/consolidate existing lots
- Costs
- Probity Advisor.

A copy of the signed MOU is attached.

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

On 19 March 2016, Council endorsed the proposed terms of the land swap and authorised the General Manager to sign the Deed of Agreement for the land swap at its meeting (Attachment 4).

The Deed of Agreement contains details of the provision of infrastructure such as extension to Fern Creek Road, new East-West Road, stormwater infrastructure and undergrounding the high voltage power lines that cross the site. The details related to this infrastructure are separate to the Planning Proposal.

The signed Deed of Agreement is attached to this report (Attachment 3). This Deed represents the final agreed position of Council staff and Frasers. Attached to the Deed is the agreed land swap plan referred as Annexure A.

As such, to progress with the land swap agreement, a Planning Proposal needs to be prepared to amend PLEP 2014.

Draft Voluntary Planning Agreement (VPA)

On 17 January 2017, a draft version of the VPA and an Explanatory Note were submitted as part of the amended Planning Proposal.

The applicant, GLN Planning, advised that the purpose of submitting the Draft VPA and Explanatory Note is to provide a “draft version at this non-statutory exhibition stage of the Planning Proposal in the interest of clarity and transparency” and is “intended to facilitate the provision of the southern Central Park in its preferred configuration. We understand that the draft VPA will need to be reviewed and agreed by Council and will be publicly advertised in accordance with the provisions of the Environmental Planning & Assessment Act 1979 during the statutory exhibition of the Planning Proposal (noting that this will be once the Planning Proposal has been endorsed by Council and has been sent to the Department of Planning and Environment for Gateway Approval)”².

On 18 April 2017, after the second preliminary (non-statutory) notification period ended, the applicant wrote to formally withdraw the submitted Draft VPA (and the Explanatory Note).

It is acknowledged that the Planning Proposal can be assessed and determined independently of a VPA being in place or otherwise.

Conversely, the merits of the offer between Council and Fraser Property has already been assessed and agreed to by Council that in turn, facilitated in the preparation of the Draft VPA. For this reason, no assessment has been made in regard to the Draft VPA that accompanied the Planning Proposal, recognizing it was provided as information to assist the understanding of the origin / impetus of the Planning Proposal being lodged with Council and formed part of documentation package that was released for exhibition at the preliminary (non-statutory) notification phase.

As a result of this notification period, two (2) submissions were received raising specific concerns with the Draft VPA and the Explanatory Note, and have been responded to by Council in Table 1 on the following page.

Council will only focus on specific issues that have been raised by the submissions in relation to the Draft VPA and the Explanatory Note and any identified errors and inconsistencies with the proposal submitted by the applicant. Any merits and details of the Draft VPA do not form part of the assessment for this Planning Proposal, noting the above-mentioned signed MOU and the Deed of Agreement already outline the extent of land swap agreement which were endorsed by the Council on 19 March 2016. The Draft VPA will, when it is finalised, need to be presented to Council at a later date under a separate process to this Planning Proposal.

² P.3 of Cover Letter, dated 17 January 2017, prepared & submitted by GLN Planning

TABLE 1 - ISSUES RAISED

ISSUES RAISED	RESPONSE
Sale of the property	
<p>The sale of 9 Fern Creek Road was advertised early in 2016 subject to a VPA and a MOU with an approximate dwellings yield (advertised for 33 dwellings).</p>	<p>Council acknowledges that the sale of the property was advertised by a Real Estate Agent for "Fern Creek Rd, Warriewood". Council has no control on how properties are being marketed by Real Estate Agencies. The following points of clarification are provided:</p> <ul style="list-style-type: none"> ▪ The advertisement does not indicate which property number(s) of Fern Creek Rd is/are selling. ▪ The advertisement indicates the property is "sold" and the indicative boundary of the property being advertised included 9 Fern Creek Rd. ▪ The wording of the advertisement is pre-empting the outcome of this Planning Proposal, a future Development Application, and as yet finalised unsigned Draft VPA. <p>To this date, Council (as the proponent of this Planning Proposal application), remains the landowner of 9 Fern Creek Rd.</p> <p>The sale of the property does not influence the assessment of the Planning Proposal. The Planning Proposal relates to the land and not the owner of the property.</p>
Dwelling yield increase	
<p>In the exhibited 'additional' document (Explanatory Note), the proposed number of maximum dwelling has now increased to 52 dwellings...Here we have in the 'additional' document either a significant error of fact or else an improper and unjustified density increase – an increase of 24 dwellings...</p>	<p>There is a discrepancy with the Planning Proposal Report and the accompanied Draft VPA, regarding the maximum number of dwellings that is being sought (maximum 33 vs 52 dwellings respectively).</p> <p>The Draft VPA and Explanatory Note are now withdrawn. Nonetheless, this discrepancy and any other identified errors with the Draft VPA and Explanatory Note will be forwarded to Council's Property Management & Commercial Business Unit (the author of the VPA documentation) to ensure it is corrected before it is separately presented to Council for its agreement.</p> <p>The assessment of the Planning Proposal accounts for the maximum 33 dwellings for 9, 11 & 12 Fern Creek Road, and is consistent with the signed MOU and Deed of Agreement.</p>

Omission of Schedules 6 & 7 of the Draft VPA	
<p>Schedules 6 and 7 have not been included in this VPA. No reason for this omission has been provided.</p> <p>On page 4 of the VPA, it is stated "Developer Creek Line Corridor Land means the land shown in dark green and marked "To 25 Metre Creek Corridor" on the Plan at Schedule 6." This statement cannot be properly assessed by the public unless the Schedule is provided.</p> <p>The proposed northern extension of a local road through 9 Fern Creek is not provided (Schedule 6). How can this have been omitted?</p> <p>The 'additional' documents also omit this essential diagram. As with Schedule 6, how can council expect the public to be adequately and properly informed if this essential information is withheld or otherwise not provided?</p> <p>Without council (or the entity lodging this PP) providing the essential but missing information there can be no proper public scrutiny of the Planning Proposal.</p>	<p>These schedules were not attached to the Draft VPA provided with the amended Planning Proposal, and did not convey the details of the Draft VPA</p> <p>As advised by the applicant, the purpose of providing the Draft VPA is to provide a <i>"draft version at this non-statutory exhibition stage of the Planning Proposal in the interest of clarity and transparency"</i> and is <i>"intended to facilitate the provision of the southern Central Park in its preferred configuration."</i>³</p> <p>The Draft VPA, when it is finalised, will be presented to Council under a separate cover, ahead of it being publicly exhibited. It is at that time, that details associated with the VPA will be available and afforded scrutiny and rigour.</p> <p>As advised by MBWA Consulting, the Planning Proposal application can be assessed and considered separate to the VPA.</p>
Road Layout	
<p>Concern over the road layout on works along Fern Creek Road and East-West Road and the need for these roads - Schedule 4 of the VPA lists.</p> <p>There is no plan of the east-west road in the VPA for clarity.</p>	<p>Schedule 4 of the Draft VPA outlines the methods and timing on the delivery of certain infrastructure to be agreed upon by the parties. These details are not necessary for the purposes of assessing the Planning Proposal.</p> <p>The delivery of the infrastructure as outlined in the Draft VPA is outside the Warriewood Valley s94 Contributions Plan's schedule. The design of these road works will be the subject of any subsequent Development Applications following the outcome of this Planning Proposal.</p> <p>As the concern raised encompasses the necessity and merits of the road layout for Fern Creek Rd and East-West Rd, it does not form part of this response, noting that the VPA has been withdrawn and associated documentation is no longer relevant to this Planning Proposal for consideration.</p>

³ P.3 of Cover Letter, dated 17 January 2017, prepared & submitted by GLN Planning

FINANCIAL IMPACT

Should the Planning Proposal proceed and subsequently be finalised, a partnership with the private sector in moving forward with the land swap agreement to deliver a passive recreation area, improved housing and subdivision design, that, in turn, recognises the land release development is nearing or close to completion

SOCIAL IMPACT

The proposal will improve the utility and design of the passive open space layout, delivering a large linear shaped open space area spanning both sides of Fern creek, known as the Central Local Park, for the release area that would encourage social activities/ interactions; and assists in fostering a sense of community identity; enhance existing public space and recreation networks for the benefit of future generations and improve the quality of public space through upgrading and managing existing networks.

POLICY IMPACT

Should the Planning Proposal proceed and subsequently be finalised, the outcome will be consistent with Council's Warriewood Valley Section 94 Contributions Plan and Public Space & Recreation Strategy in providing more public recreation open space in Warriewood Valley as part of the urban land release.

If endorsed as recommended, this would necessitate changes in the Warriewood Valley Strategic Review Addendum Report including the dwelling yield, being "not more than 33 dwellings or less than 26 dwellings" as they apply to sectors 901C, 901G and 9 Fern Creek Road which are to be developed together; relevant maps; and re-wording of several sections within the Addendum Report and Control C6.11 of Pittwater 21 Development Control Plan to reflect the outcome of this Planning Proposal.

ENVIRONMENTAL IMPACT

The Planning Proposal will have minor environmental impact and can be mitigated during implementation.

NORTHERN BEACHES COUNCIL



Independent Assessment Northern Beaches Council

PP0002/16 – PLANNING PROPOSAL

9, 11, 12 AND 13 FERN CREEK ROAD,
WARRIEWOOD



Summary

MBWA Consulting has been engaged by Northern Beaches Council to undertake an independent assessment of a Planning Proposal (PP0002/16) for 9, 11, 12 and 13 Fern Creek Road, Warriewood.

The Planning Proposal seeks to amend Pittwater Local Environmental Plan 2014 to primarily enable the creation of the southern portion of the planned Central Local Park. A secondary objective is to enable the development of the remaining land in an orderly and economic manner for housing. This will be achieved through an amendment to the Land Zoning map, amend the Height of Building map, and amend the dwelling provisions contained in Part 6 Clause 6.1(3) Pittwater Local Environmental Plan 2014.

As Council is a landowner and party to the land swap to mitigate potential probity issues, an independent planning consultant was engaged to prepare the Planning Proposal (GLN Planning) on behalf of Council's Property Management and Commercial Business Unit and an independent planning consultant was engaged to assess the application (MBWA Consulting) on behalf of Council's Strategic Land Use Planning Business Unit. Further Council engaged a probity advisor to prepare a Probity Report to guide the preparation and assessment of the Planning Proposal (Procure Group).

A Planning Proposal was submitted to Council 8 August 2016. The Planning Proposal underwent a non-statutory exhibition for 14 days. A preliminary assessment was undertaken of the Planning Proposal and a number of issues and questions were raised that required clarification. The applicant responded to the request for additional information and resubmitted an updated Planning Proposal on the 17 January 2017.

The updated Planning Proposal adequately addressed the majority of issues that Council and the independent consultant had preliminary concerns with and this assessment report is based on the amended/updated Planning Proposal *Rezoning of Central Local Park Warriewood July 2016 (Amended January 2017)* prepared by GLN Planning.

Three issues however have been identified that require further investigation and/or action:

- Land contamination;
- Survey plan; and
- Reclassification of part of 9 Fern Creek Road.

An assessment in accordance with the *NSW Planning and Environment's Planning Proposals: A guide to preparing planning proposals (2016)* was undertaken, and has concluded that the Planning Proposal provides sufficient merit to progress to a Gateway determination subject to conditions. It will be requested that the Department of Planning and Environment consider as part of the Gateway determination conditions that the Planning Proposal:

- require a contaminated land assessment report in accordance with State Environmental Planning Policy No. 55 - Remediation of Land; and
- assess the impact of overland flow flooding and address the consistency with the s.117 Directives for 4.3 Flood Prone Lands.

To further maintain Council's independence from the decision making process, Council is not seeking delegation to exercise the LEP making powers delegated under Section 59 of the *Environmental Planning and Assessment Act 1979* in regard to this Planning Proposal. Instead the Department of Planning and Environment will undertake the plan making functions for the Planning Proposal.

Recommendations

As part of the assessment of the Planning Proposal I make the following recommendations to Council.

- A. Support the request to amend the Land Zoning map, Height of Buildings map and Part 6 Clause 6.1(3) of Pittwater Local Environmental Plan 2014 for land at 9,11,12 and 13 Fern Creek Road, Warriewood.
- B. Prepare a Planning Proposal that amends the Land Zoning map of part of Lots 11 and 12 DP 1092788 and part Lot 5 DP 736961 (9, 11, 12 Fern Creek Road, Warriewood) and Lot 13 DP 1092788 (13 Fern Creek Road, Warriewood) from R3 Medium Density Residential to RE1 Public Recreation, amend the Height of Buildings map to reflect 8.5m on land to be rezoned RE1 Public Recreation and 10.5m for the portion of 9 Fern Creek Road to be retained as R3 Medium Density and amend the dwelling provisions contained in Part 6 Clause 6.1(3).
- C. Request the applicant prepare a detailed survey plan of the Planning Proposal boundaries for consideration by the community at the statutory exhibition period.
- D. Request that the Department of Planning and Environment consider as part of the Gateway determination conditions that the Planning Proposal:
 - require a contaminated land assessment report in accordance with State Environmental Planning Policy No. 55 - Remediation of Land; and
 - assess the impact of overland flow flooding and address the consistency with the s.117 Directives for 4.3 Flood Prone Lands.
- E. Forward the Planning Proposal to the Department of Planning and Environment with a request for a Gateway determination.
- F. Amend Pittwater 21 Development Control Plan Clause 6.11 Indicative Layout Plan No 2 to reflect the proposed layout of the Planning Proposal and delete Indicative Layout Plan No 1 and place on exhibition concurrently with the Planning Proposal.
- G. Amend Warriewood Valley Strategic Review Addendum Report 2014 to reflect the provisions of the Planning Proposal and place on exhibition concurrently with the Planning Proposal.
- H. In accordance with s.33 of the *Local Government Act 1993* reclassify part Lot 5 DP 736961 proposed to be zoned RE1 Public Recreation from land classified as 'operational' to land classified as 'community' and undertake a 28-day public notification in accordance with s.34 of the *Local Government Act 1993* noting that this resolution is separate to the Planning Proposal process.

INDEPENDENT ASSESSMENT

PLANNING PROPOSAL (PO002/16)

CENTRAL LOCAL PARK WARRIEWOOD – 9, 11, 12 AND 13 FERN CREEK ROAD,
WARRIEWOOD**1.0 Introduction**

MBWA Consulting has been engaged by Northern Beaches Council (Council) to undertake an independent assessment of a Planning Proposal (PP0002/16).

Council received a Planning Proposal from GLN Planning Consultants on behalf of Council's Property Management and Commercial Business Unit relating to 9, 11, 12 and 13 Fern Creek Road, Warriewood.

The Planning Proposal seeks to amend the Pittwater Local Environmental Plan 2014 to primarily enable the creation of the southern portion of the planned Central Local Park. A secondary objective is to enable the development of the remaining land in an orderly and economic manner for housing. This will be achieved through an amendment to the Land Zoning map, amend the Height of Building map, and amend the dwelling provisions contained in Part 6 Clause 6.1(3) Pittwater Local Environmental Plan 2014.

As Council is a landowner and party to the land swap to mitigate potential probity issues, an independent planning consultant was engaged to prepare the Planning Proposal (GLN Planning) on behalf of Council's Property Management and Commercial Business Unit and an independent planning consultant was engaged to assess the application (MBWA Consulting) on behalf of Council's Strategic Land Use Planning Business Unit. Further Council engaged a probity advisor to prepare a Probity Report to guide the preparation and assessment of the Planning Proposal (Procure Group).

An assessment in accordance with the NSW Planning and Environment's *Planning Proposals: A guide to preparing planning proposals (2016)* has been undertaken, and has concluded that the Planning Proposal provides sufficient merit to progress to a Gateway determination.

2.0 Subject Land

The site comprises 4 lots:

Address	Property Description	Sector Number or Reference in Pittwater LEP 2014
9 Fern Creek Road	Lot 5 DP 736961	9 Fern Creek Road
11 Fern Creek Road	Lot 11 DP 1092788	901G
12 Fern Creek Road	Lot 12 DP 1092788	901C
13 Fern Creek Road	Lot 13 DP 1092788	(Part) 901A

3.0 Background

3.1 Previous Council Reports

The history of the site is well documented in a number of previous Council reports. As background, the following Council reports have been referred to in this assessment report:

- 21 April 2008 – Acquisition of Land for District Park – Sector 9, Warriewood Valley Land Release.
- 21 July 2008 – Review of Warriewood Valley Section 94 Contributions Plan.
- 1 September 2008 - Review of Warriewood Valley Section 94 Contributions Plan.
- 12 June 2013 – Warriewood Valley Strategic Review Report.
- 19 May 2014 – 9 Fern Creek Road Warriewood – Proposed Land Swap.
- 17 November 2014 – Warriewood Valley Strategic Review Addendum Report.
- 18 May 2015 – (C12.1) Warriewood Valley Open Space – Southern Component of Central Local Park (Sector 9).
- 19 March 2016 – Warriewood Valley Open Space – Southern Component of Central Local Park (Sector 9).

3.2 History

In 2008 Council resolved to purchase 9 Fern Creek Road after assessing the suitability of a number of land parcels in Sector 9 for their suitability for open space purposes. 9 Fern Creek Road is rectangular in shape and approximately 1.15ha in area (9273m² excluding creek line) 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.

At the time 9 Fern Creek Road was purchased the form and layout of development in Sector 9 was still uncertain and Council therefore 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.

The Warriewood Valley Strategic Review Report 2013 (Strategic Review) was carried out by the former Pittwater Council and NSW Department of Planning and Infrastructure and was endorsed by the Director General of the Department on 1 May 2013, and was adopted by Council on 12 June 2013.

The Strategic Review covered Council's dwelling density and height controls for Warriewood Valley, the current transport network and infrastructure demands. The Strategic Review relied on comprehensive environmental, social and economic data to ensure its outcomes provided for sustainable development. 9 Fern Creek was identified as having potential for intensification of development, however at the time, it was excluded from an allocated dwelling yield.

The subject properties were rezoned 2(f) Urban Purposes - Mixed Residential (Pittwater LEP 1993) as a result of recommendations of the Strategic Review Report.

Following the adoption of the Strategic Review, further investigations were carried out under the Warriewood Valley Strategic Review Addendum Report 2014 for lands not provided a clear forward path under the Strategic Review Report. The subject sites were all given a Land Capability classification identifying their suitability for development. 9 Fern Creek Road was identified as having the potential for a maximum density of 32 dwellings/Ha and a minimum of 25 dwellings/Ha, however 9 Fern Creek Road was not allocated a dwelling yield as the parcel was purchased by Council for recreation purposes.

Pittwater Local Environmental Plan 2014 (Pittwater LEP 2014) came into effect 27 June 2014 and zoned the subject properties R3 Medium Density Residential.

In 2013, Fraser Property (formerly Australand), the owner of adjoining land parcels 11, 12 and 13 Fern Creek Road, presented 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 generally involved swapping the northern portions of Frasers three properties for the southern portion of Council's property.

Between May 2014 and May 2015 consultation occurred with the adjoining landowners and the Warriewood Residents Association to examine Frasers proposal as well as other potential options for the southern portion of the Central Local Park.

A revised concept plan with a larger area provided for the park was endorsed by Council for the land swap on 18 May 2015 and authorised the General Manager to commence negotiations with Frasers.

This revised concept included an additional 1800sqm 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.

Council endorsed the proposed terms of the land swap and authorised the General Manager to sign the Deed of Agreement for the land swap at its meeting 19 March 2016. It is recommended that the Council report of 19 March 2016 be included as background when the Planning Proposal is sent to the Department of Planning and Environment (Department).

The Deed of Agreement also contains details of the provision of infrastructure. The details related to this infrastructure are separate to the Planning Proposal, however as background the associated infrastructure includes:

- extension of the Fern Creek Road north and construction of a new east-west road connecting Fern Creek Road with the eastern half of Sector 9;
- associated stormwater infrastructure; and
- undergrounding the high voltage power lines that run along the boundary at 9 and 12 Fern Creek Road.

To progress the land swap agreement a Planning Proposal needs to be prepared to amend Pittwater LEP 2014. This report provides an assessment of the Planning Proposal.

3.3 Probity Issues

Council at its meeting, 19 March 2016, detailed that as landowner and party to the land swap there was a need to mitigate potential probity issues. In this regard, Council's Property Management and Commercial Business Unit engaged an independent planning consultant - GLN Planning Consultants - to prepare and lodge the Planning Proposal on Council's behalf. Council's Strategic Land Use Planning Business Unit engaged an independent planning consultant - MBWA Consulting - to assess the Planning Proposal.

Further an independent probity consultant - Procure Group - was commissioned to guide the preparation and assessment of the Planning Proposal.

To further maintain Council's independence from the decision making process, Council is not seeking delegation to exercise LEP making powers delegated under Section 59 of the

Environmental Planning and Assessment Act 1979 in regard to this Planning Proposal. Instead the Department will undertake the plan making functions.

4.0 INITIAL PLANNING PROPOSAL

A Planning Proposal was submitted to Council 8 August 2016. This Planning Proposal underwent preliminary non-statutory exhibition from 15 August 2016 to 29 August 2016.

Council received 7 written submissions, comprising 6 objections/concerns and 1 submission raising issues about the broader Warriewood Valley area.

A submission was also received from NSW Rural Fire Services.

A preliminary assessment was undertaken of the Planning Proposal and a number of issues and questions were raised that required clarification. Council wrote to the proponent on 23rd September 2016 requesting additional information and clarification. The applicant (GLN Planning) responded to the request for additional information. The issues are summarised below with the response from the applicant in the third column:

Issue	Explanation	Applicant's Response (GLN Planning)
Objectives and Intended Outcomes.	Clearly identify the objectives and intended outcomes at the beginning of the Planning Proposal.	<i>Planning Proposal updated to clearly identify the Objectives and intended outcome.</i>
Is any reclassification of land required?	The Planning Proposal was silent of the whether any reclassification of any land was required.	<i>9 Fern Creek was purchased in 2008 and immediately allocated an 'operational' land classification. The site is listed within Council's Land Register as 'Operational'. Whilst Council is unable to find evidence of the public notice under s.34 of the Local Government Act 1993 the land is still valid and effectively 'operational' land. The portion of 9 Fern Creek that will be rezoned RE1 Public Recreation will become community land without any requirement to undertake additional procedures within the Planning Proposal. As a result of the above the Planning Proposal is silent as to the community/operational status of the land as it is not a matter that requires amendment.</i>
Strategic Justification for the Planning Proposal.	A clearer outline of the need for the Planning Proposal.	<i>The background reports have been added as Annexures to the Planning Proposal. The Planning Proposal provides an explanation as to why the site was not historically allocated a dwelling yield.</i>

Issue	Explanation	Applicant's Response (GLN Planning)
Is the Planning Proposal the best means for achieving the outcomes or is there a better way?	More clarity around whether a Planning Proposal is the best means of achieving the outcome (linked to what is the objective of the Planning Proposal).	<i>The Planning Proposal has been amended to indicate there is no other means to provide for Central Local Park without rezoning the land RE1, primarily because parks are not permissible in the residential zones under Pittwater LEP.</i>
Environmental Studies.	If the Planning Proposal is relying on the previous studies undertaken as part of the Warriewood Valley Strategic Report Review and the Warriewood Valley Strategic Review Addendum report then as a minimum the planning proposal should extract the findings of previous studies specific to the subject land and identify any gaps.	<i>The Planning Proposal is for an effective back zoning of part of the site from Residential to RE1, having previously been rezoned from Non-Urban to Residential. The Environmental Planning and Assessment Act provides sufficient means of protection to ensure future development is adequately assessed. Further the Gateway process was designed and provides opportunity for additional information to be sought should that information be required. We are of the opinion that the requirement for additional information is contrary to The Department of Planning and Environment's "Planning Proposals: A Guide to Preparing Planning Proposals" (August 2016) and is excessive and unnecessary at this point. This information will unnecessarily add to the costs of enabling the provision of Central Local Park as has been anticipated in the development of Warriewood Valley, but, if required by the Gateway determination, it can be provided later consistent with the Department Guidelines.</i>
Dwelling Density Allocation.	Justification for the increase in dwellings.	<i>An additional Table 4 has been provided explaining proposed allocation of dwelling yields and why this is appropriate and will not adversely impact the overall planned capacity of the release area.</i>
Guidance for Merged Councils.	Justification in support for the proposed rezoning having regard to the Department of Planning's Guidance for	<i>As stated within the Planning Proposal, the proposed rezoning is consistent with an endorsed strategy of the (pre-merger) council. The annexure</i>

Issue	Explanation	Applicant's Response (GLN Planning)
	<i>merged councils on planning functions (May 2016).</i>	<i>of Council reports supports this strategy of the Pittwater Council, in buying the land in 2008 and entering into the land swap agreement with Frasers.</i>
Various minor amendments relating to the typographical errors in the Planning Proposal (including correction of incorrect land descriptions).		<i>Responded to and, amended where necessary.</i>

5.0 UPDATED PLANNING PROPOSAL

The applicant responded to the request for additional information and resubmitted an updated Planning Proposal on the 17 January 2017. It is considered that the updated Planning Proposal adequately addressed the majority of issues of concern with the exception of three issues outlined below.

This assessment report is based on the amended/updated Planning Proposal *Rezoning of Central Local Park Warriewood July 2016 (Amended January 2017)* prepared by GLN Planning.

Three issues requiring further investigation and/or action are:

- Land contamination;
- Survey plan; and
- Reclassification of part of 9 Fern Creek Road.

5.1 Land Contamination

A potential environmental issues that has not been adequately canvassed is land contamination. It is recommended, that a contaminated land assessment be required as part of the conditions of the Gateway determination given the land is to be rezoned to RE1 Public Recreation to be utilised by the community for recreational purposes. The land contamination assessment should be consistent with State Environmental Planning Policy No. 55 – Remediation of Land.

5.2 Survey Plan

A number of community submissions to the initial Planning Proposal requested a survey plan to demonstrate clearly the boundaries of the park and the width of the future park at key points including at its narrowest and widest points.

The Planning Proposal documentation submitted by GLN Planning relies on the survey area measurements to demonstrate the land subject to the Planning Proposal. This is a reasonable approach however a survey plan will offer further clarity to the community.

It is recommended that a survey plan be requested and available for the statutory exhibition. Whilst the survey plan will not form part of the Planning Proposal it will assist in clearly demonstrating the size and dimensions of the proposed RE1 Public Recreation land.

5.3 Reclassification

As previously detailed, 9 Fern Creek Road was purchased in 2008. At the time of purchase Council decided upon acquisition to allocate an 'operational' land classification under the *Local Government Act 1993*. Council in its report dated 21 April 2008 dealing with the acquisition of the land stated *'the Sector needs to retain some flexibility of land use depending upon the outcome of the master planning process for the Sector which is currently underway. For this reason an operational classification provides the necessary flexibility'*.

When a review of the Planning Proposal was initially undertaken a question was raised as to whether the public notice under s.34 of the *Local Government Act 1993* was effectively given.

Legal advice was sought and confirmed that the land is still valid and effectively 'operational' land.

The portion of 11, 12 and 13 Fern Creek Road (Lots 11-13 DP 1092788) proposed to be zoned RE1 Public Recreation will become 'community' land when the Planning Proposal is made.

The portion of 9 Fern Creek that will be rezoned RE1 Public Recreation will be reclassified from 'operational' to 'community' land. Under s.33 of the *Local Government Act 1993* Council may resolve to reclassify the land (separate to this Planning Proposal and not part of any local environmental plan). Section 34 requires Council to give public notice of the resolution to reclassify the land from 'operational' to 'community' land and must specify a period of not less than 28 days during which submissions may be made to Council.

This assessment report facilitates the reclassification process by recommending that Council resolve to reclassify the land in accordance with Section 33 and Section 34 of the *Local Government Act 1993*. Given that the reclassification is a separate process from the Planning Proposal it is recommended that the decision on when to undertake the 28 day public notice be made by Council's Property Management and Commercial Business Unit.

5.4 Consultation for the Updated Planning Proposal

Upon receipt of the updated Planning Proposal the second non-statutory exhibition was undertaken from 25 March 2017 to 10 April 2017.

Landowners were notified within the Warriewood Valley suburb (1757 in total) as well as the Warriewood Residents Association. An advertisement was placed in the Manly Daily (25 March 2017) and a site notice was displayed at the site throughout the notification period. The application documents were made available electronically on Council's website and in hard copy in Customer Service Centres at Manly, Dee Why, Mona Vale and Avalon.

Six written responses were received from the community.

Notification letters were sent to the following State Agencies:

- NSW Rural Fire Service
- NSW Office of Water
- Ausgrid

The Proposal was also referred to the following Council Business Units:

- Parks & Reserves

- Transport & Urban – Traffic Engineering
- Natural Environment and Climate Change

The responses received from members of the community, State agencies and internal Council Business Units are provided in **Appendix 1**.

6.0 PLANNING ASSESSMENT

This section is an independent assessment of the criteria under Section 55(2) of the *Environmental Planning and Assessment Act 1979*. Section 55(2) requires consideration of the following five criteria when preparing and considering a Planning Proposal.

Part 1: A statement of the objectives or intended outcomes of the proposed instrument.

Part 2: An explanation of the provisions that are to be included in the proposed instrument.

Part 3: The justification for those objectives, outcomes and provisions and the process for their implementation (including whether the proposed instrument will comply with relevant directions under section 117).

Part 4: If maps are to be adopted by the proposed instrument – a version of the maps containing sufficient detail to indicate the substantive effect of the proposed instrument.

Part 5: Details the community consultation that is to be undertaken before consideration is given to the making of the proposed instrument.

These five criteria are replicated and expanded upon within the NSW Department of Planning and Environment document *Planning Proposals: A guide to preparing planning proposals* (2016). The assessment of the subject Planning Proposal has been undertaken in accordance with this document and these criteria are discussed below.

Part 1: A statement of the objectives or intended outcomes of the proposed instrument

The principal objective of the Planning Proposal is to amend Pittwater LEP 2014 to enable the creation of the southern portion of the planned Central Local Park. A secondary objective is to enable the development of the remaining land for housing in an orderly and economic manner.

These two objectives will be achieved by amending the following provisions of Pittwater LEP 2014:

1. The Land Zoning Map to rezone part Lots 11 and 12 DP 1092788 and part Lot 5 DP 736961 and Lot 13 DP 1092788 from R3 Medium Density Residential to RE1 Public Recreation.
2. The Height of Building Map to 8.5m for the land to be rezoned RE1 Public Recreation and 10.5m for the part of Lot 5 DP 736961 zoned R3 Medium Density Residential.
3. The dwelling yield provisions contained in Part 6 Clause 6.1(3).

Council is not seeking delegation to exercise the LEP making powers delegated under Section 59 of the *Environmental Planning and Assessment Act 1979* in regard to this Planning Proposal.

Part 2: An explanation of the provisions that are to be included in the proposed instrument

The Table below outlines the proposed amendment to Pittwater LEP 2014 and a description of the proposed amendment.

	Proposed Amendment	Description
1	Amendments to the Land Zoning Map – Sheet LZN_012	Rezone part Lot 11 DP 1092788 from R3 Medium Density Residential to RE1 Public Recreation Rezone part Lot 12 DP 1092788 from R3 Medium Density Residential to RE1 Public Recreation Rezone part Lot 5 DP 736961 from R3 Medium Density Residential to RE1 Public Recreation Rezone Lot 13 DP 1092788 from R3 Medium Density Residential to RE1 Public Recreation
2	Amendment to Height of Buildings Map – Sheet HOB_12	Amend maximum height applying to part Lot 11 DP 1092788 proposed to be zoned RE1 Public Recreation from 10.5m to 8.5m Amend maximum height applying to part Lot 12 DP 1092788 proposed to be zoned RE1 Public Recreation from 10.5m to 8.5m Amend maximum height applying to part Lot 5 DP 736961 proposed to be zoned R3 Medium Density Residential from 8.5m to 10.5m Amend maximum height applying to Lot 13 DP 1092788 proposed to be zoned RE1 Public Recreation from 10.5m to 8.5m
3	Amendments to Part 6, Clause 6.1(3)	The text related to Sectors 901A; 901C and 901 G; and 9 Fern Creek Road in the table in Part 6 Clause 6.1(3) is to be amended as follows: Sector 901A Not more than 192 dwellings or less than 156 dwellings Sectors 901C & 901G Not more than 28 dwellings or less than 23 dwellings 9 Fern Creek Road No dwellings Sector 901A Not more than 190 or less than 154 Sectors 901C, 901G and 9 Fern Creek Road Not more than 33 dwellings or less than 26 dwellings

Part 3: The justification for those objectives, outcomes and provisions and the process for their implementation (including whether the proposed instrument will comply with relevant directions under section 117).

NSW Department of Planning and Environment document *Planning Proposals: A guide to preparing planning proposals* (2016) poses a series of questions to assist in establishing whether there is suitable justification for the Planning Proposal. These questions are addressed below:

Section A: Need for the Planning Proposal

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

No the Planning Proposal is not the result of a specific strategic study or report.

However, the Planning Proposal is supported by numerous existing studies such as the Warriewood Valley Strategic Review Report 2013 and Warriewood Valley Strategic Addendum Report 2014.

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

Yes. A Planning Proposal is the best and only means to achieve the objectives and intended outcomes to enable amendments to be made to the mapping within Pittwater Local Environmental Plan 2014 and dwelling yield provisions in Part 6 Clause 6.1(3) of Pittwater Local Environmental Plan 2014.

Section B: Relationship to Strategic Planning Framework

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

A Plan for Growing Sydney

A Plan for Growing Sydney (APfGS) released in December 2014 is the NSW Government's plan for the future of the Sydney Metropolitan Area over the next 20 years. The Plan identifies key challenges facing Sydney including a population increase of 1.6 million by 2034, the need for 689,000 new jobs and 664,000 new homes by 2031. The Plan identifies the Government's vision for Sydney which is for a strong global city and a great place to live.

To achieve this vision, the Government has set down goals that Sydney will be:

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

To achieve these goals, APfGS sets out directions and actions as well as priorities for each subregion. The relevant directions with respect to this Planning Proposal are outlined below, with a commentary on the Planning Proposal's consistency.

APfGS aims to provide new housing stock around public transport nodes and within areas close to public transport, retail and commercial centres and community facilities.

The site is within Sector 9 of Warriewood Valley Release Area. The Planning Proposal facilitates Council's preferred open space layout for the area as well as unlocking housing opportunities.

The Planning Proposal is consistent with the APfGS in the following ways:

Goal and Direction APfGS	Planning Proposal Consistency
<p><i>Goal 2 A City of housing choice, with homes that meet our needs and lifestyles.</i></p> <p>APfGS focuses on providing increased and diverse housing in well-serviced areas.</p> <p>Direction 2.1.1 Accelerate housing supply and local housing choice.</p>	<p>The Planning Proposal facilitates the development of land zoned R3 Medium Density for housing.</p> <p>The Planning Proposal provides new housing in a planned greenfield precinct.</p>
<p><i>Goal 3 Sydney's great place to live.</i></p> <p>Direction 3.3 – Create healthy built environments.</p>	<p>The Planning Proposal will facilitate an attractive public space through the provision of a Central Local Park. The northern portion of Central Local Park has already been delivered and is approx. 2.13Ha with 1.14Ha exclusive of the inner creek line corridor.</p> <p>The southern section will complete Central Local Park. The area of the southern section is approx. 1.8Ha with 9882m² exclusive of the inner creek line.</p> <p>9 Fern Creek Road is approximately 11,590m². Excluding the inner creek line the area of 9 Fern Creek Road is approx. 9273m². Under the Planning Proposal the area of the proposed southern section of Central Local Park is approx. 9882m² just over 600m² more than what would have been delivered if 9 Fern Creek was zoned entirely RE1 Public Recreation.</p> <p>The two halves of Central Local Park will ultimately be connected via a pedestrian bridge and work as one large green space serving the local residents.</p> <p>The Central Local Park will contribute to a healthy built environment and increased liveability for residents in Warriewood.</p>

Towards our Greater Sydney 2056

In November 2016, the Greater Sydney Commission released a draft amendment to the Metropolitan Strategy for public comment. This draft amendment entitled "*Towards our Greater Sydney 2056*" (draft Metropolitan Strategy). The Commission is required to complete a review of the current Metropolitan Strategy by the end of 2017. The draft Metropolitan Strategy is a step in that review process and has been exhibited together with the draft District Plans (discussed below) so that both can be finalised concurrently.

The Planning Proposal remains consistent with the draft Metropolitan Strategy. Since release of the current Metropolitan Strategy, projections for growth have been revised upwards, with the middle scenario now requiring 725,000 additional dwellings between 2016-2036 (a 9% increase).

Whilst acknowledged as a very modest contribution, the Planning Proposal will contribute to achieving this growth within a planned urban release area. Regardless of the degree of contribution there is nothing within the Planning Proposal that is contrary to or inconsistent with the objectives of "Towards our Greater Sydney 2056".

Assessment Criteria

A *Guide to preparing planning proposals* (2016) establishes Assessment Criteria to be considered in the justification of a Planning Proposal. The Assessment Criteria is considered below.

Consideration of the Planning Proposal against the Assessment Criteria of 'A Guide to preparing planning proposals'.

Criteria	Assessment
(a) Does the proposal have strategic merit? Is it:	
Consistent with the relevant regional plan outside of the Greater Sydney Region, the relevant district plan within the Greater Sydney Region, or corridor/precinct plans applying to the site, including any draft regional, district or corridor/precinct plans released for public comment, or	<p>In November 2016, the Greater Sydney Commission released the draft North District Plan (Draft NDP) for public comment. The draft NDP is one of six draft District Plans developed by the Greater Sydney Commission for each of Sydney's planning districts. The Plan outlines a range of priorities and actions that are broadly categorised as creating:</p> <ul style="list-style-type: none"> • A productive city; • A liveable city; and • A sustainable city. <p>The Planning Proposal contributes to the creation of a 'liveable' and 'sustainable' city.</p> <p>In terms of liveability, it is considered that the Planning Proposal contributes to improved housing diversity and choice, creating great places to live and responding to peoples need for services in the form of increased open space. Action L3: Councils to increase housing capacity across the District is specifically met albeit as a very modest contribution.</p> <p>In terms of sustainability, it is considered that the future development of the open space component will enhance the existing natural environment by improving the landscape and protecting and enhancing biodiversity. Both of these attributes are overarching priorities in the sustainability priorities and actions in the North District plan. In terms of the future development of the housing it is considered that the they can be designed and implemented (via the development application process) with acceptable impacts on the existing natural environment.</p> <p>In terms of productivity, the Planning Proposal does not permit employment land however the planned residential component has access to</p>

Criteria	Assessment
	local jobs, goods and services within 30 minutes of the subject site.
Consistent with the relevant local council strategy that has been endorsed by the Department, or	<p>The relevant strategic study is the <i>Warriewood Valley Strategic Review Report 2013</i> (Review Report). The Review Report carried out by the former Pittwater Council and NSW Department of Planning and Infrastructure was endorsed by the Director General of the Department on 1 May 2013, and was adopted by Council on 12 June 2013.</p> <p>The focus of the Review Report was to investigate, amongst other things, intensification of residential densities in the as-yet undeveloped lands, particularly those identified as having the potential for intensification of development having regard to the land capability assessment undertaken as part of the Review Report. 9 Fern Creek was identified as having potential for intensification of development.¹ However, it was excluded from an allocated dwelling yield at the time.</p> <p>Following the adoption of the Strategic Review, further investigations were carried out under the <i>Warriewood Valley Strategic Review Addendum Report 2014</i>. The subject sites were all given a Land Capability classification identifying their suitability for development. 9 Fern Creek Road was identified as having the potential for a maximum density of 32 dwellings/ha and a minimum of 25 dwellings/ha, however 9 Fern Creek Road was not allocated a dwelling yield as the parcel was purchased by Council for recreation purposes.</p> <p>The Planning Proposal is consistent with the Warriewood Valley Strategic Review Report 2013 and the Warriewood Valley Strategic Review Addendum Report 2014.</p>
Responding to a change in circumstances, such as the investment in new infrastructure or changing demographic trends that have not been recognised by existing planning controls.	In this case the Criteria is not applicable to the Planning Proposal.
(b) Does the proposal have site-specific merit, having regard to the following:	
The natural environment (including known significant values, resources or hazards),	<p>The Planning Proposal involves, amongst other things, the rezoning of R3 Medium Density Residential land to RE1 Public Recreation Land.</p> <p>The Planning Proposal will enable the creation of the southern portion of Central Local Park with a greater publicly owned riparian zone buffer between future residential development and Fern Creek.</p>

¹ Page 3-4 Warriewood Valley Strategic Review Report 2013

Criteria	Assessment
	<p>Part of the site is identified on the Biodiversity Map within Pittwater LEP 2014 generally following the creekline and riparian corridor. The Planning Proposal will provide greater protection to the land identified on the Biodiversity Map by bringing it into Council ownership.</p>
<p>The existing uses, approved uses, and likely future uses of land in the vicinity of the proposal; and</p>	<p>The Planning Proposal is consistent with the adjoining land uses.</p> <p>To the north of the site is the northern half of Central Local Park. The proposed RE1 Public Recreation land will complete the southern section of the planned Central Local Park.</p> <p>The surrounding zoned residential land is generally undeveloped however when ultimately developed will all be of a similar density and built form.</p>
<p>The services and infrastructure that are or will be available to meet the demands arising from the proposal and any proposed financial arrangements for infrastructure provision.</p>	<p>The Planning Proposal will deliver the Central Local Park that will serve the nearby community.</p> <p>The future residential development will be served by existing services to the site. The specific infrastructure requirements will be assessed at DA stage however it is not anticipated that the residential development will create any additional demand for infrastructure and services not already planned and catered for.</p> <p>The development is anticipated under the current Warriewood Valley Section 94 Contributions Plan Amendment 16 – Revision 2.</p> <p>As background, there is a Memorandum of Understanding (MOU) between Frasers (land owner) and Council (land owner) that was signed in October 2015 outlining amongst other things, the undergrounding of the overhead powerlines, road construction and stormwater construction.</p> <p>Following on from the MOU a Deed of Agreement was signed between Frasers and Council and represented the final agreed position between both parties.</p> <p>Council at its meeting 19 March 2016 outlined the infrastructure provisions that Council and Frasers have agreed to:</p> <ul style="list-style-type: none"> • 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.

Criteria	Assessment
	<ul style="list-style-type: none"> • 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. <p>The details relating to these arrangements will be captured in a Planning Agreement. A draft Planning Agreement was submitted in January 2017 as part of the updated Planning Proposal information however it was subsequently withdrawn in April 2017.</p>

Accordingly, it is considered that the Planning Proposal has strategic merit as well as site-specific merit in accordance with this assessment criterion above.

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

Warriewood Valley Landscape Masterplan & Design Guidelines (November 2016)

The Warriewood Valley Landscape Masterplan & Design Guidelines (November 2016) details 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, and providing for passive recreation opportunities.

Warriewood Valley Strategic Review Report 2013 and the Warriewood Valley Strategic Review Addendum Report 2014

The Warriewood Valley Strategic Review Report 2013 (Strategic Review). The Review Report carried out by the former Pittwater Council and NSW Department of Planning and Infrastructure was endorsed by the Director General of the Department on 1 May 2013, and was adopted by Council on 12 June 2013.

The focus of the Review Report was to investigate, amongst other things, the intensification of residential densities in the as-yet undeveloped lands, particularly those identified as having the potential for intensification of development having regard to the land capability assessment undertaken as part of the Review Report. 9 Fern Creek was identified as having potential for intensification of development.²

² Page 3-4 Warriewood Valley Strategic Review Report 2013

More specifically the Warriewood Valley Strategic Review Addendum Report 2014 is the basis for the proposed dwelling yields for the subject land. The Addendum Report indicated that 9 Fern Creek Road is suitable to be developed at a density range of 25-32 dwellings per hectare, however at the time 9 Fern Creek Rd was excluded from an allocated dwelling yield due to its identification as recreation.

The developable area for 9 Fern Creek Road (Lot 5 DP 736961) under the Planning Proposal is 5374.3m², Therefore, at 25 – 32 dwellings/Ha the range of a maximum of 17 dwellings and a minimum of 13 dwellings for 9 Fern Creek Road is a reasonable and logical methodology to determine the dwelling capacity of the land based on densities established by the various environmental investigations and reviews undertaken as part of the Warriewood Valley Strategic Review Addendum Report 2014.

The proposed allocation of dwelling yields over the four sites is summarised in the Table below as well as the current minimum and maximum yields compared to what is proposed against each property.

Allocation of Current and Proposed Dwelling Yields

Property Description	Existing Min Dwelling Yield (PLEP 2014)	Existing Max Dwelling Yield (PLEP 2014)	Developable Area (m ²) under Planning Proposal	Min Dwelling Yield (indicative individual Lot based on developable area of Planning Proposal)	Max Dwelling Yield (indicative individual Lot based on developable area of Planning Proposal)	Net Increase or Decrease of dwellings (indicative individual lots)	As proposed under the Planning Proposal amendment	Dwelling yields identified in WVS Review Report or WVSRA Addendum Report
11 Fern Creek Rd (Lot 11 DP 1092788) 901G	Not more than 28 dwellings or less than 23		3174	3	3	Decrease of 12 dwellings (max) and decrease of 10 dwellings (min)	Not more than 33 dwellings or less than 26 dwellings***	10/ha min and max
12 Fern Creek Rd (Lot 12 DP 1092788) 901C			4075.8	10	13			25/ha min 32/ha max
9 Fern Creek Rd (Lot 5 DP 736961)	0	0	5374.3	13	17	Increase of 17 dwellings (max) and increase of 13 dwellings (min)		25/ha min 32/ha max
13 Fern Creek Rd (Lot 13 DP 1092788) (part) 901A	2*	2*	0	0**	0**	Decrease 2 dwellings (max and min)	0	25/ha min 32/ha max
Total	25	30		26	33	3 dwelling maximum increase overall		

*Warriewood Valley Strategic Review Addendum Report – Table 6 Pro-rata yield for individual parcels in sector 901A Page 46

**Pittwater LEP 2014 will be amended to reduce the dwelling yield in 901A from 'Not more than 192 dwellings or less than 156 dwellings' to 'Not more than 190 dwellings or less than 154 dwellings'.

***The Planning Proposal proposes that Sectors 901C, 901G and 9 Fern Creek Road be developed together therefore the minimum dwelling yield and maximum dwelling yield are shown combined for the 3 sectors.

There is a potential maximum dwelling yield increase of 3 dwellings over what is currently permitted under Pittwater LEP 2014 for Sectors 901C, 901G and 9 Fern Creek Road if any future development develops at the maximum dwelling yield of 33 dwellings. The potential maximum 3 dwelling increase is unlikely to have any material effect on the capacity of infrastructure. Further, the additional 3 dwellings will still remain below the RMS cap of 2544 dwellings recommended as part of traffic modelling previously undertaken.

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

Consistency with the applicable State Environmental Planning Policies and Deemed State Environmental Planning Policy is discussed below.

Title of State Environmental Planning Policy (SEPP)	Applicable	Consistent	Reason for inconsistency or otherwise
SEPP No 1 – Development Standards	NO	N/A	
SEPP No 14 – Coastal Wetlands	NO	N/A	
SEPP No 19 – Bushland in Urban Areas	NO	N/A	
SEPP No 21 – Caravan Parks	NO	N/A	
SEPP No 26 – Littoral Rainforests	NO	N/A	
SEPP No 30 – Intensive Agriculture	NO	N/A	
SEPP No 32 – Urban Consolidation (Redevelopment of Urban Land)	NO	N/A	
SEPP No 33 – Hazardous and Offensive Development	NO	N/A	
SEPP No 36 – Manufactured Home Estates	NO	N/A	
SEPP No 39 – Spit Island Bird Habitat	NO	N/A	
SEPP No 44 Koala Habitat Protection	NO	N/A	
SEPP No 50 – Canal Estate Development	NO	N/A	
SEPP No 55 – Remediation of Land	YES	NO	Council recommends as a condition of Gateway that a contaminated land assessment be prepared in accordance with the provisions of <i>SEPP No 55 – Remediation of Land</i>
SEPP No 62 – Sustainable Aquaculture	NO	N/A	
SEPP No 64 – Advertising and Signage	YES	YES	
SEPP No 65 – Design and Quality of Residential Flat Development	YES	YES	
SEPP No 70 – Affordable Housing (Revised Schemes)	YES	YES	

Title of State Environmental Planning Policy (SEPP)	Applicable	Consistent	Reason for inconsistency or otherwise
SEPP No 71 – Coastal Protection	NO	N/A	
SEPP (Affordable Rental Housing) 2009	YES	YES	
SEPP (Building Sustainability Index: BASIX) 2004	YES	YES	
SEPP (Exempt and Complying Development Codes) 2008	YES	YES	
SEPP (Housing for Seniors or People with a Disability) 2004	YES	YES	
SEPP (Infrastructure) 2007	YES	YES	
SEPP (Major Development)	NO	N/A	
SEPP (Mining, Petroleum Production and Extractive Industries) 2007	NO	N/A	
SEPP (Miscellaneous Consent Provisions) 2007	NO	N/A	
SEPP (Rural Lands) 2008	NO	N/A	
SEPP (Transitional Provisions) 2011	NO	N/A	
SEPP (State and Regional Development) 2011	NO	N/A	
SEPP (Sydney Drinking Water) 2011	NO	N/A	
SEPP (Sydney Region Growth Centres) 2006	NO	N/A	
SEPP (Three Ports) 2013	NO	N/A	
SEPP (Western Sydney Employment Area) 2009	NO	N/A	
SEPP (Western Sydney Parklands) 2011	NO	N/A	
SEPP (Urban Renewal) 2010	NO	N/A	

The following is a list of the deemed SEPP's (formerly Sydney Regional Environmental Plans) relevant to the Northern Beaches Local Government Area.

Title of deemed SEPP, being Sydney regional Environmental Plan (SREP)	Applicable	Consistent	Reason for inconsistency
SREP No 20 – Hawkesbury-Nepean River (No 2 – 1997)	YES	YES	

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

Employment and Resources			
	Direction	Applicable	Consistent
1.1	Business and Industrial Zones	NO	N/A
1.2	Rural Zones	NO	N/A
1.3	Mining, Petroleum Production and Extractive Industries	NO	N/A
1.4	Oyster Aquaculture	NO	N/A
1.5	Rural Lands	NO	N/A

Environment and Heritage			
	Direction	Applicable	Consistent
2.1	Environmental Protection Zones	NO	N/A
2.2	Coastal Protection	NO	N/A
2.3	Heritage Conservation	NO	N/A
2.4	Recreation Vehicle Areas	NO	N/A
2.5	Application of E2 and E3 Zones and the Environmental Overlays in Far North Coast LEPs	NO	N/A

Housing, Infrastructure and Urban Development			
	Direction	Applicable	Consistent
3.1	Residential Zones	YES	YES
3.2	Caravan Parks and Manufactured Home Estates	NO	N/A
3.3	Home Occupations	YES	YES
3.4	Integrating Land Use and Transport	YES	YES
3.5	Development Near Licensed Aerodromes	NO	N/A
3.6	Shooting Ranges	NO	N/A

Hazard and Risk			
	Direction	Applicable	Consistent
4.1	Acid Sulphate Soils	YES	YES
4.2	Mine Subsidence and Unstable Land	NO	N/A
4.3	Flood Prone Land	YES	NO
4.4	Planning for Bushfire Protection	YES	NO

Justification for Inconsistency with Direction 4.3

The northern portion of Planning Proposal proposes rezoning from R3 Medium Density to RE1 Public Recreation. This will reduce the risk to property damage by not having buildings in the flood zone. Further the s.117 Directive does not refer to height of buildings therefore the change to the height of buildings map proposed under the Planning Proposal is consistent with the s.117 Direction.

The potential inconsistency arises with the proposed density allocation on part of 9 Fern Creek Road.

Council's Land Release Area Planning Manager advised:

"Since the Strategic Review 2013, the 2013 Pittwater Overland Flow Mapping and Flood Study (Cardno) identified that overland flow flooding traverses sections of the subject properties. In addition the 2013 Narrabeen Lagoon Flood Study (BMT WBM) has also been adopted by Council and needs to be considered. The likely impact from overland flow flooding has not been addressed in this application however it is highly unlikely that the development capability of the subject properties will now identify these properties to be significantly constrained that residential accommodation is deemed to be an inappropriate land use for these properties. Nonetheless, the applicant should address the impact of overland flow flooding to facilitate consistency with the 117 Direction. This information should be provided and exhibited (as part of the statutory public exhibition) with the Planning Proposal".

I concur with the above advice received and recommend that the applicant assess the impact of overland flow flooding and address its consistency with the s.117 Directives for 4.3 Flood Prone Lands. This additional information will be requested as part of the conditions of the Gateway determination.

Justification with Inconsistency with Direction 4.4

Lot 11 DP1092788 of the Planning Proposal is identified as Bush Fire Prone under Council's Bush Fire Prone Lands Map.

This Planning Proposal is inconsistent with this direction in so far as consultation after Gateway has not yet occurred with the NSW Rural Fire Service. Consultation will be undertaken during the statutory exhibition period. Notwithstanding, Council has undertaken preliminary consultation during its non-statutory notification period with NSW Rural Fire Service and their response is summarised at **Appendix 1**. The NSW Rural Fire service raised no object to the Planning Proposal subject to a requirement that the future residential subdivision of the land complies with *Planning for Bushfire Protection 2006*.

Regional Planning			
	Direction	Applicable	Consistent
5.1	Implementation of Regional Strategies	NO	N/A
5.2	Sydney Drinking Water Catchments	NO	N/A
5.3	Farmland of State and Regional Significance on NSW Far North Coast	NO	N/A
5.4	Commercial and Retail Development along the Pacific Hwy, North Coast	NO	N/A
5.5	Development in the vicinity of Ellalong, Paxton and Millfield	NO	N/A
5.8	Second Sydney Airport: Badgerys Creek	NO	N/A
5.9	North West Rail Link Corridor Strategy	NO	N/A
5.10	Implementation of Regional Plans	YES	YES

Local Plan Making			
	Direction	Applicable	Consistent
6.1	Approval and Referral Requirements	YES	YES
6.2	Reserving Land for Public Purposes	YES	YES
6.3	Site Specific Purposes	YES	NO

Justification for inconsistency with Direction 6.3

The Planning Proposal seeks to amend the existing dwelling yield provision applying to the subject land. The application of the dwelling yield provisions within the Pittwater LEP 2014 is well established for the Warriewood Valley Release Area. The dwelling yield provisions in Part 6 of the Pittwater LEP 2014 were translated from Pittwater LEP 1993 and are not new provisions. This Planning Proposal merely amends Part 6.

Metropolitan Planning			
	Direction	Applicable	Consistent
7.1	Implementation of the Metropolitan Strategy	YES	YES
7.2	Implementation of Greater Macarthur Land Release Investigation	NO	N/A
7.3	Parramatta Road Corridor Urban Transformation Strategy	NO	N/A

Section C: Environmental, social and economic impact

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

The Planning Proposal involves, amongst other things, the rezoning of R3 Medium Density Residential land to RE1 Public Recreation Land. The overall development footprint (as reflected by the R3 Medium Density Residential zone under Pittwater LEP 2014) will be reduced and a larger area for the southern portion of Central Local Park will be delivered.

The revised open space layout will also facilitate the improvement of the existing biodiversity connection between the Fern Creek corridor and the Ingleside Escarpment and enable land identified with constraints adjacent to the creekline, including land identified on the Biodiversity Map, to be greater protected by the proposed RE1 Public Recreation zone. It is therefore unlikely that this Planning Proposal will result in adverse impacts on critical habitat or threatened species, populations or ecological communities or their habitats.

Any future development applications will require assessment under Section 79C of the *Environmental Planning and Assessment Act 1979* and will be subject to the provisions and development controls under Pittwater LEP 2014 and Pittwater 21 DCP.

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

Two potential environmental issues that have not been adequately canvassed or addressed are - land contamination and overland flow flooding.

Land Contamination - it is recommended, that a contaminated land assessment be required as part of the conditions of the Gateway determination given the land is to be rezoned to RE1 Public Recreation to be utilised by the community for recreational pursuits. The contaminated land assessment should be drafted in accordance with *State Environmental Planning Policy No. 55 – Remediation of Land*.

Flooding - as detailed above in Section B 6 Ministerial Direction Section 117 Directions 4.3 Flood Prone Land the applicant will be directed to assess the impact of overland flow flooding and address its consistency with the s.117 Directives for 4.3 Flood Prone Lands. This additional information will be required as part of the conditions of the Gateway determination.

Any future development application will require assessment under Section 79C of the *Environmental Planning and Assessment Act 1979* and will be subject to the provisions and development controls under Pittwater LEP 2014 and Pittwater 21 DCP, including those related to bushfire prone land, waste management, biodiversity, geotechnical hazards, heritage and traffic. Development planning and construction issues would need to be addressed in detail in any future development application for the site.

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

The main social effect of the Planning Proposal is a positive one resulting in increased local open space in Council's preferred configuration for Central Local Park. The Planning Proposal

would result in an increase of approximately 600m² more public open space for the community compared to what would be achieved on the current lot (9 Fern Creek Road) in Council's ownership.

Further, the future open space will add to the recreational enjoyment of the community strengthening liveability for the residents of Warriewood Valley.

The main economic effect is unlocking the development opportunities in Sector 9 which is important to ensuring the timely delivery of infrastructure under the *Warriewood Valley Section 94 Contributions Plan Amendment 16 Revision 2*.

As this Planning Proposal will facilitate the extension of Central Local Park and enable residential development in a form similar to adjoining properties it is unlikely to have any negative social or economic effects.

Section D: State and Commonwealth interests

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

Local infrastructure, to meet the needs of the current and expected future population of the Warriewood Valley community, is planned for and funded through the *Warriewood Valley Section 94 Contributions Plan Amendment 16 Revision 2*.

The Planning Proposal proposes a maximum of 3 additional dwellings. The extra dwellings are considered minor and will be accommodated under existing infrastructure provisions. Further the additional 3 dwellings will still remain below the RMS cap of 2544 dwellings recommended as part of traffic modelling previously undertaken.

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

The formal views of relevant State and Commonwealth public authorities will be sort following a Gateway determination during the statutory exhibition period.

The preliminary views of the NSW Rural Fire Service and Office of Water during the non-statutory exhibition period are provided at **Appendix 1**.

Council will formally consult with NSW Rural Fire Services and Office of Water and any other relevant authority again during the statutory exhibition period.

Part 4 If maps are to be adopted by the proposed instrument – a version of the maps containing sufficient detail to indicate substantive effect of the proposed instrument

Appendix 2 demonstrates the existing Land Zoning Map and the existing Height of Building Map under Pittwater LEP 2014, and the proposed change to these maps which would result in the event that the planning proposal is endorsed.

Part 5 Details of the community consultation that is to be undertaken before consideration is given to the making of the instrument

The Planning Proposal has undergone non-statutory consultation in accordance with Council policy. The comments received in response to the latest non-statutory consultation are provided within **Appendix 1**.

If a Gateway determination is issued, the Planning Proposal will be publicly exhibited in accordance with the legislative provisions under the *Environmental Planning and Assessment Act 1979*. It is anticipated that the Planning Proposal would be exhibited for a period of 14 days.

Timing

Should the Planning Proposal proceed, it is anticipated that the amendment to Pittwater LEP 2014 would be finalised within a six (6) month timeframe.

7.0 AMENDMENTS TO OTHER COUNCIL DOCUMENTS

The Planning Proposal will necessitate changes to other Council documents and strategies to ensure consistency between all documents. These proposed amendments are listed below.

7.1 Pittwater DCP 21

Clause 6.11 of Pittwater Development Control Plan (DCP) 21 outlines specific additional controls for Sectors 901A to 901H including the land subject to this Planning Proposal.

The Planning Proposal is generally consistent with Clause 6.11 of Pittwater DCP 21.

Two indicative layout plans for the public recreation land are shown within Pittwater DCP 21 – Indicative Layout Plan No. 1 with 9 Fern Creek Road unchanged and Indicative Layout Plan No. 2 with a linear park configuration. It is proposed that if the Planning Proposal proceeds through Gateway, Clause 6.11 should be amended to delete Indicative Layout Plan No 1 and show an amended Indicative Layout Plan No. 2 reflecting the Planning Proposal layout. The amendment to the DCP would be placed on exhibition for public comment at the same time as the Planning Proposal undergoes statutory exhibition.

7.2 Warriewood Valley Strategic Review Addendum Report 2014

The Planning Proposal necessitates changes to the Warriewood Valley Strategic Addendum Report 2014 to ensure that the document is ultimately consistent with the provisions of Pittwater LEP 2014. These changes broadly include:

- Reflect that 901C, 901G and 9 Fern Creek Road will be developed together.
- Reflect the dwelling yields proposed under the Planning Proposal.
- Allocate the proposed pro rata dwelling yield to 9 Fern Creek Road – Minimum of 13 dwellings and a maximum of 17 dwellings.
- Remove reference to 9 Fern Creek Road being included in Sector 901A.
- Amend various maps to reflect the proposed Planning Proposal zones and intent, including Map 4 p.52 and Map 5 p.53.
- All amendments proposed within Warriewood Valley Strategic Addendum Report to be accompanied by a note that explains the need for the amendments arose from the subject Planning Proposal.

The amendment to Warriewood Valley Strategic Review Addendum Report should be placed on exhibition for public comment at the same time as the Planning Proposal undergoes statutory exhibition.

8.0 CONCLUSION

This Assessment Report has concluded that the Planning Proposal to amend Pittwater Local Environmental Plan 2014 to primarily enable the creation of the southern portion of the planned Central Local Park and secondly enable the development of the remaining land for housing in an orderly and economic manner has strategic merit to proceed to the next stage of the plan making process.

The Planning Proposal should be forwarded to the Department of Planning and Environment for a Gateway determination noting the request for two Gateway conditions - a contaminated land assessment and addressing the impact of overland flow flooding.

To further maintain Council's independence from the decision making process, Council is not seeking delegation to exercise the LEP making powers delegated under Section 59 of the *Environmental Planning and Assessment Act 1979* in regard to this Planning Proposal. Instead the Department will undertake the plan making functions for the Planning Proposal.

The following specific **recommendations** are made to Council:

- A. Support the request to amend the Land Zoning map, Height of Buildings map and Part 6 Clause 6.1(3) of Pittwater Local Environmental Plan 2014 for land at 9,11,12 and 13 Fern Creek Road, Warriewood.
- B. Prepare a Planning Proposal that amends the Land Zoning map of part of Lots 11 and 12 DP 1092788 and part Lot 5 DP 736961 (9, 11, 12 Fern Creek Road, Warriewood) and Lot 13 DP 1092788 (13 Fern Creek Road, Warriewood) from R3 Medium Density Residential to RE1 Public Recreation, amend the Height of Buildings map to reflect 8.5m on land to be rezoned RE1 Public Recreation and 10.5m for the portion of 9 Fern Creek Road to be retained as R3 Medium Density and amend the dwelling provisions contained in Part 6 Clause 6.1(3).
- C. Request the applicant prepare a detailed survey plan of the Planning Proposal boundaries for consideration by the community at the statutory exhibition period.
- D. Request that the Department of Planning and Environment consider as part of the Gateway determination conditions that the Planning Proposal:
 - require a contaminated land assessment report in accordance with State Environmental Planning Policy No. 55 - Remediation of Land; and
 - assess the impact of overland flow flooding and address the consistency with the s.117 Directives for 4.3 Flood Prone Lands.
- E. Forward the Planning Proposal to the Department of Planning and Environment with a request for a Gateway determination.
- F. Amend Pittwater 21 Development Control Plan Clause 6.11 Indicative Layout Plan No 2 to reflect the proposed layout of the Planning Proposal and delete Indicative Layout Plan No 1 and place on exhibition concurrently with the Planning Proposal.

- G. Amend Warriewood Valley Strategic Review Addendum Report 2014 to reflect the provisions of the Planning Proposal and place on exhibition concurrently with the Planning Proposal.
- H. In accordance with s.33 of the *Local Government Act 1993* reclassify part Lot 5 DP 736961 proposed to be zoned RE1 Public Recreation from land classified as 'operational' to land classified as 'community' and undertake a 28 day public notification in accordance with s.34 of the *Local Government Act 1993* noting that this resolution is separate to the Planning Proposal process.

Appendix 1

Table 1: Comments received from State Government agencies

Public Agency	Comments	Response
NSW Rural Fire Services	The NSW Rural Fire Services has previously commented on the Planning Proposal raising several concerns. Based upon an assessment of the additional information provided, NSW RFS raises no objection to the proposal subject to a requirement that the future residential subdivision of the land complies with <i>Planning for Bushfire Protection 2006</i> .	Noted.
	Compliance with <i>Planning for Bushfire Protection 2006</i> includes but is not limited to: <ul style="list-style-type: none"> • Provision of an Asset Protection Zones (APZs) in accordance with Table A2.4; • Access to be provided in accordance with the design specifications set out in section 4.1.3; and • Services to be provided in accordance with section 4.1.3. 	Noted for future residential subdivisions.
	In response to the submitted Concept Plan – Sector 8 and 9 Open Space Masterplan dated 6 May 2015 the NSW RFS: <ul style="list-style-type: none"> • supports the creation of the open space and recreation space as part of the Central Local Park and the management of the Park to the standard of an asset protection zone; and • supports the new east-west Fern Creek Road extension and connection to Garden Street, thereby creating a through road. And western connection from cul-de-sac to the existing fire trail. 	Noted.
NSW Office of Water	Any works within 40m of watercourse will be integrated.	Noted.
	Requirements for this site are in accordance with our current guidelines.	Noted.
	A minimum 10m setback from top of bank (both sides).	The inner creekline corridor is 50m wide (25m each side of the centerline of the creek). This area is acquired by Council under the Section 94 CP for Warriewood Valley and remains in Council ownership.

Public Agency	Comments	Response
	Outlet structures and instream works in accordance with our guidelines.	Noted.

Table 2: Advice received from Council Business Units

Business Unit	Comments	Response
Parks and Reserves	Do not have any issues with the proposal as it stands.	Noted.
	The community will gain a linear park along Fern Creek that will complement the open space on the northern side of the creek.	
	The rationale in seeking a linear park through the land swap rather than the rectangular block currently owned by Council goes way back to the original open space strategy for the Warriewood Valley release. The original plan showed a large park spanning both sides of Fern Creek. It was always envisaged that this park would be roughly semi circular on both sides of Fern Creek and incorporate the creekline corridor thus maximising the Open Space element of the park.	Noted.
	When the opportunity to purchase Lot 9 presented itself, it was taken up with a view to use this equity as a means of achieving the desired outcome at this location through possible land swaps.	Noted.
	This can be achieved through this land swap, which will incorporate the two open space elements with the adjoining creek line corridor thus maximising the open space at this location.	
	District Park – The 2008 Section 94 Plan referenced the park as 'District Park', partially built on Sector 8 (already built) and Sector 9 (being on the now subject properties), and at the time, Council's view was that the District Park will be used by majority of residents of the Warriewood Valley release area.	The history of the District Park terminology is noted.
	The definition of District Park was introduced by the Department of Planning and Infrastructure when it released the Planning Bill, amending the Local Contributions, together with draft guidance on the list of essential infrastructure items and Draft Development	

Business Unit	Comments	Response
	<p>Contributions Practice Notes (to replace the July 2005 version).</p> <p>Additionally, the following reforms were introduced:</p> <ul style="list-style-type: none"> the Minister issued a Direction for all Councils that in effect capped the contributions rate in greenfield release areas (\$30K per lot/dwelling) and existing areas to \$20K per lot/dwelling; DPI, with NSW Treasury, established a Local Contributions Review Panel whereupon Councils could seek exemption from the Direction. <p>Pittwater Council removed the reference of 'District Park' from the schedule and Section 94 Contributions Plan, as the definition of the term was distinctly different to Council's approach/intent. This name change resulted in the 'Central Local Park', which has been stated in Council's submission to the Local Contributions Review Panel and subsequent reviews of the Section 94 Plan since the 2008 version.</p>	
Urban Infrastructure	<p>The road layout for the Planning Proposal has not changed and is in accordance with the Indicative Layout Plan2 with linear park, indicated under C6.11 Additional Specifications for development of Sector 901A to 901H in the Pittwater DCP, providing connectivity to the internal road network.</p> <p>The increase in 3 dwellings as the result of the rezoning and dwelling yields, is insignificant and will not have any material effect on the capacity of the infrastructure.</p>	Noted
Natural Environment and Climate Change	<p>There are no issues against the 117 directive for the rezoning of the northern portion of the subject properties from R3 Med Density to RE1 Public Recreation, as this</p>	Noted

Business Unit	Comments	Response
	<p>reduces the risk to property damage, by not having buildings in the flood zone.</p> <p>The 117 directive does not reference height, therefore no comment will be provided regarding the increase max height proposed for the southern portions of 9 Fern Creek Road, and reduction to the max height for the northern portions of 11 & 12 Fern Creek Road regarding flooding.</p> <p>Regarding the proposal to permit an increase of density to the sites, this is potentially against the 117 directive 4.3 Flood Prone Lands. The 117 directive states under part (6) that 'A planning proposal must not contain provisions that apply to the flood planning areas which:</p> <ul style="list-style-type: none"> a) permit development in floodway areas, b) permit development that will result in significant flood impacts to other properties, c) permit a significant increase in the development of that land, d) are likely to result in a substantially increased requirement for government spending on flood mitigation measures, infrastructure or services, or e) permit development to be carried out without development consent except for the purposes of agriculture (not including dams, drainage canals, levees, buildings or structures in floodways or high hazard areas), roads or exempt development.' <p>There is insufficient information supplied from the applicant on the areas that it is 'inconsistent' with the S117 directive to assess whether the applications complies with the 117 Directive – 4.3 Flood Prone Lands</p> 	<p>Council's Land Release Area Planning Manager advised:</p> <p><i>"Since the Strategic Review 2013, the 2013 Pittwater Overland Flow Mapping and Flood Study (Cardno) identified that overland flow flooding traverses sections of the subject properties, in addition the 2013 Narrabeen Lagoon Flood Study (BMT WBM) has also been adopted by Council and needs to be considered. The likely impact from overland flow flooding has not been addressed in this application however it is highly unlikely that the development capability of the subject properties will now identify these properties to be significantly constrained that residential accommodation is deemed to be an inappropriate land use for these properties. Nonetheless, the applicant should address the impact of overland flow flooding to facilitate consistency with the 117 Directive. This information should be provided and exhibited (as part of the statutory public exhibition) with the Planning Proposal."</i></p> <p>I concur with the above advice and recommend that the applicant assess the impact of overland flow flooding and address the consistency with the s.117 Directives for 4.3 Flood Prone Lands. This additional information will be required as part of the conditions of the Gateway determination.</p>

Table 3: Submissions from the Community

Six written submissions were received as a result of the second non-statutory notification of Planning Proposal P0002/16 – 1 submission in support of the proposal; 4 clearly objecting to the proposal; and 1 submission offering comment and clarification.

Table 3 generally does not deal with any issues raised by submissions relating to the Voluntary Planning Agreement. These issues are dealt with by Council officers in a separate report to Council.

COMMENTS	RESPONSE
Support of Planning Proposal	
Full support of the rezoning	Noted
We thank Northern Beaches Council for concluding this long running project	
Objects to the Planning Proposal	
Strongly object to the proposal and to the 'additional information' documents.	Noted
The proposal is nothing less than a scandal. The Department of Planning should now investigate this matter and it's history from 2008 to the present day.	The Department of Planning and Environment (Department) is involved in the Planning Proposal process with the Department making the decision whether the Planning Proposal has sufficient merit to warrant a Gateway determination to proceed. Further, Council is not seeking delegation to exercise the LEP making powers delegated under Section 59 of the <i>Environmental Planning and Assessment Act 1979</i> in regard to this Planning Proposal. The decision whether the Planning Proposal is ultimately made will be a decision of the Department.
Insufficient time to assess application	
Two weeks is insufficient time to assess the additional information received.	Council undertakes a preliminary non-statutory exhibition for 14 days consistent with the initial non-statutory exhibition period when the Planning Proposal was first lodged. The non-statutory consultation is above the normal legislative requirements for consultation for exhibition of Planning Proposals. If the Planning Proposal progresses through Gateway a further statutory exhibition will be held.
History of the project	
I have been monitoring for years the unfolding of the Fern Creek/Council saga	Noted
A history of the proposal was provided including Warriewood Residents Association long involvement in the process.	The history of the site and WRA involvement in helping to facilitate a better outcome for the ratepayers is noted.

COMMENTS	RESPONSE
<p>The continued involvement of the WRA and the former opposition to changed plans that disadvantaged ratepayers including schemes that were proposed without any detail. The result of WRA's continual involvement is a net gain of about 609 sqm to the area outside the 25m creek line zone. This gain we believe has been worth striving for, and therefore a good outcome.</p> <p>The consultative documents identify when the land owners approached Pittwater Council with the scheme to free up their land locked holdings. The WRA believe that had the community been involved in the original proposal (October 2013) the updated park proposal would have been finalised some time ago benefiting both the Council and the residents.</p>	
<p>Insufficient information and errors</p> <p>Failure to include a survey plan of the park. The Plan should show the length of boundaries and bearings of all parts so that the full picture of what is being done in a transparent way to the ratepayers. The WRA has never accepted that an area measurement instead of a survey defines land.</p>	<p>The Planning Proposal documentation submitted by GLN Planning relies on the survey area measurements to demonstrate the land subject to the Planning Proposal. This is a reasonable approach however a more detailed survey plan will offer further clarity to the community.</p> <p>This assessment report recommends that a survey plan be prepared and available for the statutory exhibition. Whilst the survey plan will not form part of the Planning Proposal it will assist in clearly demonstrating the size and dimensions of the proposed RE1 Public Recreation land.</p> <p>The preliminary review of the Planning Proposal and comments made by the community uncovered some issues with the initial Planning Proposal.</p> <p>Additional information/clarification was sought from the applicant and this has resulted in an amended and updated Planning Proposal.</p>
<p>There are many errors in the first and second exhibition and many critical factual errors.</p> <p>Not adequately addressing Council's list of concerns for the first planning proposal and exhibition.</p> <p>Going to 1st public exhibition on 8 August 2016, and again currently, is an absolute farce.</p>	<p>The applicant responded to the request for additional information and resubmitted an updated Planning Proposal on the 17 January 2017. The updated Planning Proposal adequately addressed the majority of issues that Council had preliminary concerns with and this report is based on the amended Planning Proposal <i>Rezoning of Central Local Park Warriewood July 2016</i> (Amended January 2017) prepared by GLN Planning.</p>

COMMENTS	RESPONSE
Where is the probity report?	Three issues however that require further investigation and/or action are – land contamination, the need for a survey plan and the reclassification of part of 9 Fern Creek Road. These issues are further detailed in the Assessment Report. An independent probity consultant - Procure Group - was commissioned to guide the preparation and assessment of the Planning Proposal.
Questioned using Council reports as a basis for the Planning Proposal as the reports are not independent;	The probity report, presenting the outcomes of the audit of the assessment will be presented to Council at the same time as the assessment report. The previous Council reports provide background to understand the history and the development of the proposal from the acquisition of the property through to the design and community consultation undertaken to date.
Predetermined process It is a pointless exercise responding because council has predetermined the end result a long time ago. Council is a developer and salesman and the judge and jury. Although this is an unfinished proposal, the intention appears to be for council to slip it through no matter what. The conflict of interests and apprehension of bias is apparent to any reasonable observer.	The opinion is noted however it is not supported. Council must follow the legislative process for assessing a Planning Proposal. Further, Council is not seeking delegation to exercise the LEP making powers delegated under Section 59 of the <i>Environmental Planning and Assessment Act 1979</i> in regard to this Planning Proposal. The decision whether the Planning Proposal is ultimately made will be a decision of the Department. Council at its meeting, 19 March 2016, detailed that as landowner and party to the land swap there was a need to mitigate potential probity issues. In this regard, Council's Property Management and Commercial Business Unit engaged an independent planning consultant - GLN Planning Consultants - to prepare and lodge the Planning Proposal on Council's behalf. Council's Strategic Land Use Planning Business Unit engaged an independent planning consultant - MBWA Consulting - to assess the Planning Proposal. Further an independent probity consultant - Procure Group - was commissioned to guide the preparation and assessment of the Planning Proposal.
An advertisement for the sale of 9, 11 and 12 Fern Creek Road shows the land as sold. This makes the exhibition a waste of time.	As the independent assessor of the Planning Proposal the first time I was made aware of the sale of the property was through submissions to the Planning Proposal. The sale of the property has in no way influenced my assessment of the Planning Proposal.

COMMENTS	RESPONSE
<p>Design of future park</p> <p>Consider teenagers in the design of the new section – for example basketball hoops – as there is current lack of facilities for them</p> <p>Input requested into the final design of the park.</p>	<p>The Planning Proposal does not consider the future design however this submission will be referred to Council's Parks and Reserves Business Unit for consideration.</p> <p>Council has committed to directly involving the community in the design of the southern half of the Central Local Park.</p>
<p>Open space function and form</p> <p>The current plan indicates that there will be a suitable park where people can run, kick a ball and fly a kite which is all the WRA has proposed since 2013.</p> <p>Active playing fields:</p> <ul style="list-style-type: none"> • Council has recently stated there is a shortage of active open space in the Warriewood Valley area. • Warriewood Valley supposedly has a net need for some five hectares of land for active playing fields; • Why is Council upzoning this land for residential purposes whilst claiming there is a shortage of sports fields when the land is suitable for what it was originally designated for. • Given that 9 Fern Creek Road was purchased as a large District Park in 2008, why has not this need for active playing fields been applied to the subject land back in 2008/2009? • One hectare of level land at this site could easily accommodate a series of netball courts with associated parking and amenities. • The advertisement for sale stated that the property was 'asset surplus'. How can it be surplus when it was purchased from s.94 CP funds for active recreation and Council continues to say that there is a lack of active space in Warriewood Valley. • 9 Fern Creek should not be rezoned but kept for the purpose it was purchased for in 2014, being an active sports field. 	<p>Noted</p> <p>The Warriewood Valley Section 94 Contributions Plan Amendment 16 Revision 2 identifies 4.15 hectares of land is required to meet the Release Area's active open space requirements. The preferred locations for future active open space (sportsfields) is in Boondah Road, as identified in the Warriewood Valley S94 Plan.</p> <p>9 Fern Creek Road is already zoned R3 Medium Density Residential under Pittwater LEP 2014.</p> <p>Comments from Council's Parks and Reserves Business Unit provide the rationale behind the linear park and the change in the terminology from District Park to Central Local Park. The comments are reproduced below:</p> <p><i>"The rationale in seeking a linear park through the land swap rather than the rectangular block currently owned by Council goes way back to the original open space strategy for the Warriewood Valley release. The original plan showed a large park spanning both sides of Fern Creek. It was always envisaged that this park would be roughly semi-circular on both sides of Fern Creek and incorporate the creekline corridor thus maximising the Open Space element of the park.</i></p> <p><i>District Park – The 2008 Section 94 Plan referenced the park as 'District Park' partially built on Sector 8 (already built) and Sector 9 (being on the now subject properties), and at the time, Council's view was that the District Park will be used by majority of residents of the Warriewood Valley release area.</i></p>

COMMENTS	RESPONSE
	<p>The definition of District Park was introduced by the Department of Planning and Infrastructure when it released the Planning Bill, amending the Local Contributions, together with draft guidance on the list of essential infrastructure items and Draft Development Contributions Practice Notes (to replace the July 2005 version).</p> <p>Additionally, the following reforms were introduced:</p> <ul style="list-style-type: none"> the Minister issued a Direction for all Councils that in effect capped the contributions rate in greenfield release areas (\$30K per lot/dwelling) and existing areas to \$20K per lot/dwelling; DPI, with NSW Treasury, established a Local Contributions Review Panel whereupon Councils could seek exemption from the Direction. <p>Pittwater Council removed the reference of 'District Park' from the schedule and Section 94 Contributions Plan, as the definition of the term was distinctly different to Council's approach/intent. This name change resulted in the 'Central Local Park', which has been stated in Council's submission to the Local Contributions Review Panel and subsequent reviews of the Section 94 Plan since the 2008 version"</p>
<p>Section 94</p> <p>We have been told that there will be a net gain to the Section 94 fund when the land is exchanged. However, there are no money details available in the consultative documents. Does this net gain take into account liabilities for items including utilities, civil works and administrative costs? Secrecy is no longer an issue because the facts must be disclosed in Section 94 Plans.</p>	<p>Council has stated in the Council report 19 March 2016 that 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.</p> <p>The financial arrangements are separate from my consideration of the strategic merit of the Planning Proposal.</p> <p>This comment was therefore referred to Council officers and the following comment received:</p> <p>"Assessment of the financial benefits associated with the land-swap was completed as part of the Council report 19 March 2016 and are independent of the Planning Proposal.</p> <p>The Planning Proposal (this application) is the legal mechanism to facilitate the legislative obligations already agreed to by Council on 19 March 2016.</p>

COMMENTS	RESPONSE
	<i>Any financial accounting associated with the future land transaction and delivery of Section 94 infrastructure is reported to Council within the financial year it is effected. This is not a matter for consideration within this Planning Proposal."</i>
Sale of the property The sale of 9 Fern Creek Road was advertised early in 2016 subject to a VPA and a MOU with an approximate dwellings yield advertised of 33 dwellings	As the independent assessor of the Planning Proposal the first time I was made aware of the sale of the property was through this submission.
Sale of the subject site before the rezoning is gazetted is pre-emptive of the process	The sale of the property has in no way influenced my assessment of the Planning Proposal. The Planning Proposal relates to the land and not the owner of the property.
Effect on zoning of areas outside of the Planning Proposal Council is downzoning privately owned land against the private landowners wishes.	The Planning Proposal does not seek to rezone any land outside of the land it applies to.
Classification of land It should also have been classified 'community' land, rather than 'operational', at the time of purchase in 2008. In my opinion, this was a manipulation that 'pulled the wool' over residents' eyes right from the outset.	9 Fern Creek Road was purchased in 2008 using S94 funds collected for the provision of public open space. Council resolved at the time of acquisition to classify the land as 'operational' under the <i>Local Government Act 1993</i> to retain some flexibility around the future development of Sector 9.
Roads Concern over the road layout proposed: <ul style="list-style-type: none"> Schedule 4 of the VPA lists – Fern Creek Road works and East-West Road works Why is the East West Road needed? Why is the north-traveling Fern Creek Road proposed? Why is there no discussion on alternative routes to Lots 11 and 12. There is an alternative access off the Fern Creek Road turning circle through two access handles. There is no plan of the east-west road in the VPA 9 Fern Creek road will be cut in half just to provide access to land to the west 	<p>The road layout is proposed within the draft Voluntary Planning Agreement (VPA) that accompanied the amended Planning Proposal. Council officers are commenting on the draft VPA in a separate report to Council.</p> <p>The road layout does not form part of the Planning Proposal. However, the following comments are offered.</p> <p><i>Pittwater DCP 21 Control C6.11 Indicative Layout 2 (Linear Park)</i> details an indicative proposed public 'Local Road' for the northern and eastern proposed extension of Fern Creek Road. The western extension of Fern Creek Road is shown as an 'indicative alignment of Internal Local Road'.</p> <p>Any future development application for subdivision must consider the provisions of the DCP in respect of the road network.</p>

COMMENTS	RESPONSE
	<p>Given that the road layout is detailed within Pittwater DCP 21 it is not considered that an alternative road network needs to be provided or discussed in the Planning Proposal.</p> <p>Further, access to the future park and passive surveillance is enhanced by the north extension of Fern Creek Road and the proposed road that adjoins the open space.</p>
<p>Recent refusal of Planning Proposals in the locality</p> <p>Rezoning Review concern:</p> <ul style="list-style-type: none"> Two recent Planning Proposals have been refused – 2 MacPherson Street and 10 -12 Boondah Road citing the Department's Guide to preparing planning proposal (2016) re not to allow a rezoning review where an earlier rezoning was done within the previous five years. The inconsistency shown by council is blatant. I believe that this matter that should be taken up with the Department of Planning. No basis whatsoever for council to argue a strategic merit case for the removal of the 'no dwelling' clause applicable to 9 Fern Creek Road. <p>The increase in the number of dwellings is an issue of considerable importance and consequence:</p> <ul style="list-style-type: none"> The "no dwellings" yield prescribed by clause 6.1(3) of Pittwater Local Environmental Plan 2014 prohibits residential development on the site, and pursuant to clause 4.6 of Pittwater Local Environmental Plan 2014 cannot be varied. Council itself has rigidly enforced this clause and denied other private landowners the right to this clause for their development proposals (for instance, the planning proposal refused at the council meeting on 31 January 2017). 	<p>The refusal of the two Planning Proposals is noted.</p> <p>The submission claims that the rezonings was refused because there was an earlier rezoning done within the previous 5 years.</p> <p>A Rezoning Review is a process whereby an applicant may ask the Department of Planning and Environment for a 'rezoning review' if for example, Council has refused their planning proposal.</p> <p>The Planning Panel/Commission assess the strategic merit against the Strategic Merit Test. For proposals with strategic merit the Planning Panel/Commission undertakes a Site Specific Merit Test.</p> <p>The Guide states <i>'There will be a presumption against a Rezoning Review request that seeks to amend LEP controls that are less than 5 years old, unless the proponent can clearly justify that it meets the Strategic Merit Test'</i>.</p> <p>The Planning Proposal seeks to amend Clause 6.1(3) of Pittwater LEP 2014.</p> <p>Clause 4.6 of Pittwater LEP 2014 is not being utilised as part of the Planning Proposal as it is an 'Exception to a Development Standard'. Clause 4.6 relates to a Development Application and not a Planning Proposal.</p>

COMMENTS	RESPONSE
<p>Original acquisition of land</p> <p>Concern about the original acquisition of the land:</p> <ul style="list-style-type: none"> Object to the statement that lot 9 Fern Creek was purchased as 'operational' land; Council should have zoned the land open space and made it community land; The land was purchased for a large district park not a small local park; The land was <i>not</i> purchased as strictly 'operational land', under a s94 plan developer contributions must not be used to buy 'operational land' where the land is not part of the approved section 94 plan. It cannot be clearer that all of this land was to be a park and not operational land as residential or any other purpose. How many councils purchase lands for a park using section 94 funds and then rezone the land to medium density with no dwelling yield? Council originally bought this land using developers contributions S94 funds to rezone it for a district park. Council now propose land swaps to create a so called long creek line park and residential development. Is this redevelopment not against the intent of use for S94 funds and manipulation by Council to the detriment of privately owned lands? 	<p>Council at its meeting 21 April 2008 detailed the proposed acquisition of 9 Fern Creek Road using Section 94 funds collected for the provision of public open space and resolved to classify the land as 'operational' under the <i>Local Government Act 1993</i> to retain some flexibility around the future outcomes of the master planning of Sector 9.</p> <p>The site is listed as 'operational' under Council's Land Register. The future RE1 Public Recreation land will be reclassified as 'community' land.</p> <p>The open space land zoning will be approximately 600m² larger than what could have been accommodated originally on 9 Fern Creek Road.</p> <p>The issue of the District Park terminology has been dealt with above, as has the issue of the Council's preferred open space linear park layout.</p>
<p>Council reinventing history on the 0 dwelling yield</p> <p>Claims that the no dwelling yield was a planning error are not correct.</p> <p>The council in its Warriewood Valley Strategic Review attempted to rezone 9 Fern Creek Road for Medium Density and to allocate a dwelling yield for this site. However, public outcry over this action prompted Council to <i>promise</i> not to develop and sell this park, however, instead of rezoning it to Open Space, council took the highly unusual step of rezoning it to Medium Density BUT instead placing a "no dwellings" clause into the Pittwater LEP 2014.</p>	<p>There is no dispute that 9 Fern Creek Road has no dwelling yield allocated to it under Clause 6.1 Pittwater LEP 2014. Further, the Warriewood Valley Strategic Review Addendum Report states <i>'This parcel was bought by Council for recreation purposes. Under the 2012 Strategic Review it was zoned R3 with no dwelling yield allocated against the parcel'</i>.</p> <p>The Planning Proposal seeks to amend Clause 6.1. In fact, the only mechanism available to amend Clause 6.1 is via a Planning Proposal.</p>

COMMENTS	RESPONSE
<p>9 Fern Creek Road was purchased for active recreation purposes as a park/sports field and correctly was marked with "0" dwellings yield.</p> <p>Calculation of dwelling yield</p> <p>Concern as to how the proposed dwelling yields have been calculated by the applicant.</p> <ul style="list-style-type: none"> Table 3 and Table 4 inaccuracies; PLEP 2014 is very clear that the total number of dwellings in column 2 of Clause 6.1 must be achieved. No compelling case for 33 dwellings There is a net increase of 5 not 3 dwellings 901H has been allocated a dwelling yield of 3 dwellings for a small level portion of access handles. 	<p>Council at its meeting 21 April 2008 detailed the proposed acquisition of 9 Fern Creek Road using S94 funds collected for the provision of public open space and resolved to classify the land as 'operational' under the <i>Local Government Act 1993</i> to retain some flexibility around the future outcomes of the master planning of Sector 9.</p> <p>Table 3 of the GLN report provides 'total areas' (including creeklines). I am unsure as to why a 'total area' was included although I note the dwelling yields for 901C and 901G are correct.</p> <p>Table 4 of the GLN report provides 'developable areas' (excluding creeklines).</p> <p>Table 4 of the GLN report provides a reasonable and logical argument to the dwelling yields for Lot 11 DP 1092788 (901G), Lot 12 DP 1092788 (901C) and Lot 5 DP 736961 (9 Fern Creek Road). The developable area excludes the creekline corridor. With a developable area of 12 624.1m² and having regard to the maximum and minimum dwelling yield set in PLEP 2014 and Warriewood Valley Strategic Addendum Report 2014 the range of 26 – 33 dwellings is accurate.</p> <p>I am recommending a further amendment to Pittwater LEP 2014 to remove the 2 dwelling pro rata allocation on 13 Fern Creek Road (part 901A).</p> <p>There is a potential maximum increase of 3 dwellings as a result of this Planning Proposal if the three sectors (901C, 901G and 9 Fern Creek Road) develops to the maximum 33 dwellings.</p> <p>Council will assess at the time of any development application whether the number of dwellings in Column 2 Clause 6.1 will be achieved.</p> <p>Presently 901C and 901G are to be developed together. The Planning Proposal suggests that 901C, 901G and 9 Fern Creek Road be allocated a combined dwelling yield of a minimum of 26 and a maximum of 33 dwellings. It is considered that in terms of good urban design outcomes considering the three parcels of land together allows for an integrated assessment of any future</p>

COMMENTS	RESPONSE
	development application. Further, Pittwater 21 DCP proposes the 3 sites be developed together. 901H is not part of this Planning Proposal and no comment is offered as to why the 3 dwellings have been allocated to 901H under Pittwater LEP 2014.
<p>Land swap details</p> <p>Lack of information on the land swap in the Planning Proposal and supporting documents.</p> <p>No land swap diagram provided in Planning Proposal.</p>	<p>Council at the meeting of 19 March 2016 resolved to 'endorse the proposed terms of the land swap and authorise the General Manager to sign the deed of agreement for the land swap'. The decision on the land swap has therefore already been made by Council and the land swap diagram is therefore not required as part of the Planning Proposal.</p> <p>For the land swap to occur an amendment to Pittwater LEP 2014 is required. The current Planning Proposal is a result of the resolution of 19 March 2016 and provides the legal mechanism to amend Pittwater LEP 2014.</p> <p>The Council report on the land swap (19 May 2014) is available as an Attachment (Attachment 6) of the GLN's Planning Proposal for background purposes. As is the Council Report of 19 March 2016 (Attachment 9) that details the results of the land swap in full.</p> <p>The inner creekline corridor is 50m wide (25m each side of the centerline of the creek). This area is acquired by Council under the Section 94 CP for Warriewood Valley and remains in Council ownership. The inner creekline corridor land has not been included in the land swap areas.</p> <p>Council's preferred open space layout for the subject land is generally linear in shape, with a central bulge either side of Fern Creek, connected by a pedestrian/cyclist bridge, and providing for passive recreation opportunities.</p> <p>The outer creekline corridor is provided on each side of the inner creek line corridor (25m) and can be retained in private ownership. It is correct that no buildings are allowed in the outer creekline corridor. However, a pedestrian path/cycleway may be permitted in the outer creekline corridor sited above the 20% AEP level and subject to other controls.</p>
<p>If the creekline corridors and riparian buffer are excluded there is little benefit of an elongated park versus a rectangular park.</p> <p>The creekline corridors and riparian setback zones are not able to be used as building lands under the s94 plan for Warriewood Valley and associated DCP. So what is claimed to be a net area benefit is not correct since this corridor land has to be dedicated to council anyway.</p>	

APPENDIX 2

Land Use Zoning Maps – Existing and Proposed (Pittwater Local Environmental Plan 2014)

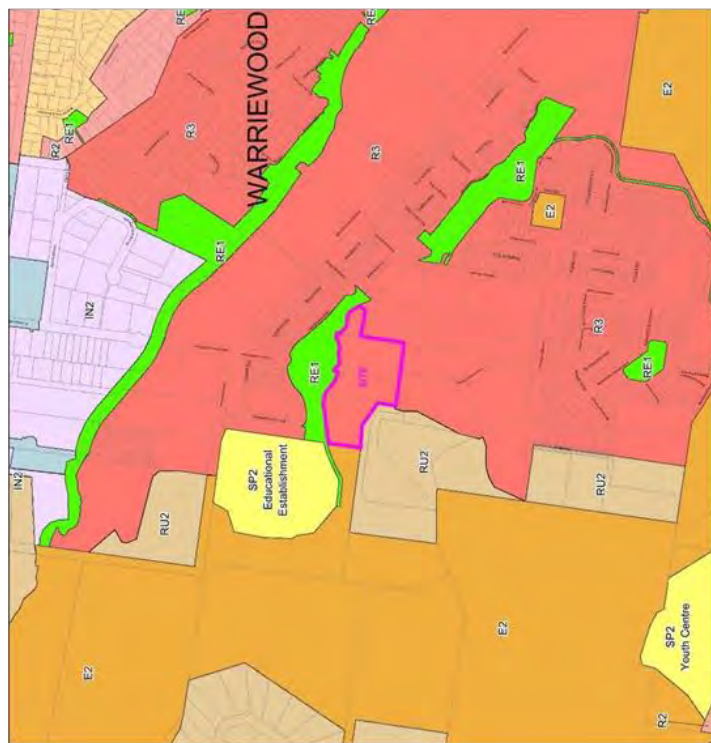


Figure 1: Existing Land Use Zoning Map

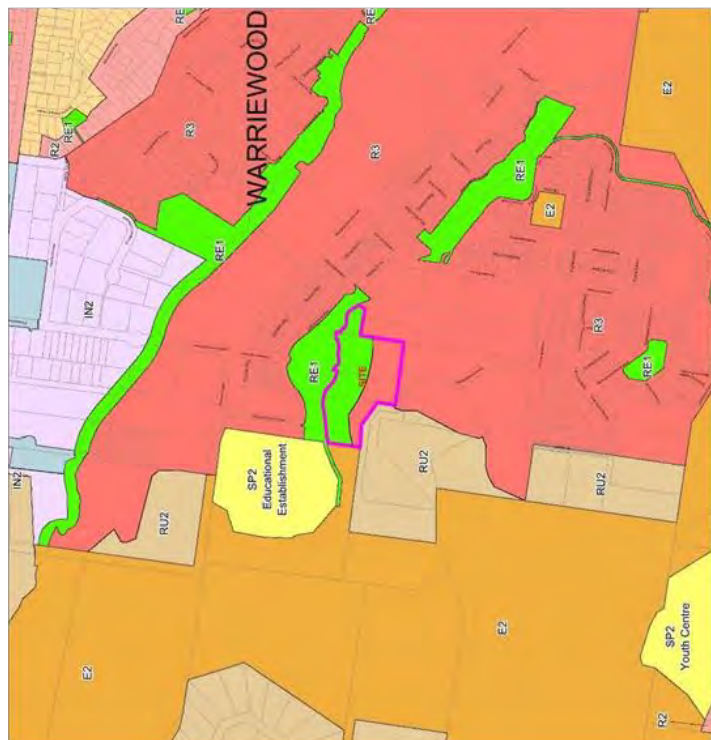


Figure 2: Proposed Land Use Zoning Map

Height of Building Maps – Existing and Proposed (Pittwater Local Environmental Plan 2014)

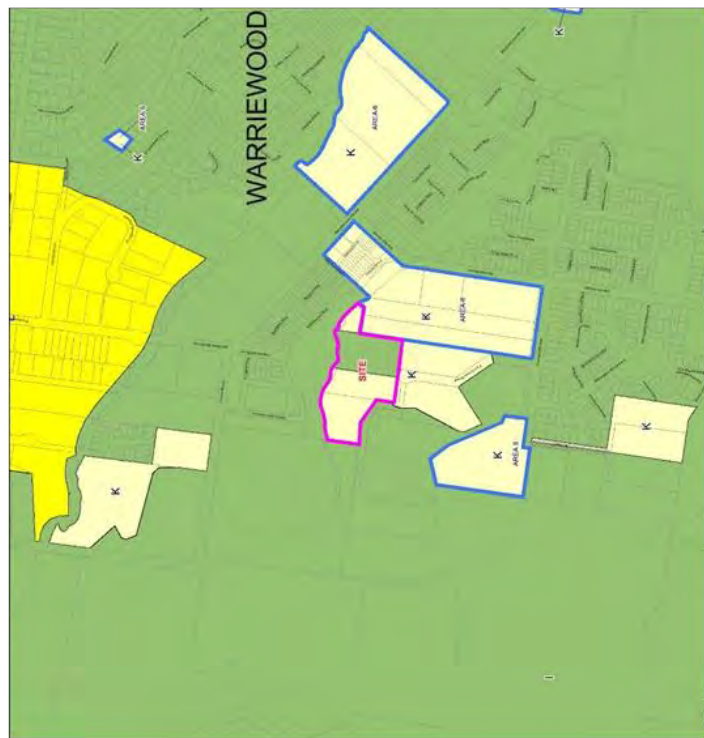


Figure 3: Existing Height of Building Map

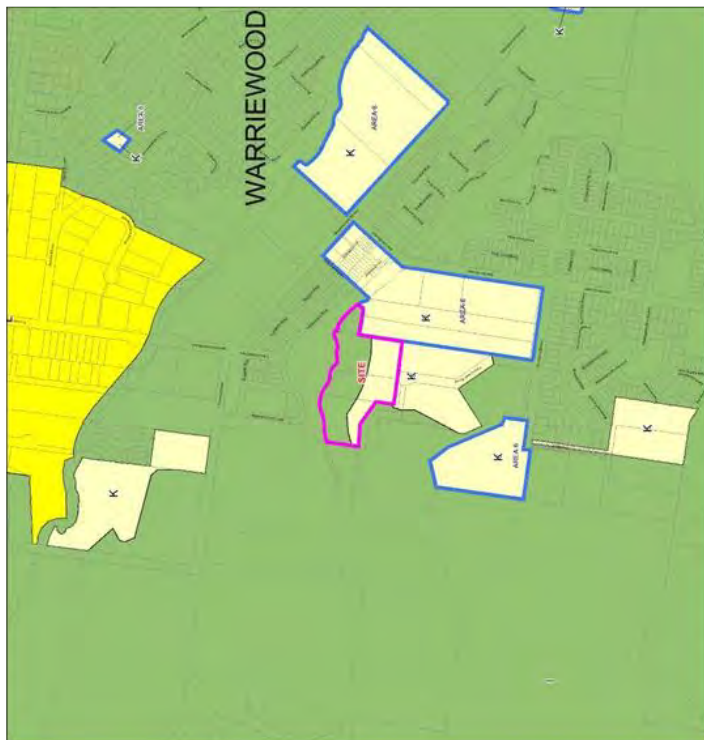


Figure 4: Proposed Height of Building Map



GPO Box 1104, SYDNEY, NSW 2001
ABN: 22 130 906 824
Phone: 1300 559 385

Mr Dick Persson
Administrator
Northern Beaches Council
Dee Why NSW 2099

By email (per): liza.cordoba@northernbeaches.nsw.gov.au

15 May 2016

Dear Dick

PROBITY REPORT – ASSESSMENT OF PLANNING PROPOSAL PP0002/16

Procure Group Pty Ltd (**Procure**) was engaged by Northern Beaches Council (**Council**) on 27 June 2016 to provide an independent probity review in relation to the assessment of Planning Proposal PP0002/16 (**Planning Proposal**). Council is the landowner of 9 Fern Creek Road Warriewood and is the proponent for this application. The Planning Proposal arises from a land swap agreement between Council and Frasers Property involving 11, 12 and 13 Fern Creek Road. The land swap enables the development of properties owned by Fraser Property and provides Council with the opportunity to establish improved open space for the use of the local community.

The assessment report to Council provides the following summary:

Council received a Planning Proposal from GLN Planning Consultants on behalf of Council's Property Management and Commercial Business Unit relating to 9, 11, 12 and 13 Fern Creek Road, Warriewood. The Planning Proposal seeks to amend the Pittwater Local Environmental Plan 2014 to primarily enable the creation of the southern portion of the planned Central Local Park. A secondary objective is to enable the development of the remaining land in an orderly and economic manner for housing. This will be achieved through an amendment to the Land Zoning map, amend the Height of Building map, and amend the dwelling provisions contained in Part 6 Clause 6.1(3) Pittwater Local Environmental Plan 2014.

As Council is a landowner and party to the land swap to mitigate potential probity issues, an independent planning consultant was engaged to prepare the Planning Proposal (GLN Planning) on behalf of Council's Property Management and Commercial Business Unit and an independent planning consultant was engaged to assess the application (MBWA Consulting) on behalf of Council's Planning and Community Business Unit.

In the circumstances where Council is the owner of land the subject of a Planning Proposal before Council, Council has a conflict of roles which must be addressed. Council has taken steps in this regard and has requested Procure to conduct a review of the steps taken and to confirm their adequacy.

This report has been completed to assist Council in its decision-making relating to the Planning Proposal. The report cannot be relied upon by any other party or for any other purpose. While the Probity Advisor may provide input into the processes followed, Council retains overall responsibility for the probity of its personnel and processes.

Vic Baueris has conducted the review on behalf of Procure and has prepared this report.

Northern Beaches Council
Planning Proposal PP0002/16

Probity Report

Probity Fundamentals

In undertaking the probity advisory role, Procure has had regard to the "probity fundamentals" described in the ICAC publication "Probity and Probity Advising (November 2005)". These probity fundamentals are:

- + Maintaining impartiality
- + Managing conflicts of interest
- + Maintaining accountability and transparency
- + Maintaining confidentiality
- + Obtaining value for money (not relevant in this case)

Our work performed to review the application of each of these probity fundamentals to the assessment process is documented below.

Key dates

Activity	Date
Planning Proposal received by Council	8 August 2016
First exhibition period	15 to 29 August 2016
Updated Proposal received by Council	17 January 2017
Second exhibition period	25 March to 10 April 2017
Assessment report completed	8 May 2017

Work Performed

In completing this engagement, Procure has completed the following tasks.

- + Noted that Council at its meeting held on 19 March 2016 determined that as landowner and party to the land swap there was a need to mitigate potential probity issues. In this regard, Council's Property Management and Commercial Business Unit engaged an independent planning consultant - GLN Planning Consultants - to prepare and lodge the Planning Proposal on Council's behalf. Council's Strategic Land Use Planning Unit engaged an independent planning consultant - MBWA Consulting - to assess the Planning Proposal;
- + Noted that the Planning Proposal was received by Council on 8 August 2016 and that (non-statutory) notification of the Planning Proposal was undertaken between 15 and 29 August 2016;
- + Participated in an initial meeting on 10 August 2016 with Council officers and the independent assessor to agree on the probity processes to be followed and Procure's role. Confirmed at the meeting that the independent assessor did not have any conflicts of interest which prevented her from conducting the assessment;
- + Noted that on 22 August 2016 Council staff in the Technical Team who may be required to provide comment on the Planning Proposal were advised that Procure had been engaged to oversee the probity arrangements for the conduct of the independent review of the Planning Proposal assessment process. Procure's contact details were provided these Council officers in order for contact to be made should any probity issues arise. Recipients were also reminded to ensure the confidentiality of any matters related to the assessment process.;
- + Matters referred by Council to Procure during the assessment period related to potential conflicts of interest by Council officers. No such matters involved any conflict of interest that required action other than disclosure. No referrals or complaints were received from the public;

Northern Beaches Council
Planning Proposal PP0002/16

Probity Report

- + Noted that as the result of additional information required to complete the assessment following the first period of public notification, a second period of non-statutory public notification of the Planning Proposal took place between 25 March 2017 and 10 April 2017;
- + Confirmed that for both public notifications, properties within Warriewood Valley and registered Community Groups were sent notification letters (approximately 1,750). Advertisements notifying of the Planning Proposal and inviting comment, were placed in the Manly Daily on 13 August 2016 and 25 March 2017. The relevant documents were made available electronically on Council's website on the 'Exhibitions' page and via the 'ePlanning' portal, and in hard copy in Customer Service Centres at Manly, Dee Why, Mona Vale and Avalon. In addition, a notification sign was placed on the site for both notification periods;
- + Noted that the public agencies being Rural Fire Service, NSW Office of Water and Ausgrid were also advised of the Planning Proposal and requested to provide comment;
- + Participated in meetings with Council officers and the independent assessor on 3 and 20 April 2017 to review progress;
- + Confirmed with the independent assessor in discussions on 10 May 2017 that she had not been subject to any influence or interference from Council officers in relation to the conduct of the assessment;
- + Confirmed with the Planner, Land Release who had overall administrative responsibility for the Proposal application process, that all the documentation related to the assessment process will be stored in a confidential folder in the Council Records System. At the time of conducting this review, Procure was advised that the confidentiality of all records has been maintained;
- + Confirmed with the Manager, Property Management and Commercial Business Unit on 10 May 2017 that total separation was maintained between her Unit and the assessment process. This was required as this Unit acted as the developer for the Planning Proposal and had engaged the planning consultant who prepared the Planning Proposal;
- + Noted that the Council report prepared to present the Assessment Report, the probity report and other relevant documents to Council includes the following details in relation to a Voluntary Planning Agreement (VPA) submitted along with the revised Planning Proposal (17 January 2017):
 - *The amended Planning Proposal, received on 17 January 2017, did not change in terms of the proposed amendments to the PLEP 2014 but responded to Council's request for additional information, addressing issues raised in its consultant's preliminary assessment and the submissions. A significant piece of new information accompanying this amended Planning Proposal was a preliminary 'draft version' of the Voluntary Planning Agreement (VPA) and Explanatory Note, "in the interest of clarity and transparency at this non-statutory exhibition phase". The Draft Voluntary Planning Agreement and Explanatory Note formed part of the documentation package that was released for preliminary (non-statutory) exhibition.*
 - *The preparation of a Draft Voluntary Planning Agreement (Draft VPA) originated from the Memorandum of Understanding between the then Pittwater Council and Frasers Property (formerly Australand) for the subject properties (now the subject of this Planning Proposal) in October 2015. On 19 March 2016, Council resolved, to authorise the General Manager to sign the Deed of Agreement where the parties are to enter into a future Planning Agreement as part of the completion conditions stipulated by the Deed.*
 - *On 18 April 2017, following the conclusion of the second preliminary (non-statutory) notification period for the Planning Proposal, the applicant formally withdrew the draft version of the Voluntary Planning Agreement.*
- + Noted that withdrawal of the VPA (as outlined in the previous point) removed the potential for a conflict of role for Council officers. This would have arisen in the circumstances where submissions in response to the Planning Proposal required comment and response from Council officers who

Northern Beaches Council
Planning Proposal PP0002/16

Probity Report

- previously had a role in preparing the VPA. Noted that the VPA will require presentation to Council and public exhibition before finalisation;
- + Reviewed the Assessment Report to Council which details the outcome of the assessment. Noted that it includes the following summary of public responses to the Planning Proposal:
 - *Six written submissions were received as a result of the second non-statutory notification of Planning Proposal P0002/16 – 1 submission in support of the proposal; 4 clearly objecting to the proposal; and 1 submission offering comment and clarification.*
 - + Further noted that the Assessment Report to Council included:
 - Outline of advice received from each Council Business Unit with responses;
 - Outline of advice received from each of the public agencies invited to comment on the Planning Proposal;
 - Outline of submissions from the community with responses; and
 - Outline of Assessment Criteria used and assessment comments in relation to each criterion
 - + Noted that to further maintain Council's independence from the decision-making process, Council is not seeking delegation to exercise the LEP making powers delegated under Section 59 of the Environmental Planning and Assessment Act 1979 in regard to this Planning Proposal. Instead the Department of Planning and Environment will undertake the plan making functions for the Planning Proposal;
 - + No breaches of confidentiality or other probity concerns have been reported to Procure;
 - + Noted then when the Assessment Report is presented to Council, members of the community will have the opportunity to present their views on the recommendations made by the independent assessor.

Conclusion

Based upon our work performed in the conduct of the review, as detailed in this report, no issues of a probity nature have come to our attention that would lead us to conclude that the assessment of Planning Proposal PP0002/16 by Council has not been undertaken in a transparent manner with due regard to probity.

Yours sincerely



Warwick Smith
Director
Procure Group Pty Ltd

MEMORANDUM OF UNDERSTANDING

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

1	Parties Identity	Pittwater Council (PC) and Fraser's Property Limited (FP)
2	Form of Contract	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	Properties	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	Terms of Memorandum of Understanding (MOU)	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	Valuation and Negotiations	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	Creek line Corridor	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	Undergrounding of Overhead Power	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	Road works	<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 & 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	Pittwater LEP Amendment	<p>PC agrees to prepare and lodge a Planning Proposal to amend Pittwater LEP 2014 as follows:</p> <ul style="list-style-type: none"> (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; (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 (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 (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

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	Subdivision	<p>Following gazettal of the LEP amendment by Department of Planning & 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	Settlement	<p>Settlement of the land swap is conditional on the following:</p> <ul style="list-style-type: none"> (a) Registration of subdivision certificate in accordance with the development application described in item 10; and (b) Gazettal of the LEP Amendment identified in Item 9. <p>Settlement will occur within 30 days of the successful completion of both (a) and (b) above.</p>
12	Storm-water infrastructure	<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	Probity	PC to appoint probity advisor to oversee and report on this transaction.
14	Other Issues: Contamination	<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	Other Issues: Legal Documentation	<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>

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	Other Issues: Other Costs and Invoicing:	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	Other Issues: Council endorsement:	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 Fraser Property Ltd

Date:

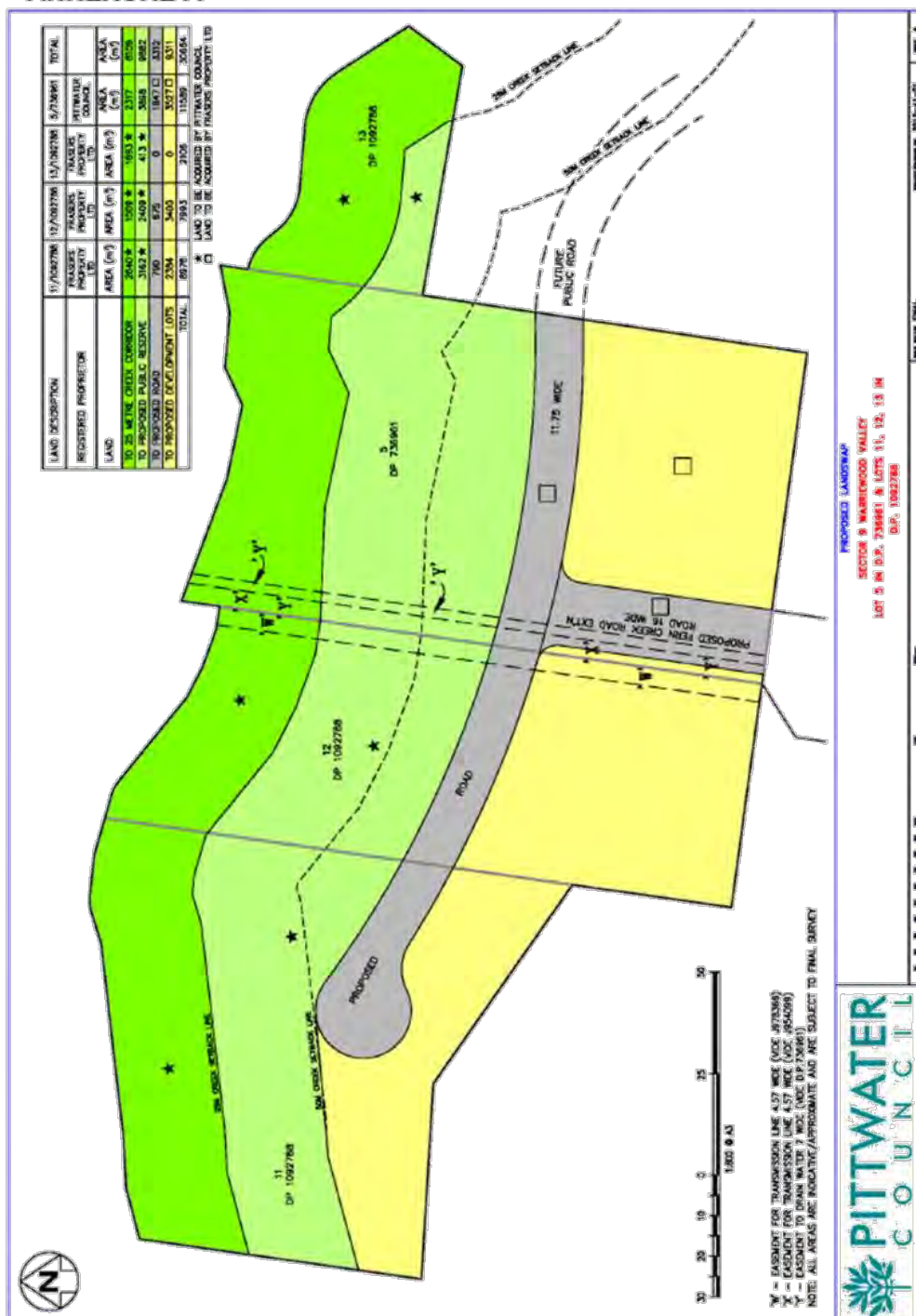
1/10/15

Agreed by Pittwater Council

Date:

29/9/15

ANNEXURE A



LAND SWAP DEED

PITTWATER COUNCIL

("Council")

and

FRASERS PROPERTY LIMITED

("FP")

Matthews Folbigg

Matthews Folbigg Pty Ltd
"The Barrington" Level 7
10-14 Smith Street Parramatta 2150
PO Box 248 Parramatta 2124
DX 8233 Parramatta
T 9635 7988 | F 9633 9400

2 March 2016

CONTENTS

PARTIES	2
RECITALS AND BACKGROUND	2
OPERATIVE PART	3
1. DEFINITIONS AND INTERPRETATION	3
2. CONDITIONS PRECEDENT	6
3. COUNCIL'S OBLIGATIONS	6
4. FP'S OBLIGATIONS	8
5. LAND SWAP	9
6. COMPLETION	10
7. UNDERGROUNDING OF OVERHEAD POWER	10
8. DUTY AND LEGAL COSTS	11
9. GST	11
10. MISCELLANEOUS PROVISIONS	12
11. DISPUTE RESOLUTION	13
12. NOTICES	14
ANNEXURE "A"	15
EXECUTION	17

8 March 2016

1

LAND SWAP DEED

Deed dated

19 April 2016

-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.

DEED
8 March 2016

2

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 9

- (a) a term which has a defined meaning in the GST Act has the same meaning when used in this clause 9; 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:

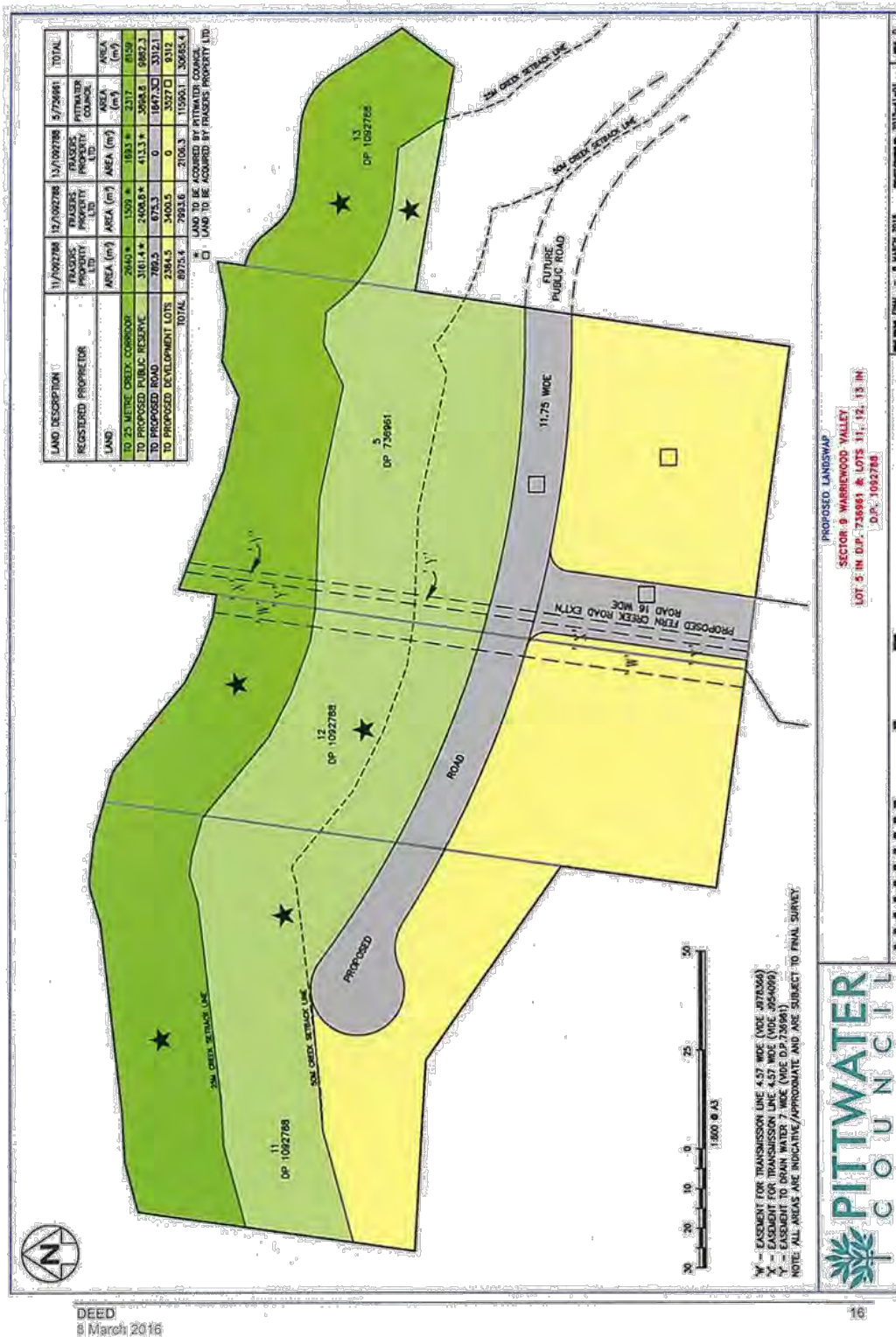
- (a) must be in writing addressed to the intended recipient at the address shown in the Deed or at the address last notified by the intended recipient to the sender;
- (b) must be signed by a person duly authorised by the sender;
- (c) will be taken to have been given when delivered, received or left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

DEED
8 March 2016

15

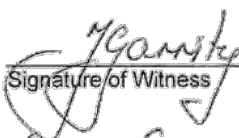


EXECUTION

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

FIONA GARRITY
Name of Witness [BLOCK LETTERS]


General Manager

MARK FERGUSON
Name of General Manager [BLOCK LETTERS]

5 VUKO PLACE WARRIEWOOD
Address of Witness NSW 2102

29/3/2016.

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

RODNEY VAUGHAN FEHRING
Name of Director


Signature

JANIS SHARON WOOD
Name of Secretary



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 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 barbecues, 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 are 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, barbeques, 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 ²)	Land to be retained (m ²)	Total (m ²)
5/736961	9 Fern Creek Road	Pittwater Council	5,374.3	6,215.8 (3898.8 exclusive of creek line land)	11,590.1
11/1092788	11 Fern Creek Road	Frasers Property	5,801.4 (3161.4 exclusive of creek line corridor land)	3,174	8,975.4
12/1092788	12 Fern Creek Road	Frasers Property	3,917.8 (2408.8 exclusive of creek line corridor land)	4,075.8	7,993.6
13/1092788	13 Fern Creek Road	Frasers Property	2,106.3 (413.3 exclusive of creek line corridor land)	0	2,106.3
Pittwater Council Total			5,374.3	6,215.8 (3898.8 exclusive of creek line land)	11,590.1
Frasers Property Total			11,825.5 (5986.5 exclusive of creek line corridor land)	7,249.8	19,075.3
Total (m²)			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 (m²)
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 ²)	2,317	2,640	1,509	1,693	
Public park (m ²)	3,898.8	3,161.4	2,408.8	413.3	9,882.3
Public road (m ²)	1,847.3	789.5	675.3	0	3,312.1
Development land (m ²)	3,527	2,384.5	3,400.5	0	9,312
Total (m²)	11,590.1	8,975.4	7,993.6	2,106.3	30,665.4

Warriewood Valley Playground

Creepline corridor acquisition as per s64 Plan. Not part of swap. Approx. 5,800 sqm

Council creepline land to be retained. Approx. 2,300 sqm

25m

43m

51m

Council land to be retained. Approx. 3,900 sqm (Net of Creek)

51m

Developer land to be swapped. (approx. 6,000 sqm)

Council land to be swapped. Approx. 5,200 sqm

0 100m

PITTWATER COUNCIL

CENTRAL LOCAL PARK - Proposed Land Swap

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

ATTACHMENT 1



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

Sector 9 Land Ownership





ATTACHMENT 3



ATTACHMENT 4

MEMORANDUM OF UNDERSTANDING

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

1	Parties Identity	Pittwater Council (PC) and Fraser's Property Limited (FP)
2	Form of Contract	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	Properties	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	Terms of Memorandum of Understanding (MOU)	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	Valuation and Negotiations	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	Creek line Corridor	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	Undergrounding of Overhead Power	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

Page | 1
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>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	Road works	<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 & 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	Pittwater LEP Amendment	<p>PC agrees to prepare and lodge a Planning Proposal to amend Pittwater LEP 2014 as follows:</p> <ul style="list-style-type: none"> (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; (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 (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 (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

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	Subdivision	<p>Following gazettal of the LEP amendment by Department of Planning & 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	Settlement	<p>Settlement of the land swap is conditional on the following:</p> <ul style="list-style-type: none"> (a) Registration of subdivision certificate in accordance with the development application described in Item 10; and (b) Gazettal of the LEP Amendment identified in Item 9. <p>Settlement will occur within 30 days of the successful completion of both (a) and (b) above.</p>
12	Storm-water infrastructure	<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	Probity	PC to appoint probity advisor to oversee and report on this transaction.
14	Other Issues: Contamination	<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	Other Issues: Legal Documentation	<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 736951 (PC) / Lot 13 1092788 (FP)

		documents leading to their signing are to be borne equally by both parties.
16	Other Issues: Other Costs and Invoicing	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	Other Issues: Council endorsement	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

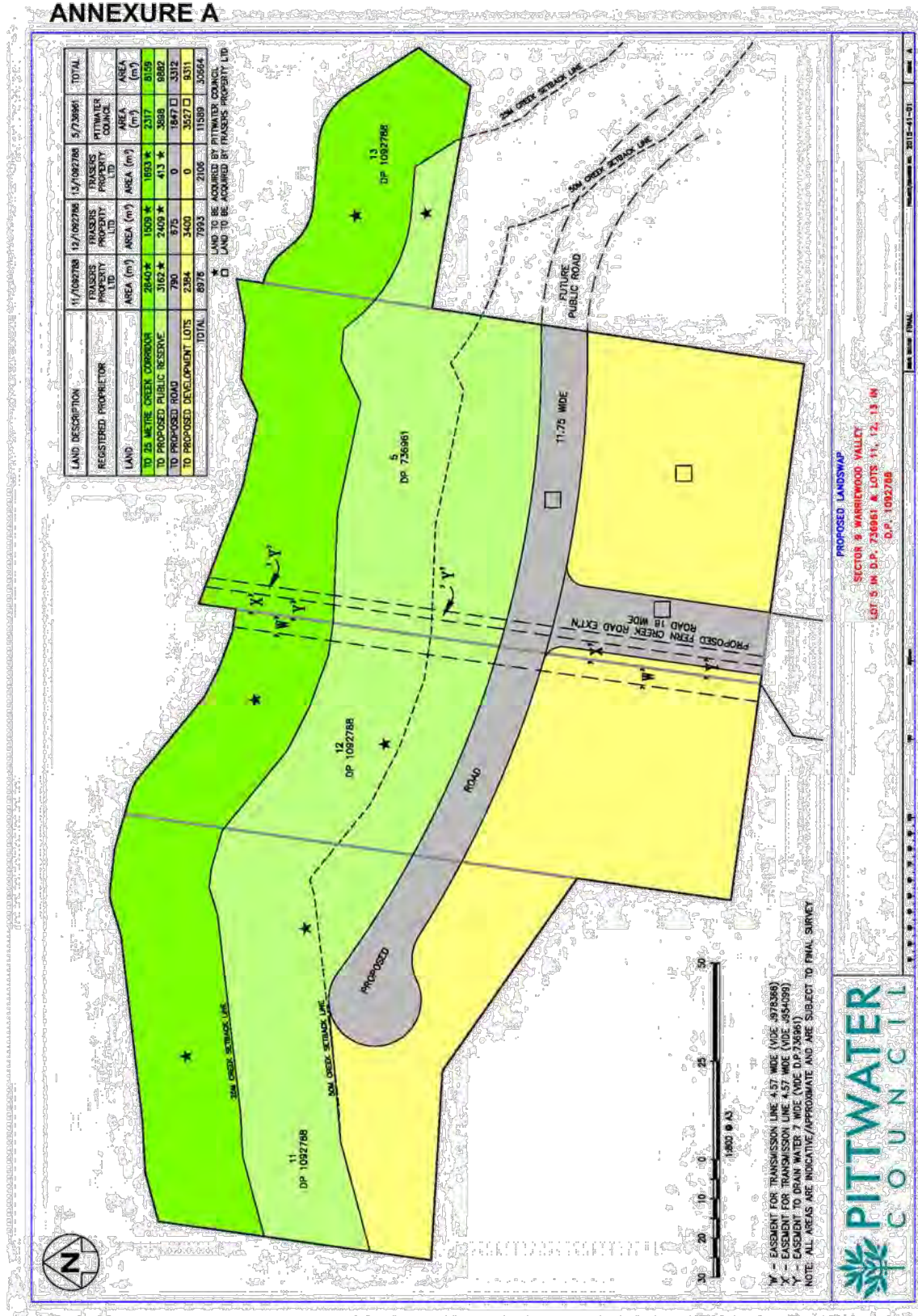
Date:

29/9/15

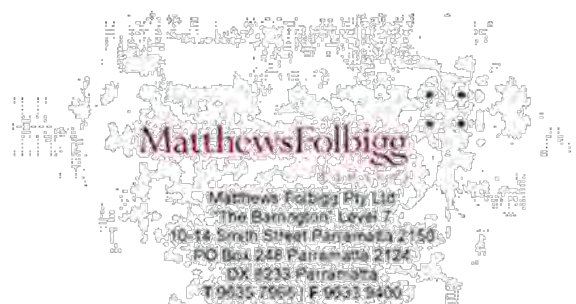
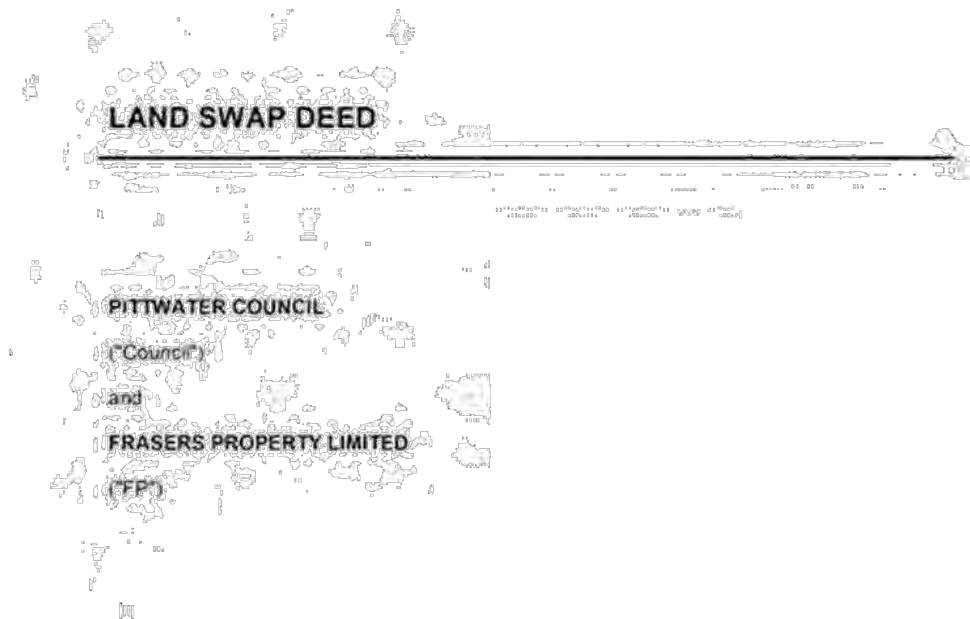
Page 4

Final 28/09/2015

ANNEXURE A



ATTACHMENT 5



CONTENTS

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

8 March 2016

i

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:

- (i) 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
- (ii) 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 [9]

- (a) a term which has a defined meaning in the GST Act has the same meaning when used in this clause [9] 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.

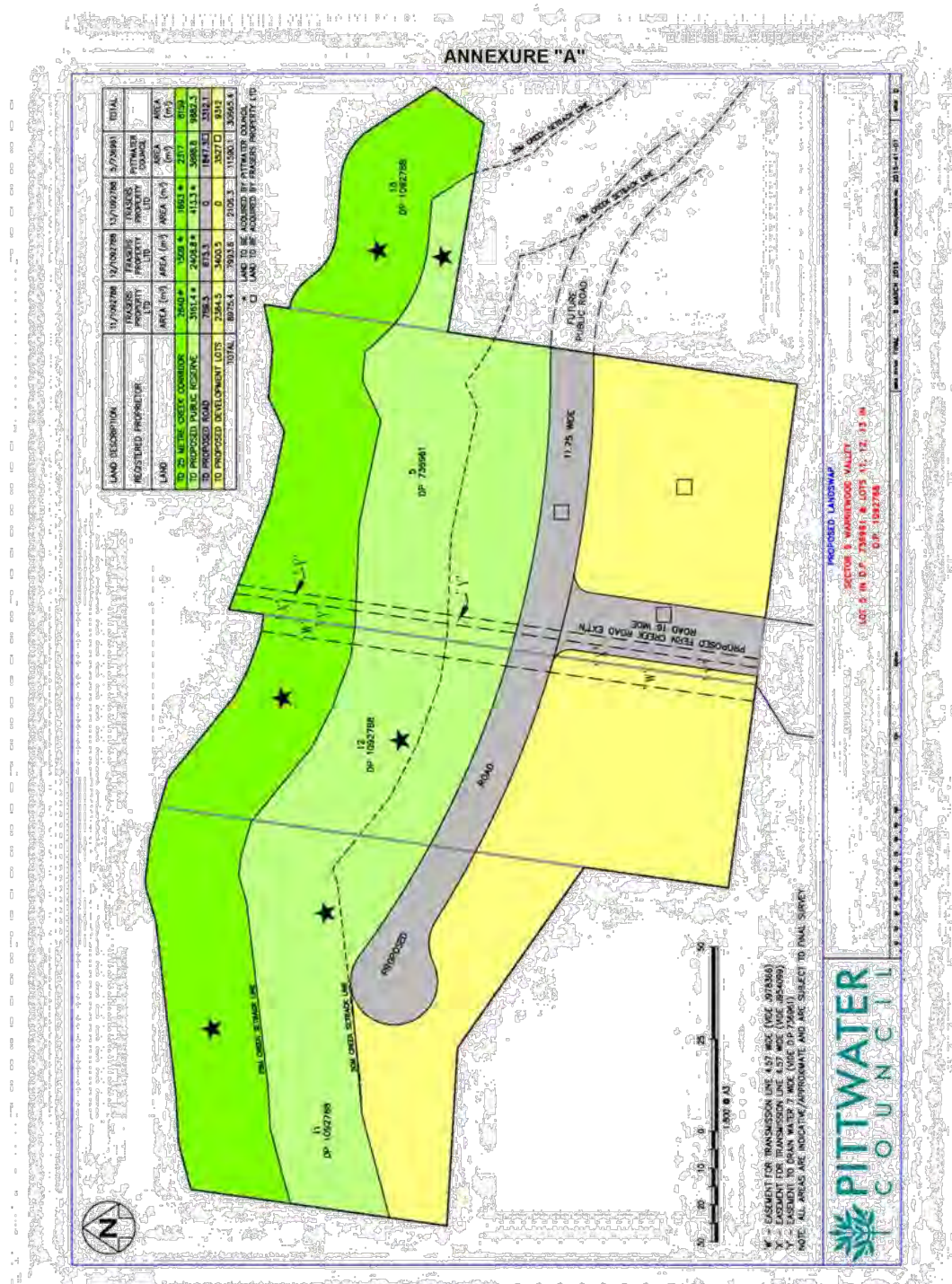
- 10.6 The costs of and associated with formal mediation before a mediator under this clause are to be paid by the parties to the mediation in such proportions as they may agree among themselves or, failing agreement, in equal shares.

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.



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:

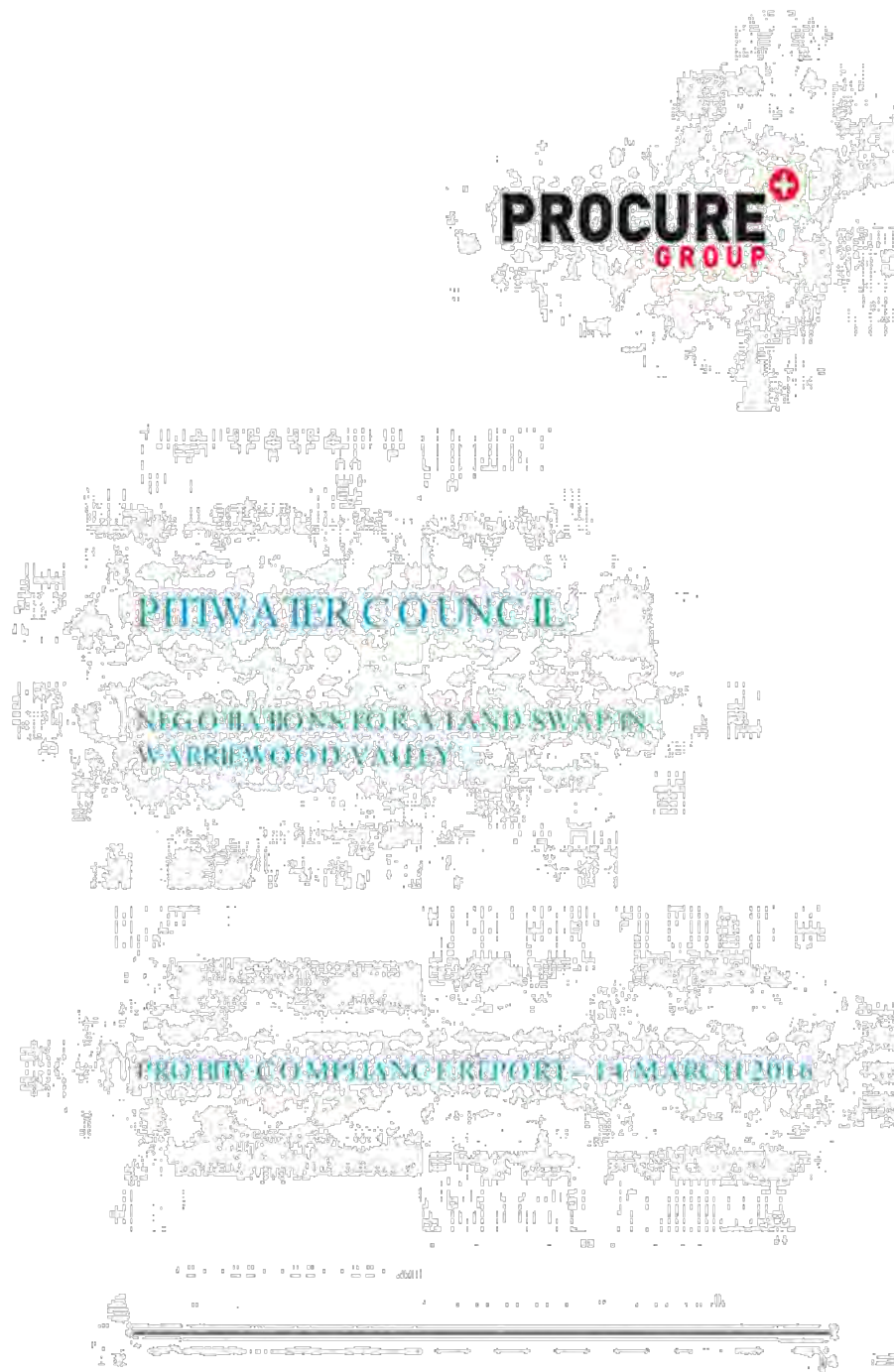
Signature

Signature



Name of Director

Name of Secretary

ATTACHMENT 6



DOCUMENT INFORMATION

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

STATEMENT OF RESPONSIBILITY

This probity report has been prepared for the purpose of assisting Patwater Council in its decision making regarding negotiations for a land swap in Warwick 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 Patwater Council to address those risks, probity issues may nevertheless have arisen that have not been identified. While Procure may provide input into processes followed, Patwater 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	1
2. SCOPE AND METHODOLOGY	3
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 2003) 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 adviser 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 Draft Procure 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 Pinwater LEP 2014
- Development application to subdivide and consolidate existing lots
- Costs
- Engagement of the Probay 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 2016 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 Warrewood Valley has not been conducted in an accountable and transparent manner and with due regard to addressing the probity fundamentals.

Attachment 1

C12.4 Warricwood 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 valuation.
 - 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:
 - 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.
 - 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. 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.



PITTWATER
COUNCIL

COUNCIL MEETING

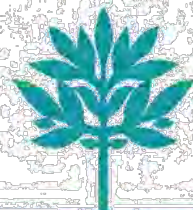
MINUTES

19 March 2016

Meeting commenced at 9.00am

held at Mona Vale Memorial Hall,
Mona Vale

M J Ferguson
General Manager



WWW.PITTWATER.NSW.GOV.AU

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
	Council Meeting	5
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
	Sustainable Towns and Villages Committee	7
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
	Council Meeting	9
10.0	Council Meeting Business	9
C10.1	Notice of Motion - NSW Government Merger Proposals (Submitted by Cr Grace)	9
	Leading and Learning Committee	10
11.0	Leading and Learning Committee Business	10
C11.1	6 Month Management Report - July-December 2015	10

Minutes of the Council Meeting held on 19 March 2016.

Page 4

.....
General Manager

.....
Mayor

Item No	Item	Page No
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
Council Meeting		13
13.0	Adoption of Leading and Learning Committee Recommendations	13
14.0	Adoption of Sustainable Towns and Villages Committee Recommendations	13

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.

Minutes of the Council Meeting held on 19 March 2016.

Page 6

.....
General Manager

.....
Mayor

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."

