

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 Planning and Community 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 (POOO2/16)

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 Planning and Community 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 Planning and Community 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
<p>(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>	<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 WVSR 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.

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. The community will gain a linear park along Fern Creek that will complement the open space on the northern side of the creek.	Noted.
	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. 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.	Noted.
	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 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	The history of the District Park terminology is noted.

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	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	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 Direction. 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 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.
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.	
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 benefitting both the Council and the residents.</p>	
Insufficient information and errors	
<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>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 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>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
	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.
Where is the probity report?	An independent probity consultant - Procure Group - was commissioned to guide the preparation and assessment of the Planning Proposal. 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.
Questioned using Council reports as a basis for the Planning Proposal as the reports are not independent;	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	
<p>It is a pointless exercise responding because council has predetermined the end result a long time ago.</p> <p>Council is a developer and salesman and the judge and jury.</p> <p>Although this is an unfinished proposal, the intention appears to be for council to slip it through no matter what.</p> <p>The conflict of interests and apprehension of bias is apparent to any reasonable observer.</p>	<p>The opinion is noted however it is not supported. Council must follow the legislative process for assessing a Planning Proposal.</p> <p>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.</p> <p>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 Planning and Community Business Unit engaged an independent planning consultant – MBWA Consulting – to assess the Planning Proposal.</p> <p>Further an independent probity consultant - Procure Group - was commissioned to guide the preparation and assessment of the Planning Proposal.</p>
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.	<p>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.</p> <p>The sale of the property has in no way influenced my assessment of the Planning Proposal.</p>

COMMENTS	RESPONSE
Design of future park	
<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>
Open space function and form	
<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>Noted</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>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><i>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).</i></p> <p><i>Additionally, the following reforms were introduced:</i></p> <ul style="list-style-type: none"> • <i>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;</i> • <i>DPI, with NSW Treasury, established a Local Contributions Review Panel whereupon Councils could seek exemption from the Direction.</i> <p><i>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"</i></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><i>"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.</i></p> <p><i>The Planning Proposal (this application) is the legal mechanism to facilitate the legislative obligations already agreed to by Council on 19 March 2016.</i></p>

COMMENTS	RESPONSE
	<p><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></p>
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 of 33 dwellings</p>	<p>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.</p>
<p>Sale of the subject site before the rezoning is gazetted is pre-emptive of the process</p>	<p>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.</p>
Effect on zoning of areas outside of the Planning Proposal	
<p>Council is downzoning privately owned land against the private landowners wishes.</p>	<p>The Planning Proposal does not seek to rezone any land outside of the land it applies to.</p>
Classification of land	
<p>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.</p>	<p>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.</p>
Roads	
<p>Concern over the road layout proposed:</p> <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 '<i>indicative alignment of Internal Local Road</i>'.</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>
Recent refusal of Planning Proposals in the locality	
<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 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 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 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
Original acquisition of land	
<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>
Council reinventing history on the 0 dwelling yield	
<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>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>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>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
	<p>development application. Further, Pittwater 21 DCP proposes the 3 sites be developed together.</p> <p>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>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 '<i>endorse the proposed terms of the land swap and authorise the General Manager to sign the deed of agreement for the land swap</i>'. 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>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>	<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>

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

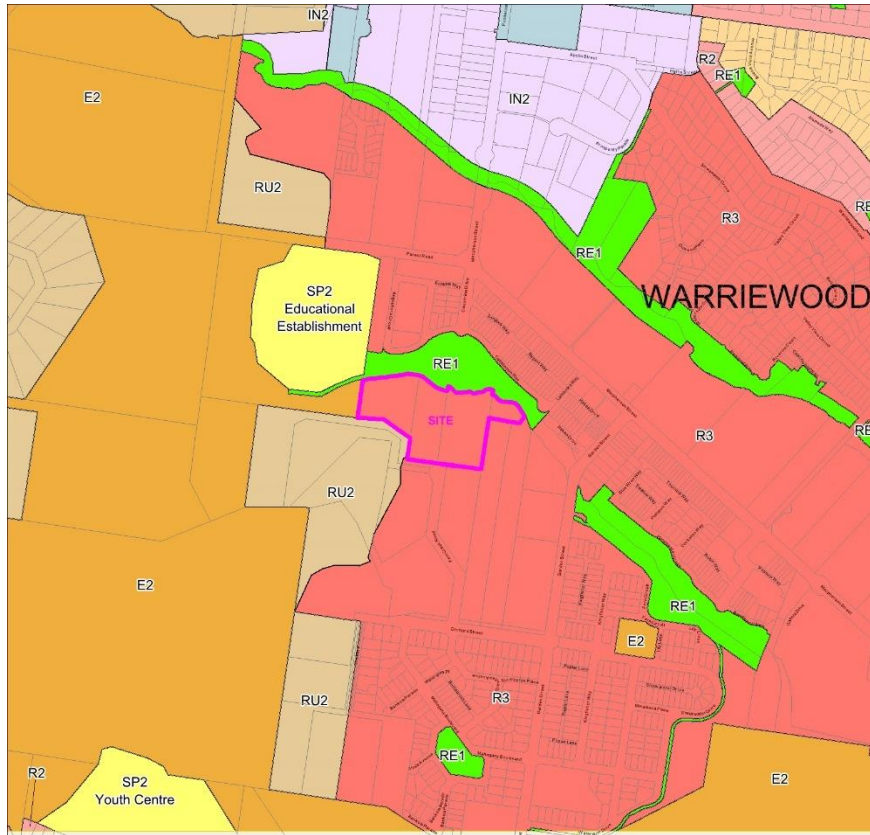


Figure 1: Existing Land Use Zoning Map

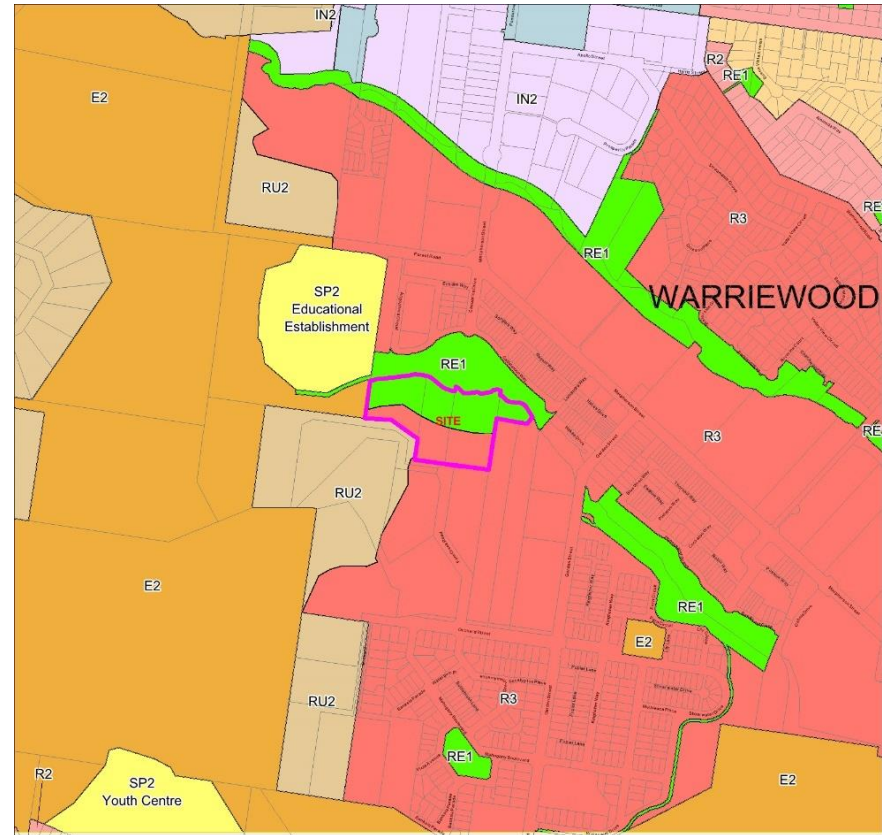


Figure 2: Proposed Land Use Zoning Map

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

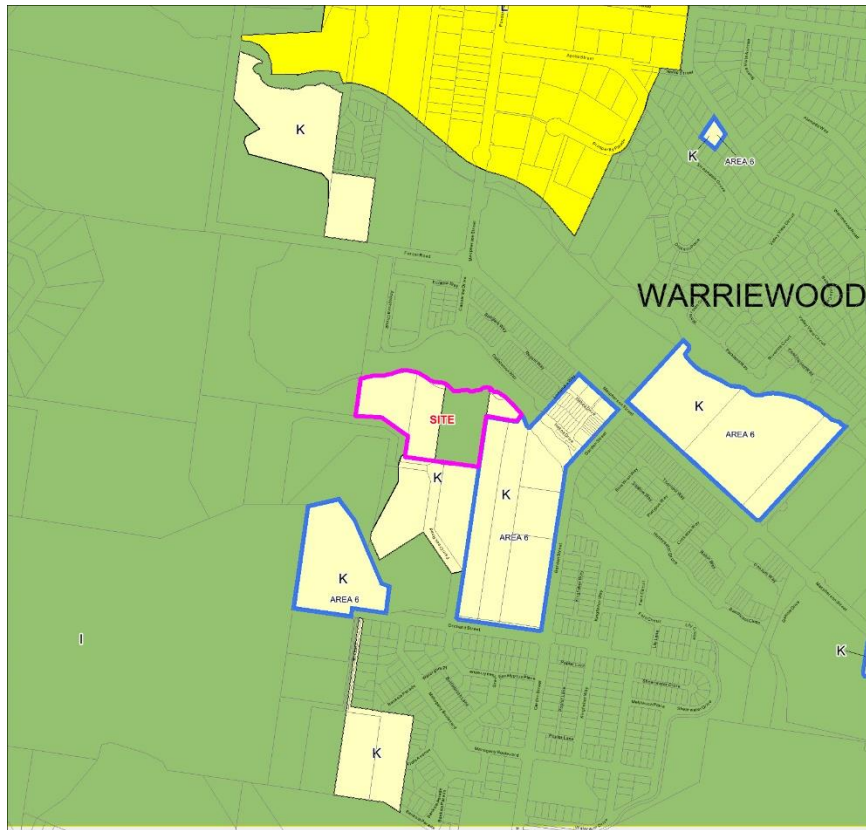


Figure 3: Existing Height of Building Map

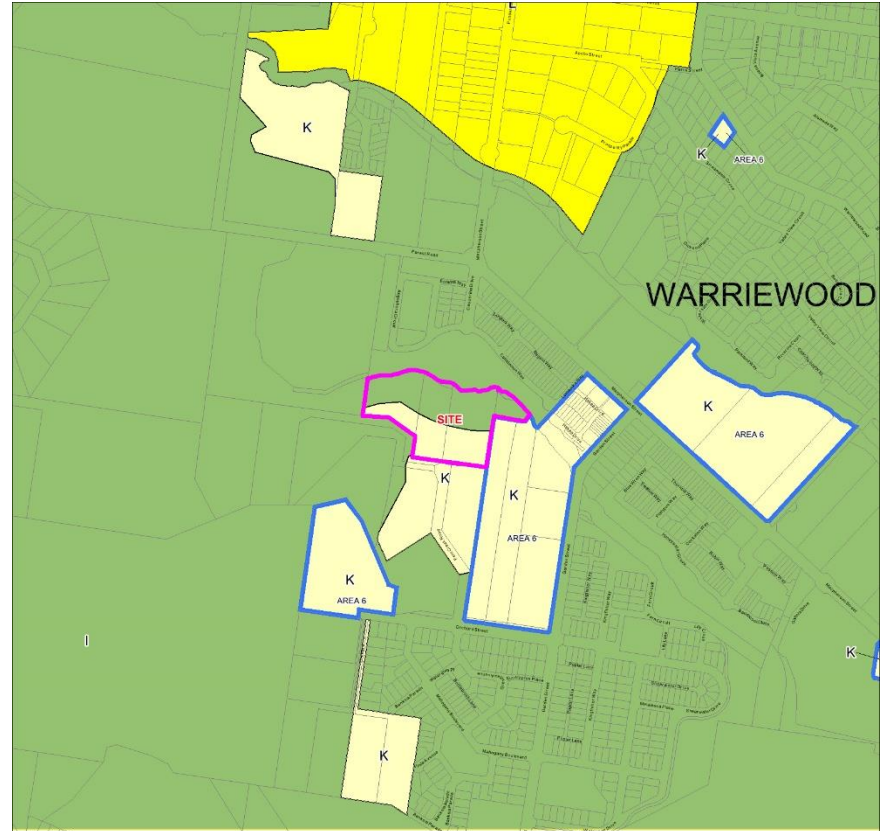


Figure 4: Proposed Height of Building Map