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Subject: Johan Kamminga - Planning Proposal PP0002-16

Attachments: Johan Kamminga - Planning Proposal PP0002-16.doc; Johan Kamminga - Planning Proposal PP0002-16.doc;

Interim General Manager, Northern Beaches Council PO Box 882, Mona Vale, NSW 1660 Pittwater@northernbeaches.nsw.gov.au RE: Planning Proposal - PP0002/16 - Johan Kamminga submission Attached is my submission in relation to PP0002/16. Please acknowledge that my submission was received and that the text format is in good order. Your faithfully, Johan Kamminga Johan Kamminga 6 Boondah Road Warriewood NSW nhc@grapevine.com.au --- This email has been checked for viruses by Avast antivirus software.
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10 April 2017

The Interim General Manager
Northern Beaches Council
PO Box 882, Mona Vale NSW 1660

Johan Kamminga submission to 'additional information' on Planning Proposal PP0002/16

I object strongly to the planning proposal and to the 'additional information' documents.

Council has supplied a total of five 'additional' documents to inform this planning proposal.

Council in its newspaper notification in the *Manly Daily* on 25 March 2017 provided stakeholders and the wider public only two weeks to 10 April to lodge submissions to 'additional information' documents on Planning Proposal PP0002/16.

One of these 'additional' documents is an 'explanatory note' intended to provide a plain English summary required under clause 25E of the EPA Regulations 2000. (See extract below).

"EXPLANATORY NOTE

Proposed Draft Planning Agreement: Land Swap between Northern Beaches Council and Frasers Property to provide for the southern portion of Central Local Park.

Introduction

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of a draft Planning Agreement (the "**Planning Agreement**") under Section 93F of the *Environmental Planning & Assessment Act 1979* (the "**EPA Act**") prepared in connection with Development Application XXXXXXX [sic]

Frasers Property Australia (the "**Developer**") and Northern Beaches Council (the "**Council**") have entered into an agreement to exchange parcels of land. The Developer will give land adjacent to Fern Creek to Council for the creation of the southern section of Central Local Park and the Council will give land to the Developer at the southern section of their property, south of the proposed new road, for the construction of housing.

This explanatory note has been prepared jointly between the

parties as required by Clause 25E of the Environmental Planning & Assessment Regulation 2000.

1 Parties

Northern Beaches Council (the "**Council**")
Fraser's Property Australia (the "**Developer**")

2 Description of subject land

The land to which this Planning Agreement applies is described as follows:

Lot 5, DP 736961 – 9 Fern Creek Road, Warriewood
Lot 11, DP 1092788 – 11 Fern Creek Road Warriewood
Lot 12, DP 1092788 – 12 Fern Creek Road, Warriewood
Lot 13, DP 1092788 – 13 Fern Creek Road Warriewood

Proposed Amendments to Pittwater LEP 2014

Amendments to Land Zoning Map Sheet LZN_012 – Rezone the northern portion of the subject sites between the proposed extension to Fern Creek Road and Fern Creek RE1.

Amendment to Height of Buildings Map Sheet HOB_012 – Amend the maximum height of buildings to 8.5 metres for the land to be rezoned RE1 Public Recreation and 10.5 metres for the developable portion of 9 Fern Creek Road.

Amendments to Part 6, Clause 6.1(3) to replace wording

"Sectors 901C & 901G Not more than 28 dwellings or less than 23 dwellings" and "9 Fern Creek Road – No dwellings"

with

"Sectors 901C, 901G and 9 Fern Creek Road – Not more than 52 dwellings."

I have grouped my Response into 14 issues. These are not in order of importance. Within each defined Issue there may be a number of related responses and statements of facts that require individual attention by the reviewers of my submission.

ISSUE 1. The 'Plain English summary'

This 'Plain English summary' document to support the notification of council's draft Planning Agreement specified and clearly explained that council would allow the construction of "not more than 28 dwellings total". In the currently posted 'additional' document the permissible number of dwellings is now switched to *52 dwellings*.

This is now the second time that the matter of the total number of dwellings has proceeded to public notification. The documents in the first public notification were replete with critical factual errors. Here we have in the 'additional' document either a significant error of fact or else an improper and unjustified density increase – an increase of *24 dwellings* to that which is legally permitted in Pittwater Local Environmental Plan 2014!

The increase in the number of dwellings is an issue of considerable importance and consequence:

- 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).

ISSUE 2. DRAFT Voluntary Planning Agreement (VPA) Comment on the VPA.

Two vital schedules, are Schedules 6 and 7 have *not* been included in this VPA. No reason for this omission has been provided.

Schedule 6 is a plan showing the location of relevant developer contributions. This information is required to allow informed consideration and response to the proposal and the 'additional' documents. For instance, on page 4 of the VPA it is stated “Developer Creek Line Corridor Land means the land shown in dark green and marked “To 25 Metre Creek Corridor” on the Plan at Schedule 6.” This statement cannot be properly assessed by the public unless the Schedule is provided.

Additionally, the VPA states:

“**East-West Road Works** means all works required for the construction of the new east-west road connecting Fern Creek Road with the eastern half of Sector 9 shown in the Plan at Schedule 6 to be completed by the Developer at the Developer’s cost in accordance with clause 3 of Schedule 4, so that it complies with the requirements of a “Local Road” under the Warriewood Valley Roads Masterplan.

Explanatory Note means the note exhibited with a copy of this Agreement when this Agreement is made available for inspection by the public pursuant to the Act, as required by the Regulation.

Fern Creek Road Works means all works required for the northern extension of Fern Creek Road shown in the Plan at Schedule 6 to be completed by the Developer at the Developer's cost in accordance with clause 2 of Schedule 4, so that it complies with the requirements of a "Local Road" under the Warriewood Valley Roads Masterplan."

The proposed northern extension of a local road through 9 Fern Creek is not provided (Schedule 6). How can this have been omitted?

ISSUE 3. Schedule 7 VPA.

Schedule 7 of the VPA is a land swap diagram. Supposedly it is a diagram showing the location of relevant developer contributions. However, the page at Schedule 7 of the Planning Proposal is entirely blank.

The 'additional' documents also omits this essential diagram. As with Schedule 6, how can council expect the public to be adequately and properly informed if this essential information is withheld or otherwise not provided?

For instance, Page 5 of the VPA Council states:

"**Land Swap** means the land swap the subject of a separate agreement between the Parties as indicated on the proposed land swap plan at Schedule 7 of this Agreement."

Without council (or the entity lodging this PP) providing the essential but missing information there can be no proper public scrutiny of the Planning Proposal.

ISSUE 4. Schedule 4 of the VPA.

In the 'additional' document the 'Schedule' is stated to be as follows:

Item	Contributions	Delivery Event and Timing
1	Fern Creek Road Works	Construction of an extension of Fern Creek Road, including new on-street parking, street trees and footpath (but excluding parking bays on the reserve side) and dedication of land to the Council by the Developer at no cost to the Council in accordance with clause 2 of this Schedule 4 prior to the issue of any Subdivision Certificate for residential development of the Developer Land.
2	East-West Road Works	Construction of the East-West Road connecting Fern Creek Road with the eastern half of Sector 9, including new onstreet parking, street trees and footpath (but excluding parking bays on the reserve side) and dedication of land to the Council by the Developer at no cost to the Council in accordance with clause 3 of this Schedule 4 prior to the issue of any Subdivision Certificate for residential development of the Developer Land.

Response:

Why is the East-West road needed? The reason given is that it will provide a link to rest of sector 9. However, the rest of sector 9 already has adequate planned and existing access roads off Orchard Street and Garden Street. The only logical rationale for this proposed new road is to provide access to a so-called 'super lot' immediately east of 9 Fern Creek Road. This 'super lot' already has access via Orchard Street to the south. It is not stated why a road to this super lot, an extra road, is needed. The new road proposed is not to provide access to lot 13 of Frasers (13 Fern Creek Road), as this small lot is completely within the riparian zone and therefore has to be dedicated as *open space creekline corridor* and, as well, it belongs in another sector – Sector 901A.

Despite my requesting this vital information of plans of the access roads on 9 Fern Creek Road during the last exhibition, this essential information again has not been provided. In my opinion that public are not being

adequately and properly informed.

I must also ask why is a north-travelling 9 Fern Creek Road proposed as well as specified in item 1 of the above table? Why is there no discussion of alternative access to lots 11 and 12 as there is demonstrated access across 2 access handles to the private owned lots to the west?

Attachment 1 of my submission clearly shows that this alternative access exists off the Fern Creek Road turning circle (see red circle for location of alternative access). The real reason the 9 Fern Creek allotment is to be traversed and fragmented by vehicular roads to private development sites appears to be to reduce the undevelopable site area within lots 11 and 12. For example, if an access road had to be provided on those two lots then the width of a standard road to service lots 11 and 12 would have to be subtracted from the small developable site area of those lots.

ISSUE 5. Schedule 4 of the VPA, further issues.

The VPA also states that:

“East-West Road Works

The Developer must (at its cost):

- (a) carry out the East-West Road Works in a good and workmanlike manner and otherwise in accordance with the provisions of this Agreement and generally in accordance with the locations shown in the Plan by the time specified in column 2 of the table in clause 1 of this Schedule 4; and

The Developer must (at its cost):

- b). dedicate and transfer to the Council the land shown in the Plan as being set aside for the East-West Road.”

Response

Again, there is no plan of the East-West Road Works or other necessary description to show the above proposed infrastructure.

It appears that these proposed works have not been properly canvassed by the amendments tabled to this draft PP. If this is indeed the case, then 9 Fern Creek Road currently a large rectangular lot of over 10,000 square metres, will be cut in half and its westernmost area of lands also will be reduced just so access can be provided to further developer lots to the west (11 and 12 Fern Creek Road) and East (the superlot).

Council is well aware that it purchased the land area of 9 Fern Creek Road using s94 funds for dedication as a 'district park'. It was later renamed a 'local park', I can only presume that it was realised that this was unlawful or that the state government and the developers who made the contributions had or would become aware of misuse of s94 funds). Certainly, the land of 9 Fern Creek Road had not been purchased by council for the purposes of creating a developable land bank.

ISSUE 6. NSW Planning & Environment Department's Guidelines, 'A guide to preparing Planning Proposals (2016)' not met in this PP.

As I have noted above, Council has refused two recent PP's submitted by Meriton at 2 Macpherson street and by the Henroth group at 10 and 12 Boondah Road and 6 Jacksons Road citing the Departments Guide to preparing Planning Proposals (2016) re not to allow a rezoning where an earlier rezoning was done within the previous five years. (See the two text extracts below).

Extract number 1

Report to Ordinary Council Meeting Item No. 9.6 - 28 March 2017 for Planning Proposal (Pp0005/16) 6 Jacksons Road and 10 & 12 Boondah Road, Warriewood.

"It is noted that this amendment was undertaken less than five years ago. (Note: the NSW Planning & Environment's Planning Proposals: A guide to preparing planning proposals (2016) states that 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 proposal can clearly justify that it meets the Strategic Merit Test)."

Extract number 2

Report to Ordinary Council Meeting Item No. 9.4 - 31 January 2017 Planning Proposal (PP0003/16) for 2 Macpherson Street, Warriewood.

"The Development Application was refused for the following reasons: '1. The proposed development is inconsistent with the objectives of clause 6.1 of Pittwater Local Environmental Plan 2014, specifically the need for development to be undertaken in accordance with the Warriewood Valley Strategic Review, which identifies that the subject site has no capacity for residential development. 2. The "no dwellings" yield prescribed by clause 6.1(3) of Pittwater Local Environmental Plan 2014 prohibits residential development on the site, and cannot be varied

pursuant to clause 4.6 of Pittwater Local Environmental Plan 2014.”

After council’s decision to refuse, the development proponent lodged an appeal with the Land & Environment Court. The question considered by the Land & Environment Court was:

‘Is the “no dwellings” specification for ‘Buffer area 1 m’ in the table to clause 6.1(3) of the Pittwater Local Environmental Plan 2014 (“PLEP”) a ‘development standard’ to which clause 4.6 of the PLEP applies?’

The decision of the Court was that the ‘No dwellings’ specification was not considered to be “... a matter relating to a development standard but to the carrying out of development at all on that land.” Ultimately it was found that the ‘No dwellings’ specification prohibits dwellings on the subject land.

This, council explained, was for the following development application “Previous Development Application (N0431/14) and subsequent court case in 27 November 2014, a Development Application was lodged for 2 Macpherson Street, Warriewood, that proposed the following:

- “Demolition of all existing structures and minor earthworks
- Construction of 30 semi-detached dwellings each containing two storeys, four bedrooms and integrated parking providing one car space
- New road infrastructure including the creation of an access driveway off Macpherson Street
- Landscaping including the construction of a publicly accessible pedestrian/cycleway around the perimeter of the site
- Stormwater management measures
- Creation and management of an Asset Protection Zone fully contained within the site”

On 11 November 2016, Northern Beaches Council accepted the planning proposal for 2 Macpherson Street, Warriewood that intended to amend the Pittwater LEP 2014. Specifically, the intended outcome of the submitted Planning Proposal is for a dwelling yield to be allocated to 2 Macpherson Street, Warriewood, thereby making dwellings a permissible land use.

Part 1

Objectives or intended outcomes.

The intended outcome of the Planning Proposal submitted, is for a dwelling yield to be allocated to 2 Macpherson Street, Warriewood.

Part 2

Explanation of provisions

Specifically, the Planning Proposal submitted intended to amend Column 2 within Clause 6.1(3) in relation to Buffer area 1m (which is 2 Macpherson Street, Warriewood). Clause 6.1(3) identifies the number of dwellings permitted on land within the Warriewood Valley Release Area. For Buffer area 1m, Clause 6.1(3) states 'No dwellings'. The Planning Proposal requests that 'No dwellings' be removed and 'Not more than 22 dwellings' be inserted, as follows:

Column 1	Column 2
Buffer area, sector or address	Number of dwellings to be erected
Buffer area 1m	No dwellings Not more than 22 dwellings

Response

Council refused this Planning Proposal. Its refusal included the statement that:

"Finally, in relation to any potential Pre-Gateway Review, it is noted that the outcome of the Warriewood Valley Strategic Review Report (2013) recommended amending the dwelling yield applicable to certain land in Warriewood Valley, with the dwelling yield for 2 Macpherson Street, Warriewood remaining as 0. The Pittwater LEP 2014 (Clause 6.1(3)) was amended accordingly. **It is noted that this amendment was undertaken less than five years ago, and the NSW Planning & Environment's Planning Proposals: A guide to preparing planning proposals (2016) states that 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 proposal can clearly justify that it meets the Strategic Merit Test.**" (Emphasis mine).

I further comment on this matter as the subject of Issue 7 below.

ISSUE 7. Further response relating to the above matter.

I assert that it is an inconsistent and hypocritical use of this 2016 Departmental Directive circular and was intended to advantage council in the planning proposal for 9 (and 11 and 12) Fern Creek Road and to disadvantage the recently submitted Meriton and Henroth planning proposals. The inconsistency shown by council is blatant. I believe that this matter that should be taken up with the Department of Planning.

I see 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.

ISSUE 8. Land swap issues.

Again, there is little information on the actual specifics of the proposed land swap due to omissions or conscious non-provision of the particulars of this rezoning, and it is clear that if one excludes the required wide creekline corridors and riparian zones then the actual benefits of the elongated park versus a rectangular park as it is, now disappear completely.

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.

Why has this information not been included in the draft Planning Proposal and supporting documents?

Relevant to this matter is that, according to Pittwater and now Northern Beaches Councils, Warriewood Valley supposedly has a net need for some five hectares of land for active playing fields (source: Warriewood Valley section 94 Plan Amendment 16 Revisions 1 and 2). 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 be accommodate a series of netball courts with associated parking and amenities. Yet this land has been allowed to remain idle for nine years, almost a decade!

ISSUE 9. Claimed planning error in the past.

Claims in the Planning Proposal that the current zoning of medium density with NO DWELLING YIELD for 9 Fern Creek Road was an inadvertent

'planning mistake' are *not* correct, and, in this case, Council (and/or its consultants) are re-writing history.

There appears to be categorical evidence in the WVSR and supporting council reports that reveal the explicit decision to rezone the once non-urban lands to 2(f) medium density with no dwelling yields as an outcome of the WVSR, and then after the Department's standard LEP template was applied, the 2(f) zone was then converted 'like for like' to Medium Density R3 in the Pittwater LEP 2014.

Council did not rezone the land of 9 Fern Creek to open-space recreation as it should have done in the first place, along with make the land 'community' land, not 'operational' land.

The following extract from Page 10 of the amended GLN report dated 17/1/3017 states:

"The 2012 Strategic Review and the 2014 Strategic Review Addendum both indicated that the 9 Fern Creek Road is suitable to be developed at a density range of 25-32 dwellings per hectare. No. 9 Fern Creek Road has a developable area of 9,273.1 m² (total area of 11,590.1 m² less 2,317 m² of 25 m riparian corridor) which would yield 29.7 dwellings at 32 dwellings per hectare.

Accordingly, if the dwelling yield potential that could be accommodated on 9 Fern Creek Road was added to the yields allocated in the LEP, the site the subject of this Planning Proposal would have a total maximum yield of **60 dwellings.**"

The maximum 30 dwelling yield is set in the LEP and is derived from Table 6 of the 2014 Warriewood Valley Strategic Addendum Report. However, this in on the basis that 9 Fern Creek Road (Council land) **was inadvertently assigned no dwelling yield on the assumption that Council had acquired it for open space.** This despite it being wholly zoned R3 Medium Density Residential under the PLEP 2014 and classified Operational for the purposes of the Local Government Act 1993. There is a clear inconsistency between clause 6.1 of the LEP that allocates "no dwellings" for 9 Fern Creek Road and clause 2.3 of the LEP that requires it to be developed in accordance with its R3 zoning." (Emphasis in this paragraph mine).

Response

I assert that there is no truth in the above claim that "However, this in on the basis that 9 Fern Creek Road (Council land) was inadvertently

assigned no dwelling yield on the assumption that Council had acquired it for open space.”

It is my contention that 9 Fern Creek Road was never *inadvertently* assigned no dwelling yield! I believe it is a flagrantly untrue claim, that it is not factual, and that it can be regarded as own as 'alternative facts’.

The 'NO DWELLING' yield in PLEP 2104 is a *gazetted* fact. It appears to have been done consciously by Pittwater Council and the Department of Planning.

The property 9 Fern Creek *was acquired for open space*, and I assert that the report to Council on 21 April 2008 is proof of that. Unless of course the consultant report would have readers believe that (as an alternative fact) Council really acquired this land for medium density housing contrary to what the elected councillors who approved this acquisition with s94 monies were led to believe. Who then is correct here? An excerpt of that 2008 report for acquisition of 9 Fern Creek Road is included in my response.

Why was not this 2008 report included in the consultant’s report despite later Council reports being included? I do not believe that the history of this event is presented in a complete or fair manner.

To further support my assertion, I cite the 2008 report’s recommendation

“That the General Manager be authorised to complete the acquisition of land at 9 Fern Creek Road, Warriewood (Lot 5 DP 7369613) for the purpose of establishing a District Park in Sector 9 of the Warriewood Valley Urban Release area.”

Furthermore, I claim that the dwelling yield statement in the GLN report that “The maximum 30 dwelling yield is set in the LEP” is also not factual, and I will return to this issue below.

ISSUE 10. Operational vs Community lands issue.

The following extract is from the GLN response letter to Council’s concerns:

“Dear Sylvania

RE: Planning Proposal PP0002/16

As discussed at our meeting, please find attached the following responses to the request for additional information to the above Planning Proposal (PP) as set out in Council’s letter of 20 September 2016.

1(a) Objectives or intended outcome

The PP primarily seeks to enable the creation of the southern portion of the planned Central Local Park and secondly to facilitate the orderly and economic development of the land in accordance with the planned intentions for the Warriewood Release Area. Any other effects are not objectives of the PP. The PP has been amended to avoid any confusion as to the objectives.

1(b) Proposed Amendments

The Planning Proposal does not intend to seek amendments to vary the status of the land under the Local Government Act 1993. *The land was purchased in 2008 as operational land.* The site is listed within Council’s Operational Land Register. The RE1 portion of the site once rezoned will become community land without any requirement to undertake additional procedures within this Planning Proposal. As a result the Planning Proposal is silent as to the community/operational status of the land as it is not a matter that requires amendment.”

Response

I object to the above statement that lot 9 Fern Creek was purchased as 'operational' land. The statement is not at all correct – the original report to council in 2008 stated that the land is to be purchased for the provision of a large district park and, to allow council some flexibility in the boundaries of the proposed large district park, the land would be classified as operational until these minor boundary changes could be effected.

The land was *not* 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. In this case, the Warriewood s94 plan and Landscape Masterplan clearly indicate that 9 Fern Creek Road was to be a large District Park. Not a small Local Park. It cannot be clearer that all of this land was to be a park and not operational land as residential or any other purpose.

The Council meeting held to discuss the purchase of 9 Fern Creek Road occurred on 21 April 2008. The following excerpts of the Council report state:

“BACKGROUND

The pre-planning for the Warriewood Valley Urban Land Release has required the acquisition of one hectare of land in Sector 9 for the purpose of establishing a district park for many years.

ISSUES

2.1 Identification of Suitable land for Acquisition

The Council’s Warriewood Valley Team has assessed the suitability of a number of land parcels in Sector 9 of the Warriewood Valley Urban Release area that may be appropriate for acquisition by Council for the purpose of establishing a District Park. The location of a site for a district park has been a major impediment to the progression of the draft Masterplan within Sector 9 of the Land Release area.

The Team has concluded that the land at 9 Fern Creek Road, Warriewood, currently owned by Stockland Development Pty Ltd, is the most appropriate available land in Sector 9 for that purpose.

The subject vacant land is currently zoned 1(b)(Non-Urban “B”). It has an area of 1.155 ha.

A survey and aerial photograph of the site is attached to the report.

2.2 Acquisition Process & Classification of Land

The Council engaged an independent valuation firm to assess the value of the subject land for the purpose of negotiating its acquisition from Stocklands. Negotiations have been held with Stocklands, who have indicated a willingness to dispose of the land. A confidential memorandum on the status of those negotiations is included as a confidential attachment to this Agenda.

As the subject land will need to be rezoned in line with its intended use as a district park, it is appropriate that the land be classified as “Operational” land under the Local Government Act, 1993 upon acquisition, so as to not pre-empt the outcome of any future rezoning application.

Similarly, 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.

POLICY IMPLICATIONS

The acquisition of one hectare of land for the purpose of establishing a District Park within Sector 9 of the Warriewood Valley Urban Release area is in accordance with the Council’s adopted Section 94 Contributions Plan for Warriewood Valley and has been a key element of the pre-planning for the Warriewood Valley land release for many years.

RECOMMENDATION

That the General Manager be authorised to complete the acquisition of land at 9 Fern Creek Road, Warriewood (Lot 5 DP 7369613) for the purpose of establishing a District Park in Sector 9 of the Warriewood Valley Urban Release area.

That the subject land be classified as Operational land under the Local Government Act, 1993 upon acquisition.” (Emphasis mine).

Response

It is clear from the above text extract that council purchased 9 Fern Creek Road for the express purpose of a District Park using section 94 funds for that purpose.

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 *promise* 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.

If council knew that this meant the lands *could not be used as a park* then why was this action taken? The land should have been zoned open space recreation at that time. How many councils purchase lands for a park using section 94 funds and then rezone the land to medium density with no dwelling yield? This practice seems to break all planning rules and I I agree proper public administration.

ISSUE 11. Consultants table of dwelling yields.

On page 11 of the GLN 2017 report there is a table 4. I present an extract of this table below.

Northern Beaches Council

Table 4 Allocation of Proposed Dwelling Yields

Property Description	Developable Area (m ²)	Minimum Dwelling Yield	Maximum Dwelling Yield	Dwelling Yields identified Strategic Review Report
Lot 11 DP 1092788	3174	3	3	10/ha min and max
Lot 12 DP 1092788	4075.8	10	13	25/ha min 32/ha max
Lot 5 DP 736961	5374.3	13	17	25/ha min 32/ha max
Lot 13 DP 1092788	0	0	0	25/ha min 32/ha max
Total	12624.1	26	33	

This table attempts to again present alternative facts to the real situation in regard to dwelling yields under PLEP 2014. The Part 6 'table of dwelling yields by sector' uses new arguments based on the WVSR per hectare yields. However, these overall yields were then converted to actual yield ranges when Part 6 yield by sector table was gazetted and the gazetted figures took into account the 'developable' yields per hectare (i.e. minus creekline corridors etc) as opposed to yields per hectare (which included creekline corridors)!

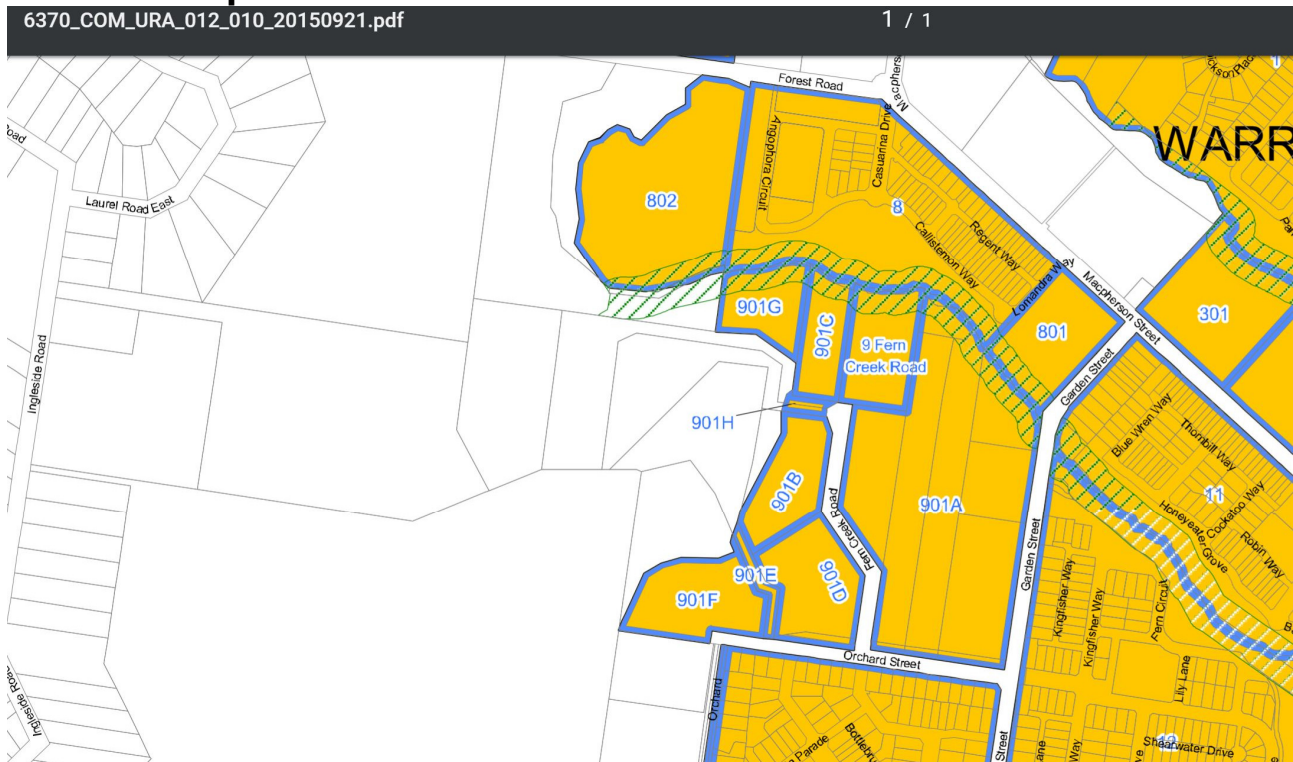
So, the PLEP 2014 is very clear about the exact dwelling yields. I present the relevant extract of Part 6 below,

“(3) Development consent must not be granted for development on land in a buffer area or sector or at an address mentioned in Column 1 of the table to this clause unless the consent authority is satisfied that the total number of dwellings shown opposite

that buffer area, sector or address in Column 2 of that table will be erected.”

Column 1	Column 2
Buffer area, sector or address	Number of dwellings to be erected
Sectors 901C and 901G	Not more than 28 dwellings or less than 23 dwellings
9 Fern Creek Road	No dwellings

Sector Map from PLEP 2014.



Clearly the number of dwellings allowed to be developed on lots 11 and 12 (11 and 12 Fern Creek Road) is in a range from 23 dwellings to 28 dwellings.

Also, clearly for 9 Fern Creek Road, the number of dwellings is ZERO i.e. “No dwellings” in the gazetted PLEP 2014.

So, contrary to the arguments contained in the GLN report Pages 9 to 11 there is no compelling case for 33 dwellings. The reality is that lots 11 and 12 will possibly not be capable of development beyond the minimum number of 23 dwellings, since the creekline corridors and setbacks restrict these two lots to narrow lineal developable areas. It is demonstrably in

the Applicant's interest to relocate developable area to 9 Fern Creek Road. However, from a probity viewpoint this lot was always to be a large park and not an extension to a creekline corridor of adjoining lots 11 and 12 Fern Creek Road.

Lot 13 (or 13 Fern Creek Road) should not be included in the GLN table as it is part of sector 901A and quite clearly its hypothetical yield and strange 'rounding up' figures should remain with sector 901A. This is despite the reality that almost 100% of lot 13 is wholly within the creekline corridor and therefore can never be built upon!

So, in reality, by including 9 Fern Creek Road with sectors 901C and 901G there is a net increase of 5 dwellings! (not 3 dwellings).

ISSUE 12. Inadequate provision of information.

Again, this Planning Proposal and the five additional information documents outlined above do not provide the following independent information.

A land swap diagram prepared by the planning consultants (acting for the applicants) has not been provided!

Whilst the planning consultant has now collated and provided planning reports to council of, for example, the meeting of 19 March 2016 and 18 May 2015, these documents were prepared by or for council staff and cannot and in terms of probity should not be viewed as independent! Possibly the consultants may be of the opinion that this is a matter that is too costly to undertake, and so have simply included the council reports. Although it might be argued that this is in some way insignificant, again it is potential conflict of interests.

The consultants have in their letter of reply to council's list of concerns following the first exhibition, chosen not act upon or respond to a significant number of these matters.

ISSUE 13. Attachment 1 – red circle indicates alternative access to 11 and 12 Fern Creek Road.

The red circle on the **Attachment 1** map below indicates that there is an alternative access available across two access handles to lots 3 and 4 DP 736961. Additionally, when reference is made to the PLEP 2014 sector map for this area that was reproduced earlier, it can be noted that PLEP

2014 has a very small sector called Sector 901H, which under Part 6 of PLEP 2014 has been assigned a yield of three dwellings for a small level portion of these access handles!

Accordingly, it can be seen that there is a valid alternative access to 11 and 12 Fern Creek Road. This fact was not canvassed by the amended rezoning documents! An explanation of this omission should be forthcoming.

ISSUE 14. Sale of the Subject site before rezoning. (See attachment 2).

An internet search I have carried out has uncovered documents saying "**SOLD**" for the subject land of 9 Fern Creek Road together with 11 and 12 Fern Creek Road as a combined development site of just less than one hectare (9,311 square metres suitable for 33 dwellings!) There are conditions listed on the web document that this sale is subject to a VPA/MOA with Pittwater Council and a Consent. However, from a probity point of view it seems that the matter has been decided before any rezoning is actually gazetted!

Johan Kamminga
6 Boondah Road
Warriewood NSW 2102


Attachment 1. The red circle indicates alternative access to 11 and 12 Fern Creek Road.



Attachment 2. Sold sign from the MATRIX Property Group website for lots 9, 11 and 12 Fern Creek Road.

MATRIX
PROPERTY GROUP
MARKETING | THE NAME IN QUALITY DEVELOPMENT SITES & PROJECT

SATURDAY DEVELOPMENT STOCK [Subscribe](#)



CONTACT AGENT
Andrew Antonas
0412 253 131
[View my listing](#)

Your name

Your email

Hello, I'm interested in [Fern Creek Road, Warriewood NSW]

[Contact Agent](#)

MATRIX
PROPERTY GROUP
MARKETING



FERN CREEK ROAD,
WARRIEWOOD NSW



PROPERTY DESCRIPTION

BOUTIQUE NORTHERN BEACHES RESIDENTIAL DEVELOPMENT SITE

- Outstanding Infill Residential Development Site for up to 33 dwellings*
- Large site area 9,311 sqm of developable land**
- Suit Integrated Housing / Large Townhouse product
- Popular Northern Beaches Opportunity
- Asset Surplus to Client's Portfolio
- Saleable Product in Current Market and Suit Owner Occupier Buyers

*Subject to Draft Voluntary Planning Agreement (VPA)/Memorandum of Understanding (MOU) with Pittwater Council and Subject to Council Consent

**Approx

EOI CLOSING 3PM TUESDAY 26TH JULY 2016

10 April 2017

The Interim General Manager
Northern Beaches Council
PO Box 882, Mona Vale NSW 1660

Johan Kamminga submission to 'additional information' on Planning Proposal PP0002/16

I object strongly to the planning proposal and to the 'additional information' documents.

Council has supplied a total of five 'additional' documents to inform this planning proposal.

Council in its newspaper notification in the *Manly Daily* on 25 March 2017 provided stakeholders and the wider public only two weeks to 10 April to lodge submissions to 'additional information' documents on Planning Proposal PP0002/16.

One of these 'additional' documents is an 'explanatory note' intended to provide a plain English summary required under clause 25E of the EPA Regulations 2000. (See extract below).

"EXPLANATORY NOTE

Proposed Draft Planning Agreement: Land Swap between Northern Beaches Council and Frasers Property to provide for the southern portion of Central Local Park.

Introduction

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of a draft Planning Agreement (the "**Planning Agreement**") under Section 93F of the *Environmental Planning & Assessment Act 1979* (the "**EPA Act**") prepared in connection with Development Application XXXXXXX [sic]

Frasers Property Australia (the "**Developer**") and Northern Beaches Council (the "**Council**") have entered into an agreement to exchange parcels of land. The Developer will give land adjacent to Fern Creek to Council for the creation of the southern section of Central Local Park and the Council will give land to the Developer at the southern section of their property, south of the proposed new road, for the construction of housing.

This explanatory note has been prepared jointly between the

parties as required by Clause 25E of the Environmental Planning & Assessment Regulation 2000.

1 Parties

Northern Beaches Council (the "**Council**")
Fraser's Property Australia (the "**Developer**")

2 Description of subject land

The land to which this Planning Agreement applies is described as follows:

Lot 5, DP 736961 – 9 Fern Creek Road, Warriewood
Lot 11, DP 1092788 – 11 Fern Creek Road Warriewood
Lot 12, DP 1092788 – 12 Fern Creek Road, Warriewood
Lot 13, DP 1092788 – 13 Fern Creek Road Warriewood

Proposed Amendments to Pittwater LEP 2014

Amendments to Land Zoning Map Sheet LZN_012 – Rezone the northern portion of the subject sites between the proposed extension to Fern Creek Road and Fern Creek RE1.

Amendment to Height of Buildings Map Sheet HOB_012 – Amend the maximum height of buildings to 8.5 metres for the land to be rezoned RE1 Public Recreation and 10.5 metres for the developable portion of 9 Fern Creek Road.

Amendments to Part 6, Clause 6.1(3) to replace wording

"Sectors 901C & 901G Not more than 28 dwellings or less than 23 dwellings" and "9 Fern Creek Road – No dwellings"

with

"Sectors 901C, 901G and 9 Fern Creek Road – Not more than 52 dwellings."

I have grouped my Response into 14 issues. These are not in order of importance. Within each defined Issue there may be a number of related responses and statements of facts that require individual attention by the reviewers of my submission.

ISSUE 1. The 'Plain English summary'

This 'Plain English summary' document to support the notification of council's draft Planning Agreement specified and clearly explained that council would allow the construction of "not more than 28 dwellings total". In the currently posted 'additional' document the permissible number of dwellings is now switched to *52 dwellings*.

This is now the second time that the matter of the total number of dwellings has proceeded to public notification. The documents in the first public notification were replete with critical factual errors. Here we have in the 'additional' document either a significant error of fact or else an improper and unjustified density increase – an increase of *24 dwellings* to that which is legally permitted in Pittwater Local Environmental Plan 2014!

The increase in the number of dwellings is an issue of considerable importance and consequence:

- 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).

ISSUE 2. DRAFT Voluntary Planning Agreement (VPA) Comment on the VPA.

Two vital schedules, are Schedules 6 and 7 have *not* been included in this VPA. No reason for this omission has been provided.

Schedule 6 is a plan showing the location of relevant developer contributions. This information is required to allow informed consideration and response to the proposal and the 'additional' documents. For instance, on page 4 of the VPA it is stated “Developer Creek Line Corridor Land means the land shown in dark green and marked “To 25 Metre Creek Corridor” on the Plan at Schedule 6.” This statement cannot be properly assessed by the public unless the Schedule is provided.

Additionally, the VPA states:

“**East-West Road Works** means all works required for the construction of the new east-west road connecting Fern Creek Road with the eastern half of Sector 9 shown in the Plan at Schedule 6 to be completed by the Developer at the Developer’s cost in accordance with clause 3 of Schedule 4, so that it complies with the requirements of a “Local Road” under the Warriewood Valley Roads Masterplan.

Explanatory Note means the note exhibited with a copy of this Agreement when this Agreement is made available for inspection by the public pursuant to the Act, as required by the Regulation.

Fern Creek Road Works means all works required for the northern extension of Fern Creek Road shown in the Plan at Schedule 6 to be completed by the Developer at the Developer's cost in accordance with clause 2 of Schedule 4, so that it complies with the requirements of a "Local Road" under the Warriewood Valley Roads Masterplan."

The proposed northern extension of a local road through 9 Fern Creek is not provided (Schedule 6). How can this have been omitted?

ISSUE 3. Schedule 7 VPA.

Schedule 7 of the VPA is a land swap diagram. Supposedly it is a diagram showing the location of relevant developer contributions. However, the page at Schedule 7 of the Planning Proposal is entirely blank.

The 'additional' documents also omits this essential diagram. As with Schedule 6, how can council expect the public to be adequately and properly informed if this essential information is withheld or otherwise not provided?

For instance, Page 5 of the VPA Council states:

"**Land Swap** means the land swap the subject of a separate agreement between the Parties as indicated on the proposed land swap plan at Schedule 7 of this Agreement."

Without council (or the entity lodging this PP) providing the essential but missing information there can be no proper public scrutiny of the Planning Proposal.

ISSUE 4. Schedule 4 of the VPA.

In the 'additional' document the 'Schedule' is stated to be as follows:

Item	Contributions	Delivery Event and Timing
1	Fern Creek Road Works	Construction of an extension of Fern Creek Road, including new on-street parking, street trees and footpath (but excluding parking bays on the reserve side) and dedication of land to the Council by the Developer at no cost to the Council in accordance with clause 2 of this Schedule 4 prior to the issue of any Subdivision Certificate for residential development of the Developer Land.
2	East-West Road Works	Construction of the East-West Road connecting Fern Creek Road with the eastern half of Sector 9, including new onstreet parking, street trees and footpath (but excluding parking bays on the reserve side) and dedication of land to the Council by the Developer at no cost to the Council in accordance with clause 3 of this Schedule 4 prior to the issue of any Subdivision Certificate for residential development of the Developer Land.

Response:

Why is the East-West road needed? The reason given is that it will provide a link to rest of sector 9. However, the rest of sector 9 already has adequate planned and existing access roads off Orchard Street and Garden Street. The only logical rationale for this proposed new road is to provide access to a so-called 'super lot' immediately east of 9 Fern Creek Road. This 'super lot' already has access via Orchard Street to the south. It is not stated why a road to this super lot, an extra road, is needed. The new road proposed is not to provide access to lot 13 of Frasers (13 Fern Creek Road), as this small lot is completely within the riparian zone and therefore has to be dedicated as *open space creekline corridor* and, as well, it belongs in another sector – Sector 901A.

Despite my requesting this vital information of plans of the access roads on 9 Fern Creek Road during the last exhibition, this essential information again has not been provided. In my opinion that public are not being

adequately and properly informed.

I must also ask why is a north-travelling 9 Fern Creek Road proposed as well as specified in item 1 of the above table? Why is there no discussion of alternative access to lots 11 and 12 as there is demonstrated access across 2 access handles to the private owned lots to the west?

Attachment 1 of my submission clearly shows that this alternative access exists off the Fern Creek Road turning circle (see red circle for location of alternative access). The real reason the 9 Fern Creek allotment is to be traversed and fragmented by vehicular roads to private development sites appears to be to reduce the undevelopable site area within lots 11 and 12. For example, if an access road had to be provided on those two lots then the width of a standard road to service lots 11 and 12 would have to be subtracted from the small developable site area of those lots.

ISSUE 5. Schedule 4 of the VPA, further issues.

The VPA also states that:

“East-West Road Works

The Developer must (at its cost):

- (a) carry out the East-West Road Works in a good and workmanlike manner and otherwise in accordance with the provisions of this Agreement and generally in accordance with the locations shown in the Plan by the time specified in column 2 of the table in clause 1 of this Schedule 4; and

The Developer must (at its cost):

- b). dedicate and transfer to the Council the land shown in the Plan as being set aside for the East-West Road.”

Response

Again, there is no plan of the East-West Road Works or other necessary description to show the above proposed infrastructure.

It appears that these proposed works have not been properly canvassed by the amendments tabled to this draft PP. If this is indeed the case, then 9 Fern Creek Road currently a large rectangular lot of over 10,000 square metres, will be cut in half and its westernmost area of lands also will be reduced just so access can be provided to further developer lots to the west (11 and 12 Fern Creek Road) and East (the superlot).

Council is well aware that it purchased the land area of 9 Fern Creek Road using s94 funds for dedication as a 'district park'. It was later renamed a 'local park', I can only presume that it was realised that this was unlawful or that the state government and the developers who made the contributions had or would become aware of misuse of s94 funds). Certainly, the land of 9 Fern Creek Road had not been purchased by council for the purposes of creating a developable land bank.

ISSUE 6. NSW Planning & Environment Department's Guidelines, 'A guide to preparing Planning Proposals (2016)' not met in this PP.

As I have noted above, Council has refused two recent PP's submitted by Meriton at 2 Macpherson street and by the Henroth group at 10 and 12 Boondah Road and 6 Jacksons Road citing the Departments Guide to preparing Planning Proposals (2016) re not to allow a rezoning where an earlier rezoning was done within the previous five years. (See the two text extracts below).

Extract number 1

Report to Ordinary Council Meeting Item No. 9.6 - 28 March 2017 for Planning Proposal (Pp0005/16) 6 Jacksons Road and 10 & 12 Boondah Road, Warriewood.

"It is noted that this amendment was undertaken less than five years ago. (Note: the NSW Planning & Environment's Planning Proposals: A guide to preparing planning proposals (2016) states that 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 proposal can clearly justify that it meets the Strategic Merit Test)."

Extract number 2

Report to Ordinary Council Meeting Item No. 9.4 - 31 January 2017 Planning Proposal (PP0003/16) for 2 Macpherson Street, Warriewood.

"The Development Application was refused for the following reasons: '1. The proposed development is inconsistent with the objectives of clause 6.1 of Pittwater Local Environmental Plan 2014, specifically the need for development to be undertaken in accordance with the Warriewood Valley Strategic Review, which identifies that the subject site has no capacity for residential development. 2. The "no dwellings" yield prescribed by clause 6.1(3) of Pittwater Local Environmental Plan 2014 prohibits residential development on the site, and cannot be varied

pursuant to clause 4.6 of Pittwater Local Environmental Plan 2014.”

After council’s decision to refuse, the development proponent lodged an appeal with the Land & Environment Court. The question considered by the Land & Environment Court was:

‘Is the “no dwellings” specification for ‘Buffer area 1 m’ in the table to clause 6.1(3) of the Pittwater Local Environmental Plan 2014 (“PLEP”) a ‘development standard’ to which clause 4.6 of the PLEP applies?’

The decision of the Court was that the ‘No dwellings’ specification was not considered to be “... a matter relating to a development standard but to the carrying out of development at all on that land.” Ultimately it was found that the ‘No dwellings’ specification prohibits dwellings on the subject land.

This, council explained, was for the following development application “Previous Development Application (N0431/14) and subsequent court case in 27 November 2014, a Development Application was lodged for 2 Macpherson Street, Warriewood, that proposed the following:

- “Demolition of all existing structures and minor earthworks
- Construction of 30 semi-detached dwellings each containing two storeys, four bedrooms and integrated parking providing one car space
- New road infrastructure including the creation of an access driveway off Macpherson Street
- Landscaping including the construction of a publicly accessible pedestrian/cycleway around the perimeter of the site
- Stormwater management measures
- Creation and management of an Asset Protection Zone fully contained within the site”

On 11 November 2016, Northern Beaches Council accepted the planning proposal for 2 Macpherson Street, Warriewood that intended to amend the Pittwater LEP 2014. Specifically, the intended outcome of the submitted Planning Proposal is for a dwelling yield to be allocated to 2 Macpherson Street, Warriewood, thereby making dwellings a permissible land use.

Part 1

Objectives or intended outcomes.

The intended outcome of the Planning Proposal submitted, is for a dwelling yield to be allocated to 2 Macpherson Street, Warriewood.

Part 2

Explanation of provisions

Specifically, the Planning Proposal submitted intended to amend Column 2 within Clause 6.1(3) in relation to Buffer area 1m (which is 2 Macpherson Street, Warriewood). Clause 6.1(3) identifies the number of dwellings permitted on land within the Warriewood Valley Release Area. For Buffer area 1m, Clause 6.1(3) states 'No dwellings'. The Planning Proposal requests that 'No dwellings' be removed and 'Not more than 22 dwellings' be inserted, as follows:

Column 1	Column 2
Buffer area, sector or address	Number of dwellings to be erected
Buffer area 1m	No dwellings Not more than 22 dwellings

Response

Council refused this Planning Proposal. Its refusal included the statement that:

"Finally, in relation to any potential Pre-Gateway Review, it is noted that the outcome of the Warriewood Valley Strategic Review Report (2013) recommended amending the dwelling yield applicable to certain land in Warriewood Valley, with the dwelling yield for 2 Macpherson Street, Warriewood remaining as 0. The Pittwater LEP 2014 (Clause 6.1(3)) was amended accordingly. **It is noted that this amendment was undertaken less than five years ago, and the NSW Planning & Environment's Planning Proposals: A guide to preparing planning proposals (2016) states that 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 proposal can clearly justify that it meets the Strategic Merit Test.**" (Emphasis mine).

I further comment on this matter as the subject of Issue 7 below.

ISSUE 7. Further response relating to the above matter.

I assert that it is an inconsistent and hypocritical use of this 2016 Departmental Directive circular and was intended to advantage council in the planning proposal for 9 (and 11 and 12) Fern Creek Road and to disadvantage the recently submitted Meriton and Henroth planning proposals. The inconsistency shown by council is blatant. I believe that this matter that should be taken up with the Department of Planning.

I see 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.

ISSUE 8. Land swap issues.

Again, there is little information on the actual specifics of the proposed land swap due to omissions or conscious non-provision of the particulars of this rezoning, and it is clear that if one excludes the required wide creekline corridors and riparian zones then the actual benefits of the elongated park versus a rectangular park as it is, now disappear completely.

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.

Why has this information not been included in the draft Planning Proposal and supporting documents?

Relevant to this matter is that, according to Pittwater and now Northern Beaches Councils, Warriewood Valley supposedly has a net need for some five hectares of land for active playing fields (source: Warriewood Valley section 94 Plan Amendment 16 Revisions 1 and 2). 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 be accommodate a series of netball courts with associated parking and amenities. Yet this land has been allowed to remain idle for nine years, almost a decade!

ISSUE 9. Claimed planning error in the past.

Claims in the Planning Proposal that the current zoning of medium density with NO DWELLING YIELD for 9 Fern Creek Road was an inadvertent

'planning mistake' are *not* correct, and, in this case, Council (and/or its consultants) are re-writing history.

There appears to be categorical evidence in the WVSR and supporting council reports that reveal the explicit decision to rezone the once non-urban lands to 2(f) medium density with no dwelling yields as an outcome of the WVSR, and then after the Department's standard LEP template was applied, the 2(f) zone was then converted 'like for like' to Medium Density R3 in the Pittwater LEP 2014.

Council did not rezone the land of 9 Fern Creek to open-space recreation as it should have done in the first place, along with make the land 'community' land, not 'operational' land.

The following extract from Page 10 of the amended GLN report dated 17/1/3017 states:

"The 2012 Strategic Review and the 2014 Strategic Review Addendum both indicated that the 9 Fern Creek Road is suitable to be developed at a density range of 25-32 dwellings per hectare. No. 9 Fern Creek Road has a developable area of 9,273.1 m² (total area of 11,590.1 m² less 2,317 m² of 25 m riparian corridor) which would yield 29.7 dwellings at 32 dwellings per hectare.

Accordingly, if the dwelling yield potential that could be accommodated on 9 Fern Creek Road was added to the yields allocated in the LEP, the site the subject of this Planning Proposal would have a total maximum yield of **60 dwellings.**"

The maximum 30 dwelling yield is set in the LEP and is derived from Table 6 of the 2014 Warriewood Valley Strategic Addendum Report. However, this in on the basis that 9 Fern Creek Road (Council land) **was inadvertently assigned no dwelling yield on the assumption that Council had acquired it for open space.** This despite it being wholly zoned R3 Medium Density Residential under the PLEP 2014 and classified Operational for the purposes of the Local Government Act 1993. There is a clear inconsistency between clause 6.1 of the LEP that allocates "no dwellings" for 9 Fern Creek Road and clause 2.3 of the LEP that requires it to be developed in accordance with its R3 zoning." (Emphasis in this paragraph mine).

Response

I assert that there is no truth in the above claim that "However, this in on the basis that 9 Fern Creek Road (Council land) was inadvertently

assigned no dwelling yield on the assumption that Council had acquired it for open space.”

It is my contention that 9 Fern Creek Road was never *inadvertently* assigned no dwelling yield! I believe it is a flagrantly untrue claim, that it is not factual, and that it can be regarded as own as 'alternative facts'.

The 'NO DWELLING' yield in PLEP 2104 is a *gazetted* fact. It appears to have been done consciously by Pittwater Council and the Department of Planning.

The property 9 Fern Creek *was acquired for open space*, and I assert that the report to Council on 21 April 2008 is proof of that. Unless of course the consultant report would have readers believe that (as an alternative fact) Council really acquired this land for medium density housing contrary to what the elected councillors who approved this acquisition with s94 monies were led to believe. Who then is correct here? An excerpt of that 2008 report for acquisition of 9 Fern Creek Road is included in my response.

Why was not this 2008 report included in the consultant's report despite later Council reports being included? I do not believe that the history of this event is presented in a complete or fair manner.

To further support my assertion, I cite the 2008 report's recommendation

“That the General Manager be authorised to complete the acquisition of land at 9 Fern Creek Road, Warriewood (Lot 5 DP 7369613) for the purpose of establishing a District Park in Sector 9 of the Warriewood Valley Urban Release area.”

Furthermore, I claim that the dwelling yield statement in the GLN report that “The maximum 30 dwelling yield is set in the LEP” is also not factual, and I will return to this issue below.

ISSUE 10. Operational vs Community lands issue.

The following extract is from the GLN response letter to Council's concerns:

“Dear Sylvania

RE: Planning Proposal PP0002/16

As discussed at our meeting, please find attached the following responses to the request for additional information to the above Planning Proposal (PP) as set out in Council’s letter of 20 September 2016.

1(a) Objectives or intended outcome

The PP primarily seeks to enable the creation of the southern portion of the planned Central Local Park and secondly to facilitate the orderly and economic development of the land in accordance with the planned intentions for the Warriewood Release Area. Any other effects are not objectives of the PP. The PP has been amended to avoid any confusion as to the objectives.

1(b) Proposed Amendments

The Planning Proposal does not intend to seek amendments to vary the status of the land under the Local Government Act 1993. *The land was purchased in 2008 as operational land.* The site is listed within Council’s Operational Land Register. The RE1 portion of the site once rezoned will become community land without any requirement to undertake additional procedures within this Planning Proposal. As a result the Planning Proposal is silent as to the community/operational status of the land as it is not a matter that requires amendment.”

Response

I object to the above statement that lot 9 Fern Creek was purchased as 'operational' land. The statement is not at all correct – the original report to council in 2008 stated that the land is to be purchased for the provision of a large district park and, to allow council some flexibility in the boundaries of the proposed large district park, the land would be classified as operational until these minor boundary changes could be effected.

The land was *not* 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. In this case, the Warriewood s94 plan and Landscape Masterplan clearly indicate that 9 Fern Creek Road was to be a large District Park. Not a small Local Park. It cannot be clearer that all of this land was to be a park and not operational land as residential or any other purpose.

The Council meeting held to discuss the purchase of 9 Fern Creek Road occurred on 21 April 2008. The following excerpts of the Council report state:

“BACKGROUND

The pre-planning for the Warriewood Valley Urban Land Release has required the acquisition of one hectare of land in Sector 9 for the purpose of establishing a district park for many years.

ISSUES

2.1 Identification of Suitable land for Acquisition

The Council’s Warriewood Valley Team has assessed the suitability of a number of land parcels in Sector 9 of the Warriewood Valley Urban Release area that may be appropriate for acquisition by Council for the purpose of establishing a District Park. The location of a site for a district park has been a major impediment to the progression of the draft Masterplan within Sector 9 of the Land Release area.

The Team has concluded that the land at 9 Fern Creek Road, Warriewood, currently owned by Stockland Development Pty Ltd, is the most appropriate available land in Sector 9 for that purpose.

The subject vacant land is currently zoned 1(b)(Non-Urban “B”). It has an area of 1.155 ha.

A survey and aerial photograph of the site is attached to the report.

2.2 Acquisition Process & Classification of Land

The Council engaged an independent valuation firm to assess the value of the subject land for the purpose of negotiating its acquisition from Stocklands. Negotiations have been held with Stocklands, who have indicated a willingness to dispose of the land. A confidential memorandum on the status of those negotiations is included as a confidential attachment to this Agenda.

As the subject land will need to be rezoned in line with its intended use as a district park, it is appropriate that the land be classified as “Operational” land under the Local Government Act, 1993 upon acquisition, so as to not pre-empt the outcome of any future rezoning application.

Similarly, 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.

POLICY IMPLICATIONS

The acquisition of one hectare of land for the purpose of establishing a District Park within Sector 9 of the Warriewood Valley Urban Release area is in accordance with the Council’s adopted Section 94 Contributions Plan for Warriewood Valley and has been a key element of the pre-planning for the Warriewood Valley land release for many years.

RECOMMENDATION

That the General Manager be authorised to complete the acquisition of land at 9 Fern Creek Road, Warriewood (Lot 5 DP 7369613) for the purpose of establishing a District Park in Sector 9 of the Warriewood Valley Urban Release area.

That the subject land be classified as Operational land under the Local Government Act, 1993 upon acquisition.” (Emphasis mine).

Response

It is clear from the above text extract that council purchased 9 Fern Creek Road for the express purpose of a District Park using section 94 funds for that purpose.

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 *promise* 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.

If council knew that this meant the lands *could not be used as a park* then why was this action taken? The land should have been zoned open space recreation at that time. How many councils purchase lands for a park using section 94 funds and then rezone the land to medium density with no dwelling yield? This practice seems to break all planning rules and I I agree proper public administration.

ISSUE 11. Consultants table of dwelling yields.

On page 11 of the GLN 2017 report there is a table 4. I present an extract of this table below.

Northern Beaches Council

Table 4 Allocation of Proposed Dwelling Yields

Property Description	Developable Area (m ²)	Minimum Dwelling Yield	Maximum Dwelling Yield	Dwelling Yields identified Strategic Review Report
Lot 11 DP 1092788	3174	3	3	10/ha min and max
Lot 12 DP 1092788	4075.8	10	13	25/ha min 32/ha max
Lot 5 DP 736961	5374.3	13	17	25/ha min 32/ha max
Lot 13 DP 1092788	0	0	0	25/ha min 32/ha max
Total	12624.1	26	33	

This table attempts to again present alternative facts to the real situation in regard to dwelling yields under PLEP 2014. The Part 6 'table of dwelling yields by sector' uses new arguments based on the WVSR per hectare yields. However, these overall yields were then converted to actual yield ranges when Part 6 yield by sector table was gazetted and the gazetted figures took into account the 'developable' yields per hectare (i.e. minus creekline corridors etc) as opposed to yields per hectare (which included creekline corridors)!

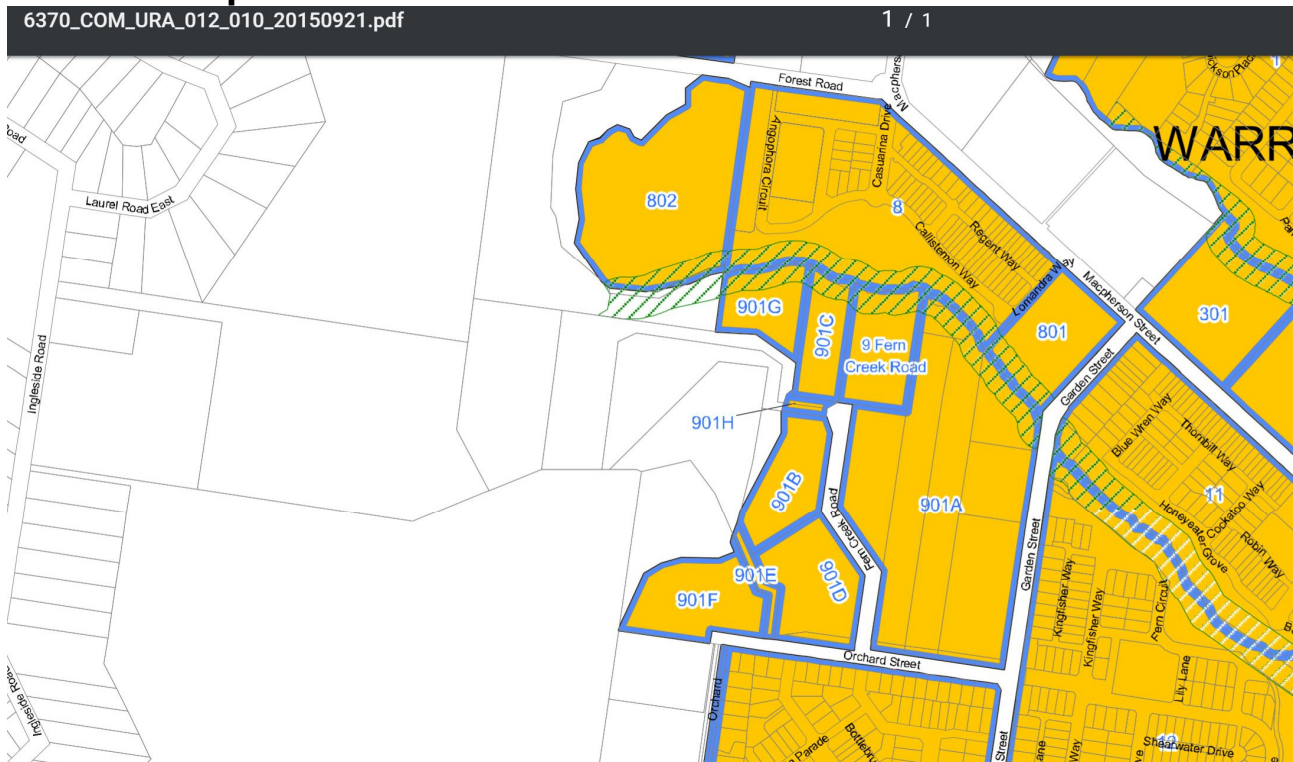
So, the PLEP 2014 is very clear about the exact dwelling yields. I present the relevant extract of Part 6 below,

“(3) Development consent must not be granted for development on land in a buffer area or sector or at an address mentioned in Column 1 of the table to this clause unless the consent authority is satisfied that the total number of dwellings shown opposite

that buffer area, sector or address in Column 2 of that table will be erected.”

Column 1	Column 2
Buffer area, sector or address	Number of dwellings to be erected
Sectors 901C and 901G	Not more than 28 dwellings or less than 23 dwellings
9 Fern Creek Road	No dwellings

Sector Map from PLEP 2014.



Clearly the number of dwellings allowed to be developed on lots 11 and 12 (11 and 12 Fern Creek Road) is in a range from 23 dwellings to 28 dwellings.

Also, clearly for 9 Fern Creek Road, the number of dwellings is ZERO i.e. “No dwellings” in the gazetted PLEP 2014.

So, contrary to the arguments contained in the GLN report Pages 9 to 11 there is no compelling case for 33 dwellings. The reality is that lots 11 and 12 will possibly not be capable of development beyond the minimum number of 23 dwellings, since the creekline corridors and setbacks restrict these two lots to narrow lineal developable areas. It is demonstrably in

the Applicant's interest to relocate developable area to 9 Fern Creek Road. However, from a probity viewpoint this lot was always to be a large park and not an extension to a creekline corridor of adjoining lots 11 and 12 Fern Creek Road.

Lot 13 (or 13 Fern Creek Road) should not be included in the GLN table as it is part of sector 901A and quite clearly its hypothetical yield and strange 'rounding up' figures should remain with sector 901A. This is despite the reality that almost 100% of lot 13 is wholly within the creekline corridor and therefore can never be built upon!

So, in reality, by including 9 Fern Creek Road with sectors 901C and 901G there is a net increase of 5 dwellings! (not 3 dwellings).

ISSUE 12. Inadequate provision of information.

Again, this Planning Proposal and the five additional information documents outlined above do not provide the following independent information.

A land swap diagram prepared by the planning consultants (acting for the applicants) has not been provided!

Whilst the planning consultant has now collated and provided planning reports to council of, for example, the meeting of 19 March 2016 and 18 May 2015, these documents were prepared by or for council staff and cannot and in terms of probity should not be viewed as independent! Possibly the consultants may be of the opinion that this is a matter that is too costly to undertake, and so have simply included the council reports. Although it might be argued that this is in some way insignificant, again it is potential conflict of interests.

The consultants have in their letter of reply to council's list of concerns following the first exhibition, chosen not act upon or respond to a significant number of these matters.

ISSUE 13. Attachment 1 – red circle indicates alternative access to 11 and 12 Fern Creek Road.

The red circle on the **Attachment 1** map below indicates that there is an alternative access available across two access handles to lots 3 and 4 DP 736961. Additionally, when reference is made to the PLEP 2014 sector map for this area that was reproduced earlier, it can be noted that PLEP

2014 has a very small sector called Sector 901H, which under Part 6 of PLEP 2014 has been assigned a yield of three dwellings for a small level portion of these access handles!

Accordingly, it can be seen that there is a valid alternative access to 11 and 12 Fern Creek Road. This fact was not canvassed by the amended rezoning documents! An explanation of this omission should be forthcoming.

ISSUE 14. Sale of the Subject site before rezoning. (See attachment 2).

An internet search I have carried out has uncovered documents saying "**SOLD**" for the subject land of 9 Fern Creek Road together with 11 and 12 Fern Creek Road as a combined development site of just less than one hectare (9,311 square metres suitable for 33 dwellings!) There are conditions listed on the web document that this sale is subject to a VPA/MOA with Pittwater Council and a Consent. However, from a probity point of view it seems that the matter has been decided before any rezoning is actually gazetted!

Johan Kamminga
6 Boondah Road
Warriewood NSW 2102


Attachment 1. The red circle indicates alternative access to 11 and 12 Fern Creek Road.



Attachment 2. Sold sign from the MATRIX Property Group website for lots 9, 11 and 12 Fern Creek Road.

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MARKETING



FERN CREEK ROAD,
WARRIEWOOD NSW



PROPERTY DESCRIPTION

BOUTIQUE NORTHERN BEACHES RESIDENTIAL DEVELOPMENT SITE

- Outstanding Infill Residential Development Site for up to 33 dwellings*
- Large site area 9,311 sqm of developable land**
- Suit Integrated Housing / Large Townhouse product
- Popular Northern Beaches Opportunity
- Asset Surplus to Client's Portfolio
- Saleable Product in Current Market and Suit Owner Occupier Buyers

*Subject to Draft Voluntary Planning Agreement (VPA)/Memorandum of Understanding (MOU) with Pittwater Council and Subject to Council Consent

**Approx

EOI CLOSES 3PM TUESDAY 26TH JULY 2016