

SUBJECT: **Application R0002/10 - Draft Planning Proposal for 39
Cabbage Tree Road, Mona Vale**

Meeting: Planning an Integrated Built Environment **Date:** 20 December 2010
Committee

STRATEGY: Land Use & Development

ACTION: Provide an effective development assessment and determination process

SUMMARY OF RECOMMENDATION

Refuse application to initiate process to amend Pittwater LEP 1993

REPORT PREPARED BY:	David Haron
APPLICATION SUBMITTED ON:	29/10/2010
APPLICATION SUBMITTED BY:	SMYTH PLANNING SUITE 112, 330 WATTLE STREET ULTIMO NSW 2007
OWNER(S):	G & J E CRAWFORD

PURPOSE OF REPORT

Council, as the Relevant Planning Authority (RPA), is required to consider the application R0002/10 which seeks to amend Pittwater Local Environmental Plan 1993. The report outlines the procedure for the RPA to initiate an LEP amendment, the relevant matters of consideration, and the applicant's draft planning proposal. A summation of community and staff comments received has been included. The report outlines an assessment and recommendation to assist Council's determination.

1.0 BACKGROUND

The subject property is 39 Cabbage Tree Road Mona Vale and the applicant, G & J E Crawford, has commissioned Smyth Planning to seek Council's endorsement to remove the requirement for the land to accommodate a recreation use, but alternatively permit a residential land use. This can only be achieved by amending the Pittwater LEP 1993. The planning proposal (the Proposal) prepared by Smyth Planning is included as **Attachment 1**.

1.1 Consistency of the Planning Proposal with Department of Planning Guidelines

The Proposal has not been prepared by Council staff. The Proposal has been submitted in the planning proposal format as set out by the Department of Planning. Council staff undertook assessment based on the merit of the content prepared and submitted by the applicant and is outlined in the following issues section of this report.

1.2 **Proposal required to be prepared and endorsed by Relevant Planning Authority for the Gateway Determination**

The process for amending a local environmental plan (LEP) has been set out in the *Environmental Planning and Assessment Act 1979 (EP&A Act)*. Council, as the Relevant Planning Authority, is required to prepare and endorse a planning proposal (for the Gateway Determination) in accordance with specific requirements the Director-General has issued under s. 55(3) of the EP&A Act. The D-G requirements outline the matters that must be address in the justification of planning proposals. The goal of the planning proposal is to enable the preparation and assessment of proposed local environmental plans to be commensurate to their likely impact.

The NSW Department of Planning has issued two documents to provide guidance and information on these matters. They are:

- A guide for preparing local environmental plans (July 2009)
- A guide for preparing planning proposals (July 2009)

An assessment of the Proposal and a recommendation has been put forward for Council consideration as Council staff does not have the delegated authority to determine applications that seek to amend Pittwater LEP 1993.

1.3 **Council determination options**

Notwithstanding the proposed staff resolution for this report, the options available to Council for determining the Proposal include:

- Defer determination based on compelling need for specific additional information either from the applicant or additional assessment consideration from staff.
- Refuse to initiate process to amend PLEP 1993.
- Endorse the Proposal as presented and resolve Council staff initiate process to amend PLEP 1993 by preparing a suitable and consistent Planning Proposal for Council to submit for Gateway Determination.

1.4 **Review or appeal rights**

Should Council resolve not to proceed with a planning proposal at this stage there is no legislative mechanism under the *Environmental Planning and Assessment Act 1979* for the applicant to request a review or appeal the Council decision.

1.5 **Process to make a local environmental plan**

The process to make a local environmental plan has been outlined by the NSW Department of Planning *Guide to preparing local environmental plans* **Attachment 2**.

A LEP is a legal instrument that imposes standards to control development. The purpose of a LEP is to achieve the objects of the *Environmental Planning and Assessment Act 1979*. In summary the steps of the “gateway” process are:

- A draft planning proposal is prepared by the proponent or Relevant Planning Authority (in this case, Council)
- Preliminary non-statutory notification of draft planning proposal (not all councils do this)
- Council considers draft planning proposal (this report)
- Based on the resolution Council either decides not to proceed or requests staff prepare an alternate PP to amend the LEP.
- Council formally considers the PP and resolves to forward PP to Minister
- PP assessed by DoP
- The LEP Panel considers PP & recommendations of DoP
- Gateway determination issued by the Minister may specify whether the PP is to proceed, and if so, under what circumstances.
- Consultation with State/Commonwealth Public Authorities
- Council conducts formal Community Consultation
- Council conducts a public hearing if required
- Council considers community and agency submissions and determines whether to proceed.
- Final PP assessed by DoP
- DoP prepares legal instrument in consultation with Parliamentary Counsel
- Plan is made by the Minister

2.0 THE PLANNING PROPOSAL

The following extract from the Proposal outlines the applicant's intent for amending Pittwater LEP. More detail and justification is provided within the material supplied.

'The subject site is 39 Cabbage Tree Road (Lot 2 DP 531960) and is currently a vacant lot of land approximately 980sqm. It is located in the Pittwater local government area and is adjacent to the Bayview Golf Club.

The site is currently zoned 6(b) Private Recreation "B" under the Pittwater LEP 1993 (PLEP 1993). The planning controls for 6(b) zone largely limit permissible uses to recreation areas. Residential, commercial and industrial uses are permissible yet only in connection with a permissible use in this zone (recreational use). Thus a dwelling could be erected on the land but only in connection with a recreational use. For example Bayview Golf Club could use the land and erect residence for staff.

The Owner's have pursued the sale of the site to the adjoining Golf Club, however following recent development by the Golf Club, last year they advised that the site would serve the club no use.

Therefore the owner's seek a simple rezoning to remove this 'ownership' restriction to erect a dwelling and to have the land zoned residential.

The subject Planning Proposal outlines that the site is able to accommodate a residential land use. The proposal provides a Design Concept that is consistent or able to be consistent with the local planning controls (PLEP 1993, Flood Affection and P21 DCP) and its context.

The Proposal also is considered to satisfy the State and Subregional Strategies in the provision of the supply of residential land.'

2.1 Initial Notification, consultation and summary of submissions

Initially, a public notice was placed on the Manly Daily on Saturday 13 November 2010 to advise the public Council had received application R0002/10 for 39 Cabbage Tree Road, Mona Vale. A further preliminary consultation letter was addressed to adjoining land owners, relevant community groups and State authorities advising the application was available to be viewed on Council's website or customer service centres for 14 days from 15 November 2010 and that comments were invited.

The following is a summary of the submissions

Notifications	Summary of Submission	
1 ANNAM ROAD Adjoining land owner	<p>Traffic – wrong location to add another vehicle driveway on an already busy road that regularly sees high speed users and accidents.</p> <p>Streetscape – there are no other houses on that side of the road. It would be inconsistent with the area.</p> <p>Danger – allowing a residential dwelling would introduce conflict to life and property from stray golf balls.</p> <p>History – site was never intended for residential use and we bought knowing it was private recreation and that no houses would be built there.</p> <p>Flooding – prone to extreme flooding and is zoned accordingly in this regard.</p> <p>Environmental habitat – disrupt local wildlife habitat.</p>	Object
48 CABBAGE TREE ROAD Adjoining land owner	<p>Traffic – the road is already subjected to 'speedsters', another driveway would risk public safety, there have been a number fatalities.</p> <p>Environmental habitat – the area is also a mini wildlife sanctuary for birds and animals.</p> <p>Flooding – the plot and surrounds are prone to flooding and is zoned.</p> <p>Danger – allowing a residential dwelling would introduce conflict to life and property from stray golf balls.</p> <p>Zone history – we purchased (48) recently and took into account this land it was private recreation and that no houses would be built there.</p>	Object
50A CABBAGE TREE ROAD Adjoining land owner	<p>Not in public interest – No social or community merit and purely designed to create windfall profit for the applicants.</p>	Object

	<p>Flooding – prone to extreme flooding and inundation making it unsuitable for residential purposes. Any development would impact the water quality of the creek and increase siltation. The creek drains to Winnererremy Bay and Pittwater which has been cleaned up so successfully.</p> <p>Environmental habitat – site serves as an important wildlife corridor / refuge for Long-Nosed Bandicoot and Powerful Owl. The rezoning would result in destruction of more valuable habitat.</p> <p>Streetscape – No other residential development on that side of road. Any development would be an eyesore disrupting the tranquil continuity.</p> <p>Danger – Not all golfers restrict their activities to the fairways. My property has been subject to errant golf balls. Any concept for building on Lot 39 would require extensive protection. Any such safety netting would be a further unsightly blight on a pristine visual environment.</p> <p>Inappropriate design response – The lot shape is not conducive for good design response. It is likely to result in unsightly long, narrow, high building and driveway to prevent bogging with curb and guttering. All of totally out of character with current natural environment.</p> <p>Safety – The iconic road is used as a street racing circuit by some. An additional vehicle access will exacerbate the already dangerous situation of near misses.</p> <p>Amenity – Everyone who purchased their property made their investment decisions aware of the zoning and the amenity it afforded. Changing it will impact those decisions.</p> <p>Biodiversity and water – The rezoning proposal will have negative impacts on the Natural Resources Commission (NRM) state plan for NSW (Priority E4).</p>	
<p>BAYVIEW GOLF CLUB LTD</p> <p>Adjoining land owner</p>	<p>Operational conflict – Site is situated adjacent to the clubs maintenance facility which is already under pressure from local residents in regards to start times.</p> <p>Danger – the block backs onto the 3rd fairway and may be in danger from errant golf balls from time to time.</p> <p>Zone history – at the time of the golf course design it was not envisaged a residential property would be situated in this position.</p>	<p>Object</p>

2.2 Chronology of the site (subdivision, zoning history and intended land use etc)

It appears that the triangular shaped block was excised from a larger portion when the Cabbage Tree Road was originally constructed to service properties in the area. On 7th August 1888 an Old System title registered survey of the road shows the correct location of the road, but does not individually identify the subject land as it had not been created or separated from the land on the other side of the road (**Attachment 3**). The survey plan of 1888 includes a description of the land southward of road as follows:

'wet and swampy covered with dense undergrowth grass and vines with swamp mahogany timber'.

It could be logically surmised that the position of the road followed the easiest construction path at the time, rather than the original intended route onto the wet and swampy land.

The County of Cumberland Planning Scheme

In 1951 the introduction of the County of Cumberland Scheme appears to identify the site as 'Open Space' and the land to north as 'Rural Area' **Attachment 4** TP167 Sheet 22. This scenario utilises the road (as constructed) as the natural boundary between zones. This creates a separation of potential land uses and establishes a consistent streetscape or character of Open Space to the southern wet and swampy side and the higher and more developable land to north as Rural Area.

Shire of Warringah Planning Scheme 1963

The Shire of Warringah Planning Scheme 1963 zones the excised land as 6(b) OPEN SPACE – Private recreation and the area north of the road as 1(c) NON URBAN 'C' **Attachment 6** Sheet 15. Annotated on the map is Bayview Golf Course and the Reserved Road (still unmade) identified as the continuation of Park Street. The Planning Scheme map marks parts of the area with the conventional signs for watercourses and includes a pond/swamp or lake on Bayview Golf Course.

This planning scheme continues the logical scenario of utilising the Cabbage Tree Road (as constructed) as the boundary between incompatible zones, separating the uses and establishing a consistent streetscape. That is, to the southern side a character of Open Space that has various watercourses and pond/swamp and, to north of the road, the higher and the more developable land as Non Urban.

Subdivision to create Lot 2 DP 531960

On 8 July 1969, the land subject of this report, Lot 2 DP 531960, was separately registered (**Attachment 5**). The survey plan shows the current position of Cabbage Tree Road that separates Lot 2 from the remainder with the annotation

'Lot 2 has an area of 38 ¾ per. and is fenced by post & wire fence 1 yr old.'

In addition the survey plan shows a Reserved Road (unmade) adjoining the southeast boundary. The survey annotates the area beyond the reserved road as that of Bayview Golf Club Ltd.

Warringah Local Environmental Plan 1985

At some stage between the Shire of Warringah Planning Scheme 1963 and the making of Warringah Local Environmental Plan 1985 (available for viewing at Council offices) the land on the northern side of Cabbage Tree Road (Lot 1 DP 531960) was rezoned to permit residential development. It has to be assumed that at that stage the Town Clerk reviewed the land uses of the adjoining land and the likelihood that Lot 2 DP 53960 was excised during the construction of Cabbage Tree Road.

Having reviewed these facts the Town Clerk certified the making of this LEP in accordance with the relevant planning legislation and kept 39 Cabbage Tree Road zoned as private recreation as it had been historically.

Pittwater LEP 1993 and permissible development

The current planning scheme is Pittwater LEP 1993. It was created following the succession of Pittwater Council. Pittwater LEP 1993 continued to logically utilise Cabbage Tree Road as the zone boundary between the residential zone on the northern side and the private recreation zone on the southern side. As outlined above the site is currently zoned 6(b) Private Recreation "B" under the Pittwater LEP 1993 (PLEP 1993) for which the zoning table states;

Zone No 6 (b) (Private Recreation "B")

1 Without development consent

Nil.

2 Only with development consent

Advertisements; boarding-houses, dwelling-houses, group buildings or residential flat buildings required for use or occupation by persons employed in connection with a purpose permissible under this heading; commercial premises or industries required in connection with a purpose permissible under this heading; helipads; recreation areas; utility installations.

3 Prohibited

Any purpose other than a purpose for which development may be carried out only with development consent.

(PLEP 1993 Current version for 16 July 2010 to date (accessed 8 December 2010 at 16:54))

Whilst the permitted land uses under this zoning are limited to the above, this does not sterilise the land.

Current Site Context

The Proposal includes an aerial photo and identifies the subject site outlined in red. It is currently vacant of any structures and in a substantially 'unimproved state'. The triangle shaped lot adjoins Bayview Golf Club on two sides and is directly opposite four (4) residential dwellings fronting Cabbage Tree Road. The Bayview Golf Club workshop and maintenance sheds are located directly west of the subject lot with access to Cabbage Tree Road and a small bridge (spanning the drainage line/watercourse) provides light machinery access to the golf course.

The site is bounded by watercourse drainage line that is located on Bayview Golf Club land and drains to Winnererremy Bay. Parts of Winnererremy Bay are zoned 7(a) Environmental Protection.

The subject site is considered flat land and is approximately 1.5 metres AHD. Excluding foreshore land, 39 Cabbage Tree Road is one of the lowest lying privately owned sites in the Pittwater LGA.

2.3 Council Assessment – Internal Referrals and Comments

The Proposal was referred internally to the following officers and their comments have been included.

Natural Resources Assessment Officer

*I have reviewed the information provided in the application R0002/10 (39 Cabbage Tree Road Bayview) and inspected the site. The proposal involves rezoning the site to allow for the possibility of a residential development in the future. As the rezoning itself will not impact on natural resources, this assessment focussed on the value of the site and any likely future impact. In terms of natural resource value, the site contains a modified understorey which is predominantly grass, which is currently mowed. A number of canopy trees exist on the site and in close proximity in the adjacent road reserve and Bayview Golf Course, and a creek line runs along the southern boundary of the site. The site does not contain natural vegetation consistent with that of any endangered ecological community, and does not appear to contain core habitat for any endangered fauna species. The majority of the trees on the site are planted *Casurina glauca* (Swamp Oak) specimens, with eight specimens of *Eucalyptus robusta* (Swamp Mahogany) in the corners, which may be remnant trees, along with others on the road reserve.*

The current natural resource value of the site should not be considered a hindrance to rezoning. As the majority of the site's trees are located around the edge of the site, a well-designed potential future dwelling will only result in minimal tree loss. Alternatively, if rezoning is refused, the site could be revegetated with locally native plant species to provide a small area of riparian habitat, however the likelihood of this occurring from a financial perspective is very low.

Landscape Architect

Council's Landscape Architect notes, having reviewed the information provided that the contribution of the site to open space and private recreation in Pittwater overall is very minimal. The current use of the site provides passive recreation enjoyment only of which Pittwater has abundance. If the site were to be rezoned, the loss of 980sqm would not impact provision of private recreation in that locality. There is no objection to rezoning as proposed.

Catchment Management and Climate Change

Having reviewed the information provided there are significant issues regarding the ability of this Proposal to ensure property and life are protected from current and future predicted flood risk. Annexure 2 of the Proposal outlines the current adopted flooding advice from the draft Mona Vale / Bayview Flood Study 2005.

Current adopted advice for the site

The Mona Vale / Bayview Flood Study was adopted by Council in 2002, with associated Flood Planning Levels adopted in 2005.

- The site hazard classification is Category 1 – High Flood Hazard.
- The flood planning level is 2.7 metres AHD, approximately 1.2 metres above the natural ground level.
- The Probable Maximum Flood is 2.6 metres AHD.

Note – These flood figures do not incorporate sea level rise planning benchmarks that are used in assessing potential impacts of sea level rise in coastal areas, including in flood risk and coastal hazard assessment

The current Estuarine Planning Level Advice is the property is not currently identified on Council's current Estuarine Hazard Map on the basis of best available information prepared by consultants for Pittwater Council. The current Pittwater Estuary Processes Study was completed 2003.

Future predicted advice for Mona Vale / Bayview Floodplain

Council is currently conducting an internal review of the draft Mona Vale / Bayview Floodplain Risk Management Study and Plan. This includes an evaluation of options to reduce flood risk in this community, a detailed assessment of the impacts of climate change was also incorporated into this project. Key floodplain risk management measures identified in the draft Mona Vale / Bayview Plan include modifications to the flood gates at Bayview Golf Course and recommendation for adoption of new Flood Planning Levels for all future development to include a climate change scenario of 0.9m sea level rise and 30% increase in rainfall intensity.

Future predicted advice for 'Pittwater Foreshore Floodplain— Mapping of Sea Level Rise Impacts'

In addition, Council is currently working on the draft 'Pittwater Foreshore Floodplain— Mapping of Sea Level Rise Impacts' project. It is currently being internally reviewed by Council and the Department of Environment, Climate Change and Water (DECCW). The primary aim of this study has been to update the Estuarine Planning Level Mapping Study to incorporate the latest sea level rise benchmarks, in accordance with the NSW Government's Sea Level Rise Policy Statement.

As reported to Council on 1st November 2010, the next step for the Pittwater Estuary Foreshore floodplain is to report to Council to place the mapping on Public Exhibition. The Public Exhibition, which is anticipated for February–March 2011, will involve a community engagement strategy, including a series of Community Workshops to present information about the likely current and future impacts of tidal inundation due to sea level rise around the foreshore of the Estuary.

This study identifies this site as being affected by tidal processes. As such the site is known to be affected by main stream flooding and tidal inundation either currently or as a result of predicted sea level rise. This information has been disclosed to assist Council in its a duty of care requirements.

Applying State Government Policy and Guidelines

As reported and adopted by Council, in 2009 the NSW Government released The NSW Sea Level Rise Policy Statement. It was prepared to support consistent adaptation to projected sea level rise impacts. The policy statement includes sea level rise planning benchmarks for use in assessing potential impacts of sea level rise in coastal areas, including in flood risk and coastal hazard assessment.

In addition, the NSW Government prepared *Flood Risk Management Guide: Incorporating sea level rise benchmarks in flood risk assessments* (August 2010). The information in this guide updates sea level rise information in the NSW Floodplain Development Manual (2005) and should be read in conjunction with the Manual.

Sea level rise is a consideration because the *Flood Risk Management Guide* applies to areas where the sea level rise planning benchmarks are likely to have impact on predicted flood levels. This includes land in the vicinity of tidal waterways. In particular the Flood Risk Management Guide is likely to apply if:

- The land is likely to be inundated if water level are 1 metre above the current flood planning level in tidally affected waters
- the land is below 4 metres Australian Height Datum (AHD).

As such, under the *Flood Risk Management Guide* parameters and in addition to the working draft 'Pittwater Foreshore Floodplain — Mapping of Sea Level Rise impacts' project, the site is subject to sea level rise.

Strategic Planning

In August 2010 the *NSW Coastal Planning Guideline – Adapting to Sea Level Rise* was prepared by the NSW Department of Planning to provide guidance on how sea level rise is to be considered in land use planning and development assessment in coastal NSW. It is a forward-looking document which assists planning for future development proposals. The *Coastal Planning Guideline* also applies to low lying land surrounding estuaries that may be subject to coastal processes in the future as a consequence of sea level rise such as the subject site.

The *Coastal Planning Guideline* adopts the following six coastal planning principles for sea level rise adaptation:

1. Assess and evaluate coastal risks taking into account the NSW sea level rise planning benchmarks.
2. Advise the public of coastal risks to ensure that informed land use planning and development decision-making can occur.
3. Avoid intensifying land use in coastal risk areas through appropriate strategic and land-use planning.
4. Consider options to reduce land use intensity in coastal risk areas where feasible.
5. Minimise the exposure to coastal risks from proposed development in coastal areas.
6. Implement appropriate management responses and adaptation strategies, with consideration for the environmental, social and economic impacts of each option.

The third principle is particularly relevant when considering this Proposal. The strategic planning decisions made today can establish settlement patterns and related infrastructure, such as road, water, sewerage, electricity etc that can outlast individual buildings and span periods of decades to centuries. It is important that long time frames are used for today's planning decisions because individual development decisions inevitably raise land use expectations in perpetuity. These Principles ensure a precautionary but not overly conservative approach to coastal flood risk matters such as for this Proposal.

The precautionary approach does not prohibit development but uses a risk based approach allowing proponents to demonstrate whether they can manage the risk. Using the *Coastal Planning Guideline* Council is currently working towards ensuring suitable restrictions are in place on the land subject to coastal risk in order to protect current and future development and investment decisions. In particular this approach recognises that private developers and landowners can't be allowed to decide on the level of risk that they are willing to take in their investment decision as today's property owners will not be the ones to bear the risk of their decisions. Council has the duty of care to make decisions that will not adversely impact on future owners and on future costs to the broader community.

Council should not progress the Proposal as it would create a residential zoned lot that is subject to Category 1 high hazard flooding. This goes against fundamental planning principles of zoning land to ensure risk to life and property are minimised.

If Council permit this Planning Proposal to progress it could establish a precedent of how Council deals with other land across the local government area that is similarly impacted by:

- Low lying (only 1.5m AHD)
- Category 1 High Flood Hazard
- Estuarine flood affected, and
- Affected by sea level rise

The Proposal does not sufficiently justify the merit of allowing a residential zone in Category 1 Flood Hazard Area that is low lying (1.5m AHD) and subject to sea level rise. Rezoning the land would not be consistent with the *Coastal Planning Guideline* and would introduce the expectation of development potential that is unlikely to be able to address the risk to property or life into the future.

Pittwater Council will be able to achieve the Housing Target established by the North East Sub-Regional Strategy and do not need to rely on the contribution of this site to assist in meeting the numbers. Overall, Council will meet its future housing needs in a more sustainable manner by ensuring future housing is located away from significant hazards such that risk to life and property is appropriately managed.

The Proposal does not address sufficiently that the site was ever intended to have a zone other than 6(b) Private Open Space. All the previous planning schemes and instruments have consistently applied Cabbage Tree Road (as constructed) as the zone boundary.

Whilst the permitted land uses under this zoning are few, this does not sterilise the land. Introducing a residential use into the private recreation area is incompatible with the existing adjoining uses. The most appropriate zone for this site with regards to the location of 39 Cabbage Tree Road and the adjacent uses, is the current zone 6B 'Private Recreation'.

The Bayview Golf Club submission already highlights the friction its operational requirements of the workshop located adjacent to the site place on the amenity for existing residences located further away. Residential amenity is affected when golf balls stray from the fairways and into yards and onto the roofs of adjacent homes. A number of submissions outlined the safety risk of errant golf balls. Any future use of the site will have to suitably provide protection in a manner that ensures it is effective and visual impact is ameliorated.

The Proposal does not sufficiently justify the removal of the provision which only permits the erection of dwelling houses on site for use or occupation by persons employed in connection with a purpose permissible under the zone heading.

The intention of such a provision is to ensure there is suitable and sufficient accommodation for those employed in the primary use of the site.

The applicant provides as an example, that a dwelling house associated with the golf course is permitted on site. It is considered that the amenity impacts that would otherwise be unacceptable to a normal resident eg golf ball hazard, proximity to maintenance sheds etc, may be more easily understood if the residents themselves are linked and employed to the Private Recreation Use.

The Proposal incorrectly pre-empted that Council would automatically approve a dwelling on the site if it was owned by Bayview Golf Club. It is clear that regardless of ownership, any type of dwelling may not be suitable for this location given the current and predicted flood affectation.

Overall, the Proposal does not provide any net community benefit and could potentially become a liability given the level of flood hazard.

Dwelling Concept

The following comments are on the dwelling concept offered. The applicant has not been asked to address these concerns as the dwelling is indicative only. Should the Proposal progress then these matters would at the development application stage be subject to the full and thorough examination of the development assessment planner.

The concept does not demonstrate a solution to the conflict of the adjoining land use. Golf ball hazard could be addressed by provision of a fence or other screening. The location and appearance of the fence/screen would impact amenity and be located within a high flood hazard area which may lead to associated flood impacts by impeding flood flows and have a cumulative impact on adjoining or downstream areas.

Overall, should the Council progress the Proposal a single dwelling development application could reasonably be submitted that would overall achieve compliance with built form requirements Pittwater 21 Development Control Plan.

However, any future development application is unlikely to be able to address the flood and sea level rise development controls because of the on-going and potentially increasing risk to property or life.

The recommendation of this report is Council refuse the proposal to initiate process to amend Pittwater LEP 1993.

3.0 SUSTAINABILITY ASSESSMENT

3.1 Supporting & Connecting our Community (Social)

The overarching aim of flood and coastal risk management is to increase safety for residents and businesses. Communication of risks from natural hazards increases community awareness thereby reducing the potential risk to life and property.

The Coastal Planning Guideline (2010), the accompanying Flood and Coastal Risk Guides and Sea Level Rise Level Rise Policy Statement assists in informing and preparing our community for the impacts of sea level rise.

3.2 Valuing & Caring for our Natural Environment (Environmental)

Consideration of floodplain risk management plans balances a wide range of social, economic and environmental issues. Assessing the predicted impacts of climate change will allow for future planning to value the impact on tidal ecosystems, adverse water quality, threatened species, coastal erosion, etc.

3.3 Enhancing our Working & Learning (Economic)

One of the key outcomes of the NSW Government policies relating to natural hazards is the 'protection of private and private infrastructure and assets'. By ensuring land is appropriately zoned and there are adequate development controls in place to deal with natural hazards, this will reduce future economic burden for the whole of the Pittwater community.

3.4 Leading an effective & Collaborative Council (Governance)

The assessment of this Proposal has been undertaken to ensure compliance with the requirements of the NSW Government Flood Prone Land Policy and accompanying Floodplain Development Manual (2005).

The adoption of the sea level rise benchmarks and incorporation into Council's hazard management planning will provide compliance with Council's obligations under the NSW Coastal Policy and the NSW Flood Prone Land Policy. This can provide Council with indemnity under Section 733 of the Local Government Act.

3.5 Integrating our Built Environment (Infrastructure)

Incorporation of the Coastal Planning Guideline and the associated technical Risk Guides and adoption of the benchmarks will allow Council to make an informed decision for the management of current and the provision of future infrastructure from the impacts of climate change.

RECOMMENDATION

That Council **refuse** application No R0002/10 – Planning Proposal for 39 Cabbage Tree Road, Mona Vale to initiate the process to amend Pittwater Local Environmental Plan 1993 for the reasons outlined below:

1. Cabbage Tree Road provides the ideal separation (buffer) between conflicting land uses (residential and private recreation uses) and therefore it is not appropriate to change the zone.
2. The most appropriate zone for this site with regards to the position of 39 Cabbage Tree Road and the adjacent uses is the current zone 6B 'Private Recreation' as such not appropriate to change the zone.
3. Council should not progress the Proposal as it creates a residential zoned lot that is subject to Category 1 high hazard flooding This goes against fundamental planning principles of zoning land to ensure risk to life and property are minimised.
4. Rezoning the land could establish a precedent.
5. Rezoning the land would not be consistent with the *Coastal Planning Guideline* and would introduce the expectation of development potential that is unlikely to be able to address the risk to property or life into the future.
6. The subject site is not required for Council to achieve housing target.
7. It is not a zoning anomaly. The Proposal does not address that the site was ever intended to have a zone other than 6(b) Private Open Space.
8. The Proposal does not provide any net community benefit and could potentially become a liability given the level of flood hazard.

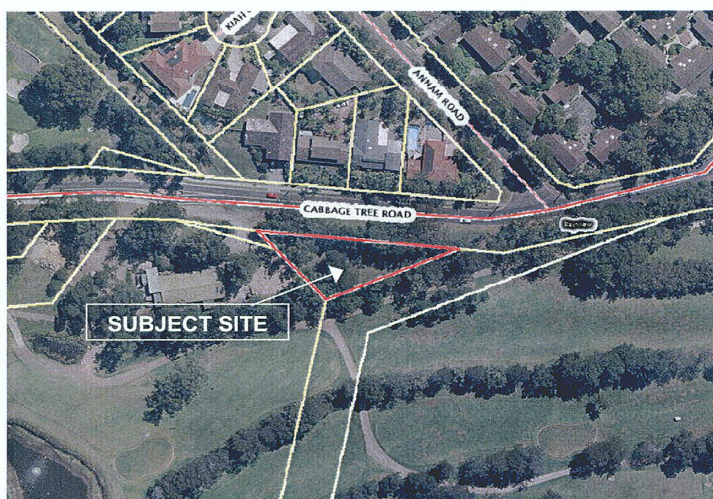
Report prepared by
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Manager Planning & Assessment

PLANNING PROPOSAL

PITTWATER COUNCIL
LOCAL ENVIRONMENTAL PLAN 1993.

FOR
RESIDENTIAL REZONING
AT
39 CABBAGE TREE ROAD, BAYVIEW.



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October 2010

CONTENTS

1	INTRODUCTION	3
2	PART 1 – OBJECTIVES OR INTENDED OUTCOMES	4
3	PART 2 – EXPLANATION OF PROVISIONS	6
4	PART 3 - JUSTIFICATION	8
	SECTION A – NEED FOR THE PLANNING PROPOSAL	8
	SECTION B – RELATIONSHIP TO STRATEGIC PLANNING FRAMEWORK	10
	SECTION C – ENVIRONMENTAL, SOCIAL AND ECONOMIC IMPACT	13
	SECTION D – STATE AND COMMONWEALTH INTERESTS	14
5	PART 4 – COMMUNITY CONSULTATION	14
6	CONCLUSION	14
	Annexures	
	Annexure 1 - Design Concept	
	Annexure 2 - Flooding Details	

1 Introduction & Summary

The subject site is 39 Cabbage Tree Road (Lot 2 DP 531960) and is currently a vacant lot of land of approximately 980sqm. It is located in the Pittwater Local Government Area and is adjacent to the Bayview Golf Club.

The site is currently zoned 6(b) Private Recreation "B" under the Pittwater LEP 1993 (PLEP 1993). The Planning controls for 6(b) zone largely limit permissible uses to recreation areas. Residential, commercial and industrial uses are permissible yet only in connection with a permissible use in this zone (recreation use). Thus a dwelling could be erected on the land but only in connection with a recreational use. For example Bayview Golf Club could use the land and erect residence for staff.

The Owner's have pursued the sale of the site to the adjoining Golf Club, however following recent developments by the Golf Club, last year they advised that the site would serve the Club no use.

Therefore the Owner's seek a simple rezoning to remove this 'ownership' restriction to erect a dwelling and to have the land zoned residential.

The subject Planning Proposal outlines that the site is able to accommodate a residential land use. The Proposal provides a Design Concept that is consistent or able to be consistent with the local planning controls (PLEP 1993, Flood Affection and P21DCP) and its context.

The Proposal also is considered to satisfy the State and Subregional Strategies in the provision of the supply of residential land.

All the analysis and information to proceed to a Gateway Determination is provided.

2 Part 1 – Objectives or Intended Outcomes

The objective of the Planning Proposal is to enable the residential development of 980sqm area of vacant land known as 39 Cabbage Tree Road, Bayview on an unrestricted basis.

The subject land is situated on the southern side of Cabbage Tree Road. The southern side and across Cabbage Tree Road to the northwest of the site is occupied by Bayview Golf Club. To the north and northeast of the site, across Cabbage Tree Road, are residential uses comprising - dwelling houses and beyond Bayview Gardens Retirement Village, these residential uses are zoned 2(a) – Residential.

The site has a fall of approximately 1m in a southerly direction and is identified in a Category 1 Flood Risk Level Area. There is a small creek along the southern boundary largely within the Golf Club property, however a small portion runs through the most southern point of the site. The land is vacant of buildings or structures. It has various forms of vegetation within and to the boundaries of the site. The site is fenced along the southeastern and southwestern boundaries with the Golf Club.

The site is strategically located along an existing road, with available services (bus, bicycle and pedestrian) to local centres along Cabbage Tree Road.

The intention is to make this land available for residential development opportunities similar to the land opposite the site, fronting Cabbage Tree Road.

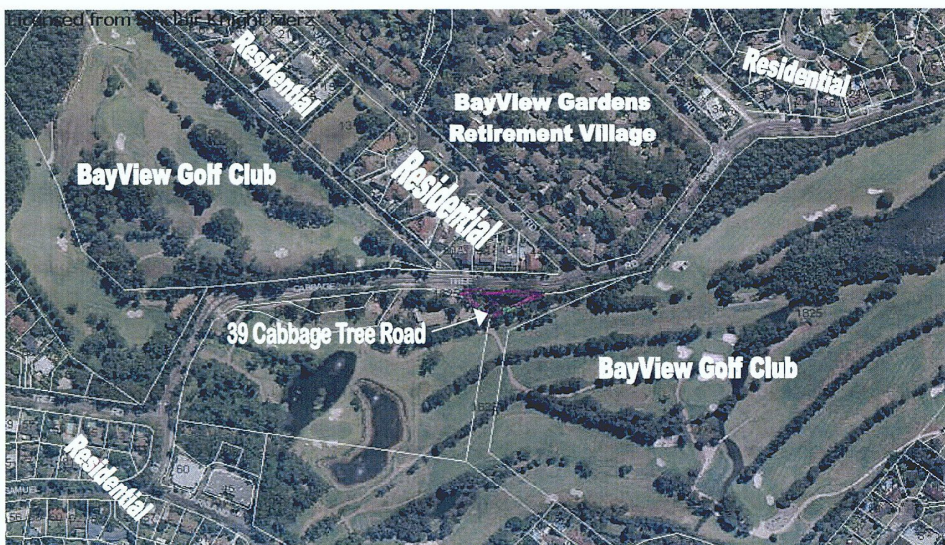


Figure 1 – Site Plan & Surrounding land uses

To assist the Planning Proposal a Design Concept has been prepared by Louise Nettleton Architect to provide an 'indicative' illustration that a dwelling-house can be accommodated on the site.

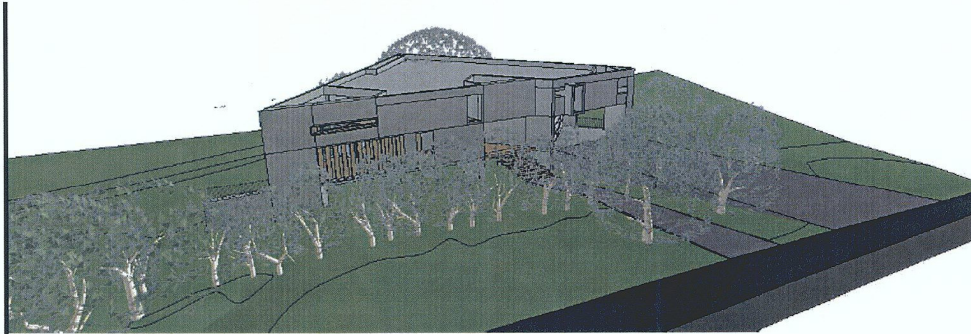


Figure 2 – Design Concept perspective

Refer to Annexure 1 for a full set of Concept Plans and Perspectives.

The Design Concept has been developed with regard to the key controls held in P21DCP and the flood affectation applicable to the site.

3 Part 2 – Explanation of Provisions

The objectives of this Planning Proposal could be achieved by rezoning the subject site to enable a usable development on the site, compatible with surrounding uses. The Pittwater Local Environmental Plan 1993 (PLEP 1993) is the relevant Environmental Planning Instrument applying to the subject land.

The site is currently zoned 6(b) Private Recreation “B” under the PLEP 1993. The Planning controls for zone generally permit recreation uses or uses in association with recreation uses. Residential, commercial and industrial uses are permissible yet only in connection with a permissible use in this zone (recreation use). As an example the Golf Club could erect a dwelling on the site, as it would be ‘connected’ to the recreational ‘Golf Club’ use. This being the case, the Planning Proposal for a residential zone is not considered to diverge from enabling a development that is currently permitted on the site. The Planning Proposal merely removes that nexus. The existing zoning is not considered to enable the site to provide an appropriate, functional or viable use as a ‘stand alone’ development on this site.

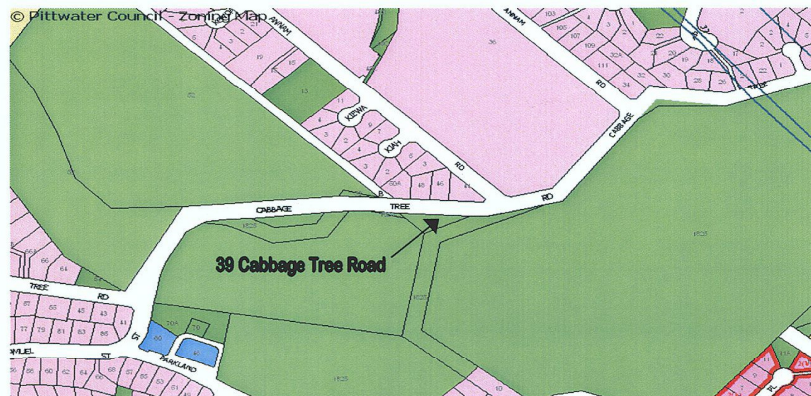


Figure 2 - Zoning extract, PLEP 1993.

The existing Zone provisions in PLEP 1993 for 2(a) - Residential “A” as identified in Clause 9 – Development Control Table are: -

1 Without development consent	Nil.
2 Only with development consent	Any purpose other than a purpose for which development may be carried out without development consent or a purpose for which development is prohibited.
3 Prohibited	Boarding-houses; bulk stores; car repair stations; caravan parks; commercial premises; generating works; group buildings; helipads; heliports; industries; institutions; junk yards; liquid fuel depots; mines; motels; motor showrooms; places of assembly; recreation areas; recreation establishments; refreshment rooms; residential flat buildings; retail plant nurseries; sawmills; service stations; shops; stock and sale yards; transport terminals; warehouses.

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Page 6 of 14

The Zone does not have any specific objectives. The aims and objectives of the PLEP 1993 are

2 Aims, objectives etc

This plan aims to incorporate the relevant provisions of Warringah Local Environmental Plan 1985 into a local environmental plan for the area of Pittwater

With this underlying Objective, the assumed objectives to residential development in this Zone are considered to be contained in Pittwater 21 DCP (P21DCP) to be -

Integrating our Built Environment is about the need to create a sustainable and relaxed living environment including appropriate development effective transport choices and efficient support services

The basis for the Plan is Ecological Sustainable Development (ESD) and within that basis, three key objectives to achieve ESD across all development. These are -

- Environmental Objectives
- Social Objectives
- Economic Objectives

The Planning Proposal seeks only the rezoning of the land and in doing so does not prevent the objectives of the Plan being satisfied.

As an immediate consideration for residential development in the 2(a) Zone, Clause 11 of PLEP 1993 requires a minimum allotment size for the subdivision of land for residential purposes of 700sqm. The aim of the Clause is to create more varied allotment sizes, improved residential amenity and enhance the environment in relation to which the Clause applies. The subject site is 980sqm.

It is proposed that the PLEP 1993 zoning map be amended to apply the Zone 2(a) Residential "A", which is an existing zone in the LEP to the subject site.

4 Part 3 - Justification

Section A – Need for the planning proposal

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

No

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

A change of zone is contended to be the correct means of achieving the objectives and intended outcomes in this Planning Proposal. The proposed development outcome in this Planning Proposal cannot be achieved without changing the zoning in Council's LEP from a private recreation zone to a residential zone, except under Part 3A of the Environmental Planning and Assessment Act. The Part 3A is not considered an appropriate means of achieving the objectives and intended outcome.

3 Is there a net community benefit?

As suggested by the Department's Local Plan-Making Guidelines, the Evaluation Criteria to undertake a Net Community Benefit analysis have been adapted from the Draft Centres Policy (April 2009). In some cases the Evaluation Criteria has been modified or removed to ensure the criteria are meaningful to this Planning Proposal.

Net Community Benefit Evaluation Criteria	Response in the planning proposal
<i>Is the LEP located in a global/regional city, strategic centre of corridor nominated within the Metropolitan Strategy or other regional/subregional strategy?</i>	<ul style="list-style-type: none"> The subject site for this Planning Proposal is not within an identified centre or corridor affected by regional/subregional strategy.
<i>Is the LEP likely to create a precedent or create or change the expectations of the landowner or other landowners?</i>	<ul style="list-style-type: none"> The Planning Proposal is in accordance with the established local planning framework. It is contended that there is merit in proceeding to rezone the land. The land is isolated and therefore is unlikely to change the expectations or set an undesirable precedent.
<i>Have the cumulative effects of the other spot rezoning proposals in the locality been considered? What was the outcome of these considerations?</i>	<ul style="list-style-type: none"> The Planning Proposal is contended to be consistent with the local strategic planning requirements and considerations. Accordingly, any cumulative effect of similar spot rezoning proposals would need to adhere to the local strategic planning policies.
<i>Will the LEP facilitate a permanent employment generating activity or result in a loss of employment lands?</i>	<ul style="list-style-type: none"> There will be no impact or loss of employment lands resulting from the proposal. The proposal would create short term employment (ie construction).
<i>Will the LEP impact upon the supply of residential land and therefore housing supply and affordability?</i>	<ul style="list-style-type: none"> The Proposal shall provide the opportunity to increase the land supply for housing, consistent with State and Local Objectives.
<i>Is the existing public infrastructure (roads, rail</i>	<ul style="list-style-type: none"> The site has a frontage to Cabbage Tree

<i>utilities) capable of servicing the proposed site? Is there good pedestrian and cycle access? Is public transport currently available or is there infrastructure capacity to support future public transport?</i>	<p>Road, which has a pedestrian footpath is located along its northern side</p> <ul style="list-style-type: none"> • A bus service operating daily along the Road between McCarrs Creek and Manly • An identified bicycle route is marked on Cabbage Tree Road
<i>Are there significant Government investments in infrastructure or services in the area whose patronage will be affected by the proposal? If so, what is the expected impact?</i>	<ul style="list-style-type: none"> • The Planning Proposal seeks merely to rezone the land and the extent of its future use is considered unlikely to have any significant impacts upon any Government investments • The proposal would provide residential lands for housing
<i>Will the proposal impact on land that the Government has identified a need to protect (e.g. land with high biodiversity values) or have other environmental impacts? Is the land constrained by environmental factors such as flooding?</i>	<ul style="list-style-type: none"> • The land is identified as a Category 1 Flood Risk Area with a FPL of 2.7m AHD (approximately 1.1m – 1.2m above natural ground level), • The site is on the peripheries of a high priority area essential to fauna movement (Wildlife Corridor) • The land is not identified as Koala Habitat and • These environmental constraints are contended and potential issues are considered to be able to be effectively managed and impacts minimised through any development stage
<i>Will the LEP be compatible/complementary with surrounding land uses? What is the impact on amenity in the location and wider community? Will the public domain improve?</i>	<ul style="list-style-type: none"> • The Planning Proposal is considered to be compatible with adjacent land uses immediately opposite the site and to the north east • There is not considered to be any adverse impact on the wider community • The public domain is not considered to be altered through the Planning Proposal • The land is contended to be suitable for the development
<i>What are the public interest reasons for preparing the draft plan? What are the implications of not proceeding at the time?</i>	<p>It is contended there are three (3) main public interest reasons for processing the Planning Proposal, which cannot be realised without finalising a change to the zoning</p> <ol style="list-style-type: none"> 1 The residential land supply in Bayview and Pittwater LGA will be increased 2 This would make efficient use of vacant land serviced by existing infrastructure and services and 3 There would be minimal impact to adjoining properties

It is considered that there is a net community benefit resulting from the Planning Proposal

Section B – Relationship to strategic planning framework

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

The Proposal is considered wholly consistent with the Sydney Metropolitan Strategy, Draft North East Subregional Strategy and Metropolitan Development Program in the provision of the supply of lands to assist the housing demand

5 Is the planning proposal consistent with the local Council's Community Strategic Plan, or other local strategic plan?

Pittwater Strategic Plan 2020

As the site is currently zoned largely for recreational areas, the Recreational Management Strategy component of the Plan is acknowledged for the purpose of this proposal

The Recreational Management Strategy has many broad and site specific objectives. This site does not have any specific strategy, as such it is considered under the broader objective to ultimately seek the increase in opportunities and diversity of existing 'green' and community areas

This site is currently vacant and its location on the outskirts of the urban centres on Cabbage Tree Road are not considered characteristics that offer the opportunity of a 'stand alone' recreational or community area that would be any of significant benefit to the community and ultimately go towards the strategic objective

The NSW Metropolitan Draft North East Subregion Strategy also considers the Environment, Heritage and Resources of the area with a key challenge to allow for increased densities while protecting significant cultural heritage. It seeks Councils to ensure that new developments are designed to encourage walking and cycling, and that there are local shops and transport links within accessible distances. The site is located on a road that is serviced by buses and is marked as a bicycle route

The Strategy identifies the need to protect riparian and flood prone land with particular regard to an Objective of the Government's Flood Prone Land Policy to "reduce the impact of flooding and flood liability on individual owners and occupiers of flood prone property and to reduce private and public losses resulting from floods". The Design Concept considers the Flood Affection and nominates a finished floor level of 2.7m AHD, compliant with the Council's FPL. Refer to Annexure 1 for a full set of Design Concept Plans and Perspectives prepared by Louise Nettleton Architect

The Land Use Development Strategy does seek to *respond to economic, cultural, social and environmental needs in a sustainable manner (including land release)*. The monitoring of this Strategy in part is against the Subregional housing targets. The target for the NSW North-east Subregion is 17,300 extra dwellings with Pittwater to provide 4,600 (27%) of the target. The Department of Planning has also recently released a Metropolitan Development Program to assist in managing land supply and guiding infrastructure coordination in Sydney which similarly identifies the housing stock provision

The rezoning of the land is considered a suitable basis to assist in achieving the housing target

6 Is the planning proposal consistent with applicable state environmental planning policies?

There are no State Environmental Planning Policies (SEPPs) or deemed SEPP's that are relevant to the immediate Planning Proposal, as such there are no inconsistencies to be outlined. There are SEPP's that shall be relevant to the site post Planning Proposal and these are identified in the table below.

Relevant SEPP/Deemed SEPPs	Applicable Post Planning Proposal
SEPP No 1 – Development Standards	YES
SEPP No 4 – Development Without Consent	YES
SEPP No 6 – Number of Storeys in a Building	YES
SEPP No 14 – Coastal Wetlands	NO
SEPP No 21 – Caravan Parks	YES
SEPP No 22 Shops & Commercial Premises	N/A
SEPP No 26 – Littoral Rainforests	NO
SEPP No 30 – Intensive Agriculture	NO
SEPP No 32 – Urban Consolidation	NO
SEPP No 33 – Hazardous & Offensive Development	NO
SEPP No 44 – Koala Habitat Protection	NO
SEPP No 50 – Canal Estate	NO
SEPP No 55 – Remediation of Land	YES
SEPP No 60 – Exempt & Complying Development	YES
SEPP No 62 – Sustainable Aquaculture	
SEPP No 64 – Advertising & Signage	YES
SEPP No 65 – Design Quality of Residential Flat Development	YES
SEPP No 70 – Affordable Housing (Revised Scheme)	YES
SEPP No 71 – Coastal Protection	NO
SEPP (Building Sustainable Index BASIX) 2004	YES
SEPP (Housing for Seniors & People with a Disability) 2004	YES
SEPP (Major Development) (2005)	YES
SEPP (Infrastructure) 2007	YES
SEPP (Mining, Petroleum Production & Extractive Industries) 2007	NO
SEPP (Temporary Structures) 2007	YES
SEPP (Rural lands) 2008	NO
SEPP (Affordable Rental Housing) 2009	YES
SREP No 20 – Hawkesbury-Nepean River (no 2 – 1997)	YES

7 Is the planning proposal consistent with applicable Ministerial Directions (s 117 directions)?

This Planning Proposal is contended to be consistent with the below applicable Ministerial Directions

s 117 Direction Title	Consistency of Planning Proposal
3 1 Residential Zones	Consistent The proposal is considered to encourage housing choice, makes use of existing services and infrastructure and provides land for housing Whilst no development is proposed at this stage, as indicated in the preliminary Design Concept a development of good design can be achieved
3 4 Integrated Land Use and Transport	Consistent The proposal is located within close proximity to local bus services, Cabbage Tree Road is marked as a cycling route and a footpath runs the length of the northern side of Cabbage Tree Road opposite the site
4 1 Acid Sulfate Soils	Consistent Council's Acid Sulfate Soils Map identifies the site as Class 2 As mentioned, there is no development proposal at this stage as such it is not considered necessary for an acid sulphate soils study
4 3 Flood Prone Land	Consideration has been given to the flood prone nature of the site The Planning Proposal is not considered to have any greater flood impacts that a built form under the current zoning would have The preliminary Design Concept provides an 'indicative' response to the flood prone nature of the site and that the site can be utilised for residential purposes The Planning Proposal is not considered to result in flood impacts on adjoining properties, or result in a significant increase in the development of land
7 1 Metropolitan Strategy	Consistent As identified previously it is considered that the Planning Proposal is wholly consistent with the Metropolitan and Subregional Strategies

Section C – Environmental, social and economic impact

8 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?

Council Wildlife Corridor Map identifies the site to be in a high priority area essential to fauna movement. It is also identified to be located in the Lowlands Vegetation Communities.

The Planning Proposal does not involve any development works at this stage, although it is acknowledged that any future works shall need to consider these ecological matters. This situation is no different to the current situation of the land, whereby it could be built upon with similar considerations required.

Notwithstanding this, Council has advised that the site is unlikely to be core habitat for any potential rare or threatened species. Council have also advised that if species were identified around the site, they would more likely be mobile species and be able to utilise the Golf Club areas, thus not relying on this small portion of land for access.

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

Council's Flood Risk Map identifies the site the subject of the Planning Proposal as being within a High Hazard Area, affected by a Flood Planning Level (FPL) and Probable Maximum Flood (PMF). The FPL is 2.7m AHD which is approximately 1.32m to 1.1m above natural ground level across the site. No development or works are proposed at this stage, therefore a flood risk management report is not considered necessary. However, a preliminary design concept has been prepared to provide an indicative response to achieve the FPL. Refer to Annexure 2. As a concept it is considered that any future development is able to effectively address the potential flooding effect.

Council's Bushfire Map identifies the site, the subject of this Planning Proposal not to be bushfire prone.

Along a portion of the southern boundary is a small creek watercourse. This creek largely flows through Bayview Golf Club grounds. As mentioned, no works are proposed at this stage, therefore there is no impact upon the creek. Notwithstanding this, the Design Concept prepared does indicate that a significant setback from the creek can be provided to which is likely to ensure that it is protected.

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

The Planning Proposal is considered to have a small positive economic impact in the provision of additional residential lands and the creation of short-term employment for any future development. There are no identified social impacts that the Proposal shall affect.

Section D – State and Commonwealth interests

11 Is there adequate public infrastructure for the planning proposal?

Public Infrastructure is available in and around the site to service the site. Access to the site is able to be obtained from the southern side of Cabbage Tree Road.

It has not been determined at this stage the nature of the utility connections for any future development use, however given its location in and around residential uses and the Golf Club, it is not considered that such connections shall require extensive work. Further investigations into the utility connections can occur following a positive outcome of the Gateway Determination.

12 What are the views of State and Commonwealth public authorities consulted in accordance with the Gateway determination?

This section of the Planning Proposal is to be completed following consultation with the State and Commonwealth Public Authorities identified in the Gateway Determination. There has been no consultation with State and Commonwealth public authorities at this stage.

5 Part 4 – Community Consultation

The Planning Proposal relates to a change in land use zoning of a 980sqm, triangular shaped parcel of land to a low-density residential zoning. For these reasons it is considered to be "low impact" for the purpose of Community Consultation. To be in keeping with *A Guide to preparing local environmental plans (Department of Planning 2009)*, the following community consultation is appropriate:

- 1 in a newspaper that circulates in the area affected by the planning proposal,
- 2 on the web-site of Pittwater Council, and
- 3 in writing to adjoining landowners, unless Pittwater Council is of the opinion that the number of landowners makes it impractical to notify them.

6 Conclusion

This Planning Proposal is contended to be consistent with the objectives and controls contained in the Pittwater 21DCP and 2(a) – Residential zoning pursuant to PLEP 1993.

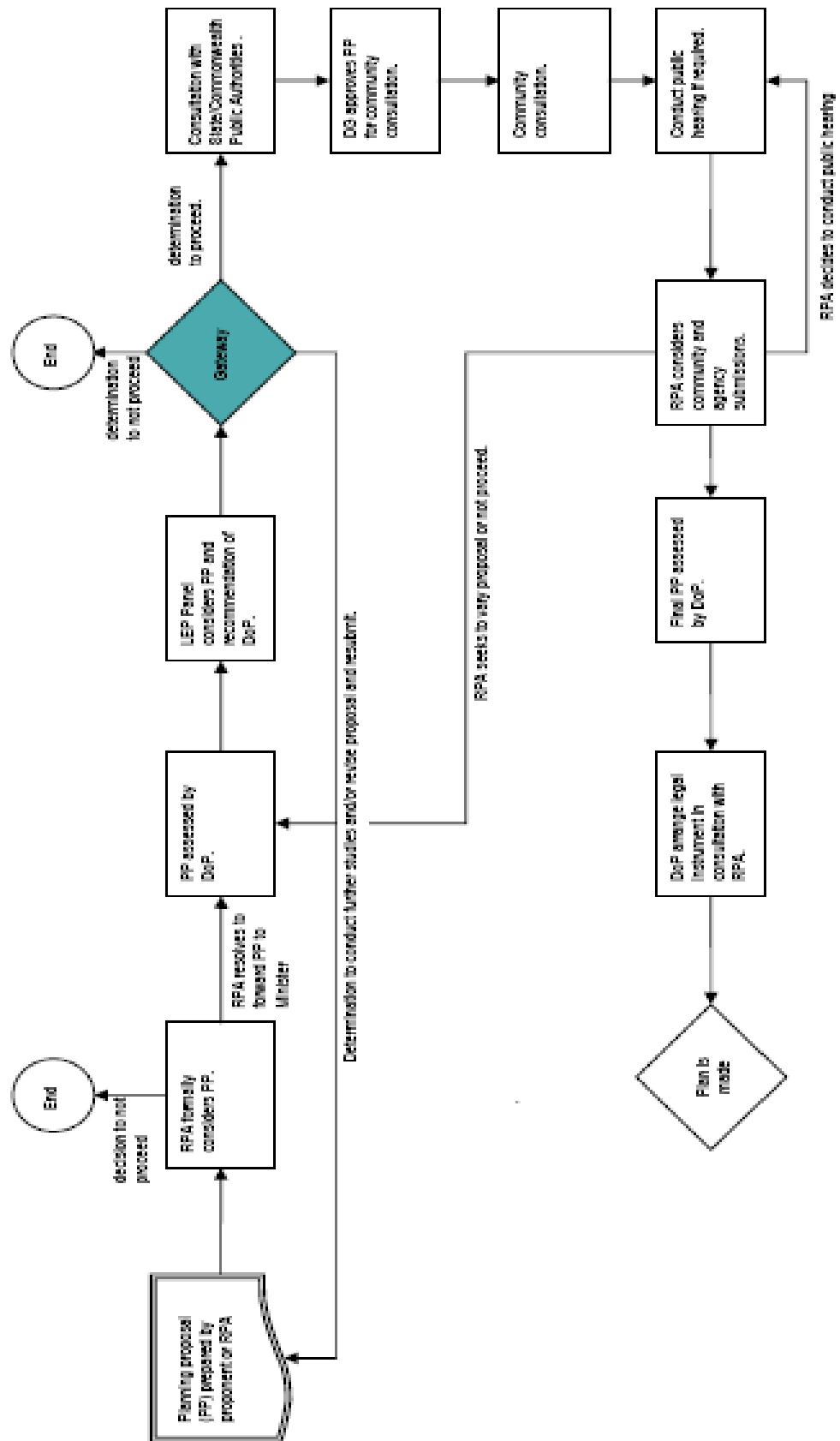
The Planning Proposal is merely a simple rezoning of land to enable the residential use of land which is currently available to the site, yet restricted under the current zoning.

It is considered the Planning Proposal shall have no additional ecological impacts to the site that would not require consideration under the current zoning. With any future development of the site subject to similar considerations and assessment of those impacts.

The Planning Proposal to rezone the land shall offer a suitable response to the location of the site with access to services and infrastructure and shall complement its context with similarly residentially zoned land opposite and to the northeast of the site.

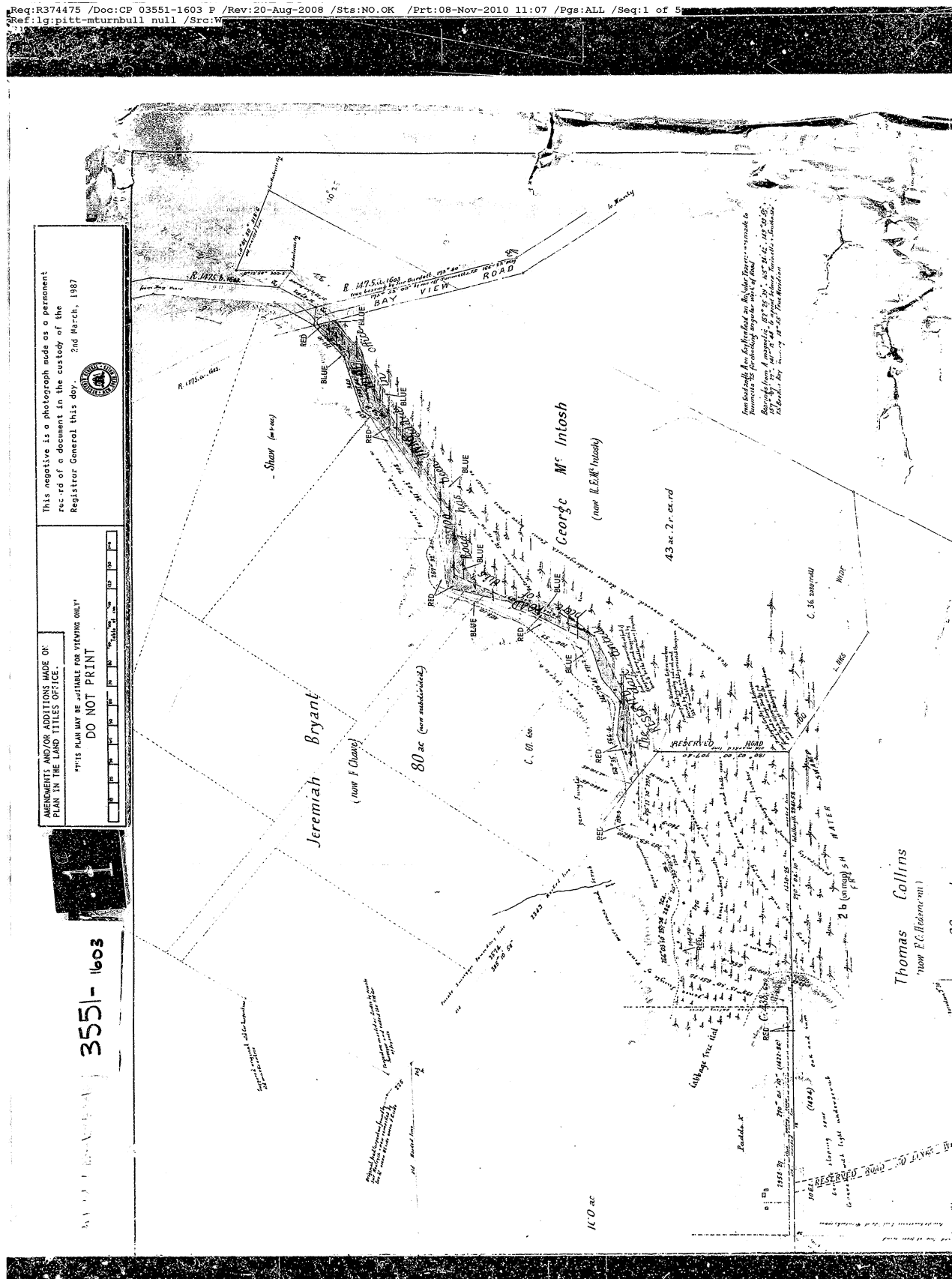
It is considered that the Planning Proposal is worthy of support.

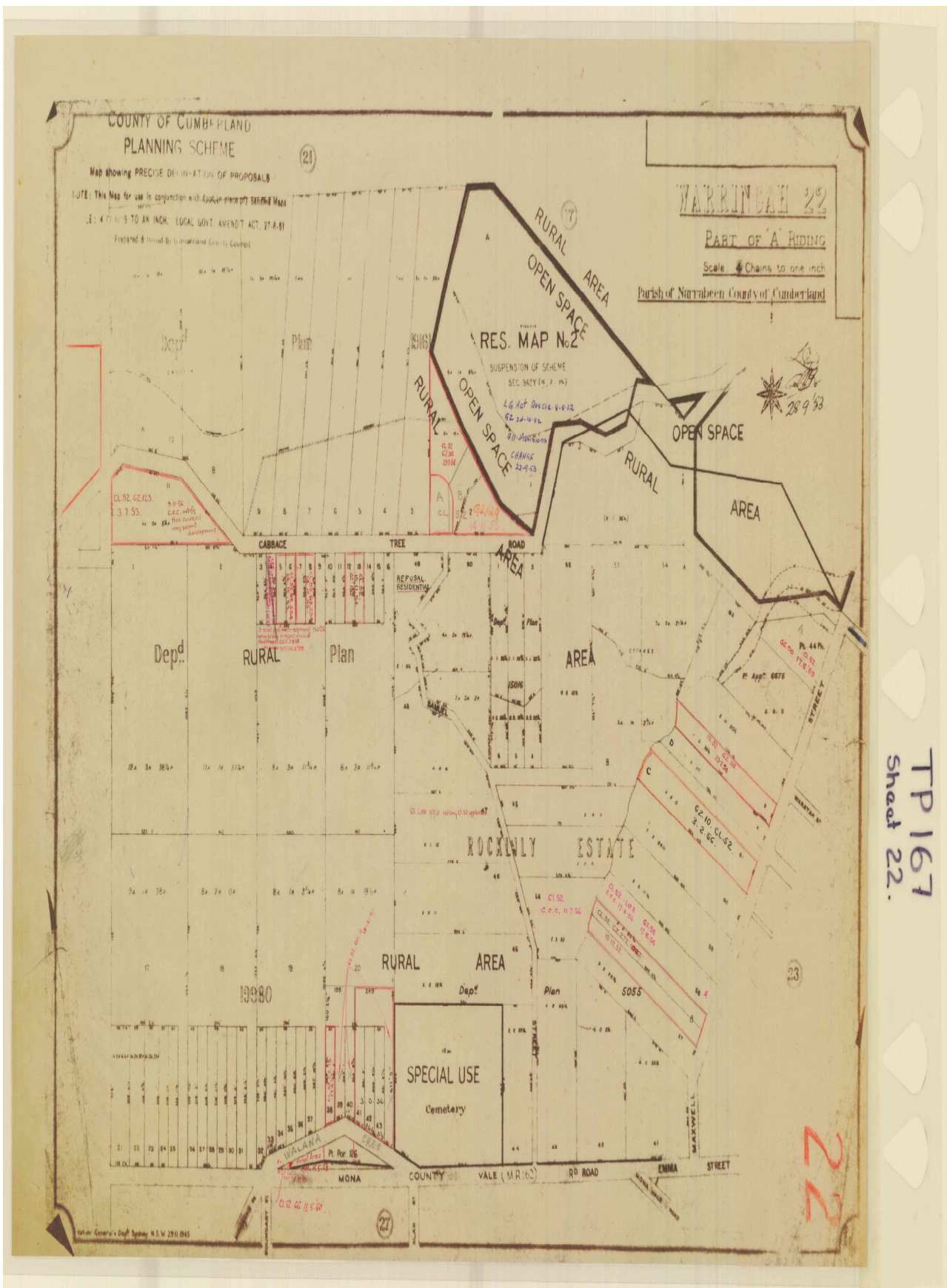
Figure 5 – Process to make a local environmental plan



On 7th August 1888 an Old System title registered survey

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On 8th July 1969, the land subject of this report, Lot 2 DP 531960, was separately registered

