

C11.2: Rezoning Application (R0001/05) - 4 and 8 Forest Road, Warriewood (Sector 5 of Warriewood Valley)

Meeting: Planning an Integrated Built Environment Committee **Date:** 15 February 2010

STRATEGY: Land Use & Development

ACTION: Coordinate land use planning component of land release

PURPOSE OF REPORT

To report the outcomes of the public exhibition of the Planning Proposal to rezone Sector 5 in Warriewood Valley and to recommend progressing an amended Planning Proposal.

1.0 BACKGROUND

- 1.1 On 2 February 2005, a rezoning application was lodged for 4 and 8 Forest Road, Warriewood (Lot B DP 370222 and part of Lot 1 DP 5055), comprising Sector 5 in the Warriewood Valley Urban Land Release Area (see **Attachment 1**). The application proposes to rezone the land from 1(b) Non-Urban to 2(f) Urban Purposes – Mixed Residential.
- 1.2 On 5 November 2007, Council initially resolved to commence the statutory rezoning process, however, required the applicant to resolve outstanding bushfire and water management issues.
- 1.3 On 17 August 2009, at the applicant's request and with the Department of Planning's (DoP) permission, Council resolved to recommence the statutory rezoning process via the new Gateway Determination process.
- 1.4 The Gateway Determination (dated 10 November 2009) enabled the commencement of the public exhibition.

2.0 PUBLIC EXHIBITION

- 2.1 In accordance with the Gateway Determination, public exhibition was held for 14 days from 26 November to 10 December 2009. Letters were sent out to adjoining landowners advising of the public exhibition and inviting comment. It was advertised in the Manly Daily on 25 November 2009. The NSW Rural Fire Service (RFS) was also consulted in accordance with the Gateway Determination.
- 2.2 Four letters were received, including comments from the RFS.

3.0 ISSUES

- Matters raised in submissions
- Response from the NSW Rural Fire Service
- Response in relation to climate change
- Amendments proposed to the exhibited Planning Proposal

4.0 MATTERS RAISED IN SUBMISSIONS

4.1 Matters include:

- Likely increase in traffic, exacerbating congestion already experienced in the road networks, particularly with school-related traffic
- Insufficient on-street parking in Forest Road
- Inadequate public transport servicing Warriewood Valley
- Concern regarding groundwater seepage and shallow soil movement impacting on 2 Forest Road, Warriewood (adjoining property)
- Likely run-off onto 2 Forest Road, Warriewood (adjoining property)
- Loss of well-established palm tree
- Potential loss of habitat for owls
- Loss of solar access and privacy

The three submissions received from residents raised issues that will be considered in greater detail under the Development Application (DA) process.

The rezoning stage provides for general planning for landuse allocation (as per the Warriewood Valley Urban Land Release Planning Framework 1997) where supporting documentation is required to demonstrate and ensure that the objectives of the Planning Framework and the relevant controls in the Pittwater 21 DCP can be achieved and that the rezoning is suitable.

4.2 *Likely increase in traffic*

Mater Maria Catholic School is located at the western end of Forest Road, and congestion exists along Forest Road during school drop-off and pick-up periods.

In planning the Warriewood Valley Urban Land Release, the Traffic and Transport Study (1997) undertaken accounted for existing and future traffic-generating developments in Warriewood Valley, including the school and future residential development in Sector 5. The Traffic and Transport Study (1997) predicted an increase of up to 31,000 vehicle trips per day, based on an acceptable level of service. Roads in Warriewood Valley were planned as a slow-down mechanism for cars, and in turn, discourage through traffic. Estimations indicate that the network can accommodate up to 44,000 vehicle trips per day with a reduced level of service for the AM and PM peak demands.

The submitted masterplan envisages 68 dwellings, which is less than the maximum number of dwellings (75) Council had anticipated for this sector in 1997.

Council's Principal Engineer (Roads, Traffic and Urban Infrastructure Operations) has reviewed the masterplan and advised that the level of traffic to be generated by the 68 dwellings envisaged, is consistent with the anticipated development for the Warriewood Valley Urban Land Release.

The capacity of surrounding road networks, in particular Mona Vale Road, was also raised as a concern. Mona Vale Road, as a classified road, is the responsibility of the RTA.

Construction traffic, noise and dust resulting from future construction will need to be addressed at the Development Application stage.

4.3 *Insufficient on-street parking*

It is acknowledged that kerbside parking is well utilised within Warriewood Valley. Developments, as part of the DA process, are required to provide sufficient off-street parking in accordance with Council's DCP.

4.4 *Inadequate public transport services in and around Warriewood Valley*

Warriewood Valley is serviced by three regular bus routes. Routes 185 and L85 travel along Garden Street and Macpherson Street, while Route 182 travels along Macpherson Street. Public transport services are the responsibility of the State Government, with Sydney Buses responsible for allocated bus routes through Warriewood Valley.

4.5 *Concern is raised regarding groundwater seepage, shallow soil movement and likely destabilising*

The *Preliminary Geotechnical Investigation and Slope Stability Risk Assessment* prepared by Jubilee Investments Pty Ltd (2005), and submitted with the rezoning application, was reviewed by Urban Infrastructure and considered satisfactory.

Any future earthworks/soil disturbance will be subject to further geotechnical assessment that will be undertaken as part of the DA stage.

4.6 *Concern is raised to likely run-off onto 2 Forest Road as a result of future development on the subject site*

The water management report is in accordance with the *Warriewood Valley Urban Land Release Water Management Specification 2001*, enabling progress of the rezoning.

Matters regarding the water cycle and management will be addressed in greater detail as part of any DA.

4.7 *Concern is raised regarding likely loss of an existing palm tree (on the boundary of 2 and 4 Forest Road)*

Council's Natural Resources Assessment Officer advises:

"...the tree is a Cocos Palm, which is an environmental weed species which is exempt from Council's Tree Preservation Order. Although no mention of the tree has been made yet in any submitted plans, Council does not view the tree as significant and as it is located on the subject property, its removal is permissible. As the species is exempt, Council has no obligation to protect the tree and any negotiations to retain the tree are a civil matter and not to be addressed by Council".

4.8 *Concern for the owls audible from the subject site*

Council's Natural Resources Assessment Officer advises:

"Powerful Owls (a listed threatened species under the Threatened Species Conservation Act 1995) are known from the Warriewood Escarpment area and often hold wide territories. The current rezoning application has addressed the formation of an Asset Protection Zone which may impact on a small number of trees along the escarpment edge to create a discontinuous canopy within the nominated zone. The removal of a few trees will not impact on a species as mobile and wide-ranging as the Powerful Owl.

As mentioned in Appendix 10 of the Ecological Assessment (Place December 2004) in the Assessment of Significance for the species "the proposal will remove a narrow band of vegetation along the edge of a relatively large patch of habitat...the area of Eucalypt woodland to be lost as a result of this proposal is not likely to support a high abundance of preferred prey, and supports no suitable nest sites...the proposed rezoning will not affect critical habitat of the Powerful Owl". This view is supported and there is highly unlikely to be any impact on owls as a result of the proposed rezoning and creation of an APZ".

4.9 Likely loss of solar access and privacy

Controls relating to subdivision layout, side and rear building lines, site coverage, and solar access contained in the Pittwater 21 DCP will form part of the assessment of any future DA on the land to ensure privacy and visual amenity is maintained.

5.0 CONSULTATION WITH RURAL FIRE SERVICE (RFS)

5.1 The RFS raised no issues to the rezoning. The RFS advised that, as part of a future DA for subdivision, a Bush Fire Safety Authority will be required from the RFS. That DA will need to be assessed against the requirements of *Planning for Bush Fire Protection* (2006). This is not required at the rezoning stage.

6.0 RESPONSE IN RELATION TO CLIMATE CHANGE

Given the current extent of knowledge in relation to climate change, where bushfire risk is particularly relevant to Sector 5, consideration of impact can be reasonably undertaken through the preparation, assessment and determinations of any future DA for Sector 5.

7.0 AMENDMENTS TO PROPOSED EXHIBITED PLANNING PROPOSAL

7.1 Following the exhibition, Council staff identified anomalies regarding the State imposed interim transport levy (\$17, 000 per lot).

In 2007, the Department of Planning advised Council that this levy would be applicable to the sectors within Warriewood Valley as they are rezoned. Clause 30E in the Pittwater LEP, relates to the application of this levy, and currently only applies to Sector 3 (being the last residential sector to be rezoned). Uncertainty as to whether the levy would apply to Sector 5 is raised following review of the Department's letter dated 4 May 2007 (**ATTACHMENT 2**).

Verbal advice was recently sought from the Department to clarify the matter, however some uncertainty remains. Accordingly, the Planning Proposal needs to be amended to remove the application of Clause 30E to Sector 5.

7.2 Minor administrative errors, resulting from misinterpretation, was also identified in the exhibited Planning Proposal, relevant to the Checklist for the Section 117 Directions, as to whether the rezoning was consistent with specific Directions or not.

The Department of Planning, prior to the issue of the Gateway Determination, also did not identify these clerical errors. Nonetheless, there is Court precedent in relation to errors in the public exhibition of draft planning instruments that have rendered the subsequent gazetted instrument invalid. The test, in these cases, has been "*whether a reasonable reader, without knowledge of planning law, or understanding of legal interpretation, may have been confused or possibly misled by documents placed on exhibition*" (*Homeworld Ballina Pty Limited v Ballina Shire Council & Anor* [2009] NSWLEC 172).

Although minor in nature, it is prudent to amend the Planning Proposal document.

8.0 DRAFT WARRIEWOOD VALLEY PLANNING FRAMEWORK 2010

- 8.1 Council recently resolved to exhibit the Draft Warriewood Valley Planning Framework 2010, where dwelling density was increased at certain locations where development has not yet occurred.
- 8.2 Although Sector 5 was identified as land that has not yet be rezoned, the Draft Planning Framework 2010 does not propose any change to this sector. Nonetheless, land owners of Sector 5 will be invited to attend a public meeting in accordance with Council's resolution of 1 February 2010.

9.0 FORWARD PATH

- 9.1 The matters raised in residents submissions, are essentially related to the future development of the land and would be matters that are considered under the DA process. The rezoning for Sector 5 would continue orderly development of Warriewood Valley consistent with the 1997 Planning Framework and the yet to be exhibited 2010 Draft Planning Framework. Progression of the rezoning application is supported, as it contributes to Warriewood Valley continuing as a viable land release.
- 9.2 Amendments required to the exhibited Planning Proposal document, however, may require a new Gateway Determination from the Director General, consistent with the new LEP-making process (**Attachment 3**).

The amendments are not significant and it may be determined by the Department of Planning that reissuing a Gateway Determination, and in turn re-exhibition, is unwarranted and unnecessary. This decision however, must be made by the Director General as Council has not received appropriate delegation regarding the new LEP-making process.

- 9.3 Council will, in forwarding the amended Planning Proposal (**Attachment 4**), write to the Department of Planning advising that Council has not applied Clause 30E of Pittwater LEP 1993 to the Sector 5 lands (under this LEP amendment/Planning Proposal), as it relates to the State-imposed interim transport levy (**Attachment 5**), and refers the Department to its own letter of 4 May 2007.

10.0 SUSTAINABILITY ASSESSMENT

10.1 Supporting & Connecting our Community (Social)

- 10.1.1 Progressing the rezoning of Sector 5, contributes towards completing the Warriewood Valley Urban Land Release Area in accordance with the Warriewood Valley Urban Land Release Planning Framework (1997).

Once rezoned, the land is able to be developed for new residences providing new housing stock and additional residents that will enhance the Warriewood Valley community.

10.2 Valuing & Caring for our Natural Environment (Environmental)

- 10.2.1 The rezoning application was accompanied by relevant environmental assessments and studies, which have been reviewed by relevant Council officers, providing an environmentally responsive masterplan for the sector. The development opportunities being provided by this sector will seek to introduce initiatives that aim to reduce our ecological footprint and protect our biodiversity.

Future applications, subsequent from the rezoning, will continue assessment of potential environmental impacts (under Section 79C of the EP&A Act) to minimise such impacts.

10.3 **Enhancing our Working & Learning (Economic)**

10.3.1 Progressing the rezoning of Sector 5 will enable land to be released for residential development resulting in economic benefits associated with Warriewood Valley Urban Land Release on the whole.

10.4 **Leading an effective & Collaborative Council (Governance)**

10.4.1 Progressing the rezoning of the subject lots, in accordance with the Warriewood Valley Urban Land Release Planning Framework (1997) and the Draft Warriewood Valley Planning Framework 2010, ensures Council's role as an effective governance authority.

This report informs the outcomes of the community consultation process ensuring transparency in its decision-making.

10.5 **Integrating our Built environment (Infrastructure)**

10.5.1 As Sector 5 forms part of the Warriewood Valley Urban Land Release Area, its rezoning will contribute to completing the land release in accordance with the Planning Framework documents for Warriewood Valley, and subsequently contribute to integrating our built environment.

11.0 **EXECUTIVE SUMMARY**

11.1 The Planning Proposal was publicly exhibited in accordance with the Gateway Determination. The matters raised in the three submissions received have been considered in this report. No objection was raised to the rezoning by the NSW Rural Fire Service.

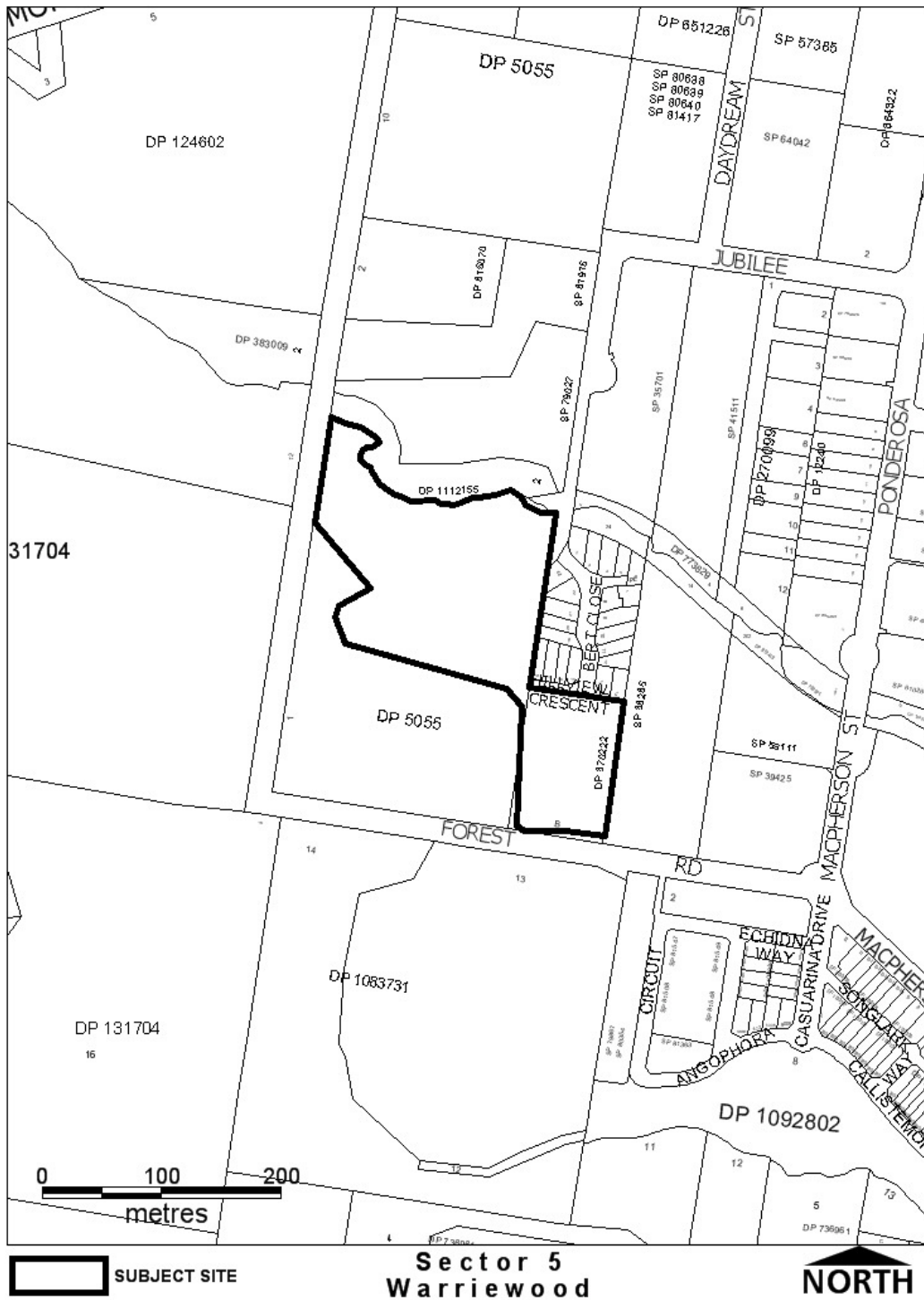
11.2 Errors identified in the exhibited Planning Proposal have resulted in amendments necessary to the Planning Proposal document, and may require (subject to the Director-General's decision) recommencement of the Gateway Determination and re-exhibition.

RECOMMENDATION

1. That Council continue progressing the statutory rezoning process to rezone Sector 5 of Warriewood Valley to 2(f) Urban Purposes – Mixed Residential to allow residential development.
2. That Council forward to the Department of Planning, the amended Planning Proposal (**Attachment 4**) for their consideration.
3. That the applicant and owners of Sector 5, and all persons who have made a submission, including the RFS, be formally advised of Council's decision.

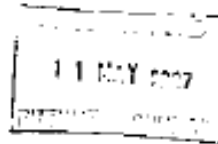
Report prepared by Kelly Wilkinson – Planner (Land Release)

Liza Cordoba
ACTING MANAGER, PLANNING AND ASSESSMENT





NSW GOVERNMENT
Department of Planning



Mr Steve Evans
Director Environment, Planning and Community
Pittwater Council
PO Box 882
MONA VALE NSW 1660

Y07/188

Dear Mr Evans

I refer to your letter concerning, in particular, regional infrastructure contributions for Sector 3 of the Warriewood Valley land release area.

The Department acknowledges the advanced status of development in the Warriewood Valley land release area, which has been progressively developed through a sector by sector approach not previously requiring a regional infrastructure levy. As only a small proportion of the land remains un-zoned, it is agreed that it would be inefficient to undertake a full examination of all infrastructure issues arising from these remaining lands.

For all LEPs gazetted prior to 30 December 2008, a satisfactory arrangements clause should be inserted in the LEP for the purposes of applying the Interim Transport Contribution (\$17,000/lot). The funds arising from this levy will be directed to regional transport initiatives, such as the expansion of Mona Vale Road at Ingleside.

It is recommended that you inform potential developers of this requirement, as after this time the contribution amount for any remaining unzoned land in the Warriewood Valley will be reviewed.

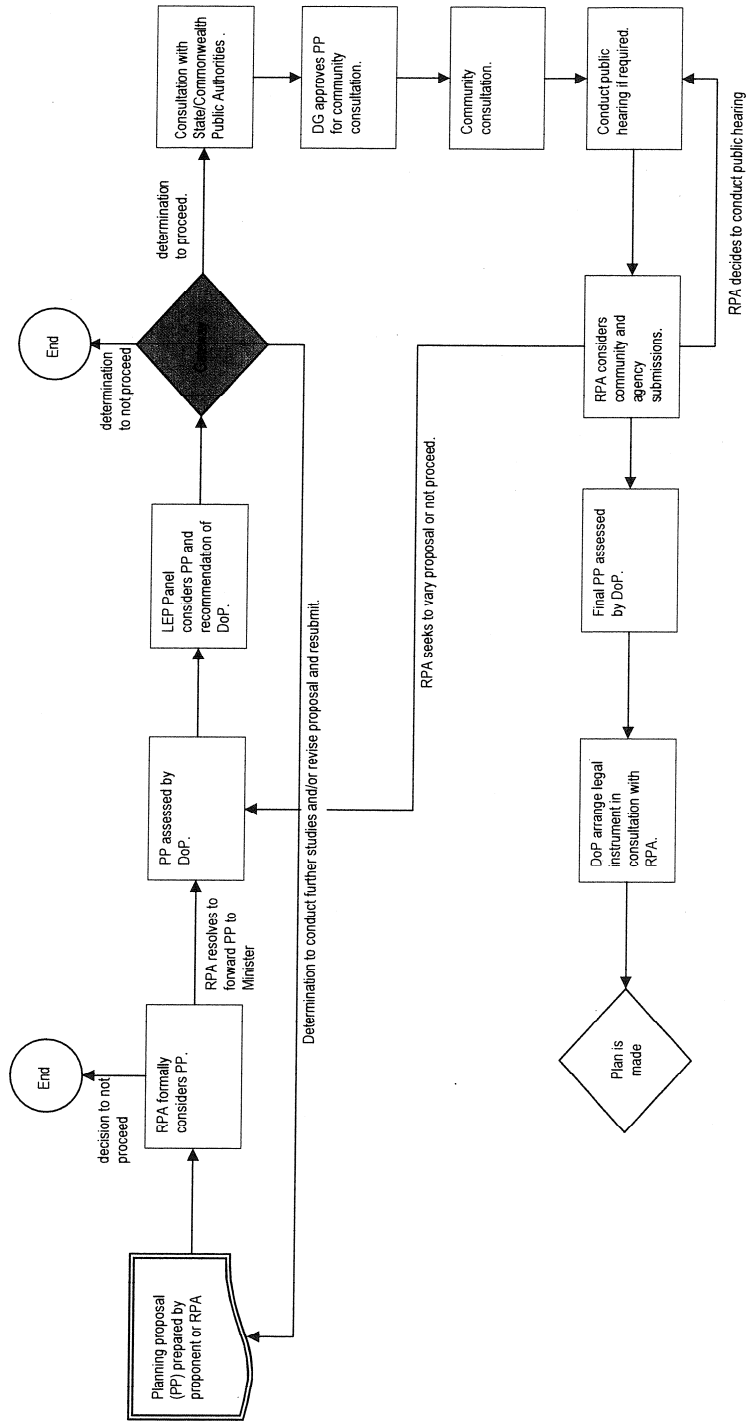
Yours sincerely

Gail Connolly
Executive Director
Metropolitan Planning

4/5/07

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Figure 5 – Process to make a local environmental plan





PLANNING PROPOSAL

To rezone lands in Sector 5 from non-urban to 2(f) (Urban Purposes – Mixed Residential) to enable residential development in this sector of Warriewood Valley Urban Land Release

Prepared by Pittwater Council

PART 1 OBJECTIVES OR INTENDED OUTCOMES

To rezone 4 and 8 Forest Road, Warriewood (Lot 1 DP 5055 and Lot B DP 370222), comprising Sector 5 of Warriewood Valley, from non-urban land to zone 2(f) (Urban Purposes – Mixed Residential), and enable residential development. See Appendix 1 for location map.

The subject land will allow not more than 75 residential dwellings and not less than 65 residential dwellings.

PART 2 EXPLANATION OF PROVISIONS

Amend the definition of “**the Zoning Map**” in Clause 5 of the *Pittwater Local Environmental Plan 1993* to include the zoning map for the Planning Proposal, being:

“Pittwater Local Environmental Plan 1993 (Amendment No. X) – Sheet 2.”

Amendment of Clauses 30B and 30C of the *Pittwater Local Environmental Plan 1993*.

Clause 30B(1) would need to be amended to include:

“Land at Warriewood within Sector 5 of the Warriewood Valley Urban Land Release shown edged heavy black on Sheet 1 of the map marked “Pittwater Local Environmental Plan 1993 (Amendment No. X)”

Clause 30C would need to be amended to include:

“Sector 5 not more than 75 dwellings or less than 65 dwellings”

PART 3 JUSTIFICATION

A Need for the Planning Proposal

(A1) Is the Planning Proposal a result of any strategic study or report?

Yes. The Warriewood Valley Urban Land Release Planning Framework (1997) is Council’s adopted strategy for the release of non-urban land in Warriewood Valley to allow urban development, in accordance with the State Government’s Metropolitan Development Program (MDP).

A suite of studies undertaken in 1994, including a Bushfire Hazard Evaluation, Contaminated Land Study, Fauna Conservation Study, Integrated Water Management Strategy, Water Cycle Management Study, Urban Land Capability Study, Visual Impact Study, Aboriginal Archaeological Study, Heritage Study, Traffic and Transportation Study, and Vegetation Conservation Study, informed the Warriewood Valley Urban Land Release Planning Framework 1997.

The Warriewood Valley Urban Land Release Planning Framework identifies Sector 5, being the land subject to this Planning Proposal, as non-urban land within Warriewood Valley to be rezoned for urban purposes.

(A2) Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Yes. The Planning Proposal is the best means of achieving the intended outcome as it would be consistent with land already rezoned and developed in the Warriewood Valley Urban Land Release area, which forms part of the State Government's MDP. The Planning Proposal is consistent with the Warriewood Valley Urban Land Release Planning Framework 1997.

(A3) Is there a net community benefit?

If Sector 5 were to be rezoned for urban purposes, this would be consistent with the land already released for development in Warriewood Valley. This would subsequently positively contribute to the social and economic benefit achieved by the Warriewood Valley Urban Land Release on the whole.

Additionally, by rezoning Sector 5 to allow urban purposes, new dwellings will be permitted, which will contribute to fulfilling the housing requirements imposed by the Sydney Metropolitan Strategy, Draft North East Subregional Strategy and the MDP.

B Relationship to Strategic Planning Framework

(B1) Is the Planning Proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?

This Planning Proposal is consistent with the objectives of the Sydney Metropolitan Strategy, in line with the State Plan, and the Draft North-East Subregional Strategy, where goals are set for housing and land supply.

In the Draft North-East Subregional Strategy, Action C1 calls for ensuring the adequate supply of land and sites for residential development, where the MDP is the State Government's key program for managing and monitoring land and housing supply. As Warriewood Valley forms part of the MDP, it is subsequently identified for accommodating new residential development. The Planning Proposal is therefore consistent with such an action

This Planning Proposal would also be consistent with Action C4 of the North East Subregional Strategy, which calls for improving housing affordability. By enabling residential development, this Planning Proposal is therefore consistent with such an action.

As the intended outcome of this Planning Proposal is to allow new residential development, it is subsequently consistent with the objectives and actions contained within the relevant strategic planning framework.

(B2) Is the Planning Proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?

This Planning Proposal is consistent with the Warriewood Valley Urban Land Release Planning Framework 1997, which is the underlying strategic plan for the release of land within Warriewood Valley (as discussed in A1 of this Planning Proposal).

(B3) Is the Planning Proposal consistent with applicable state environmental planning policies?

This Planning Proposal is generally consistent with the relevant State Environmental Planning Policies (SEPPs). Most of the relevant SEPPs apply specifically to residential zones and will therefore be assessed when the subject lots are rezoned and Development Applications are lodged.

Where there are inconsistencies, justification has been provided (see Appendix 2).

As part of the rezoning application, an Ecological Assessment Report (Place Environmental 2004) was submitted, which flagged potential koala habitat in the area. However, no koalas were spotted during the duration of the study and the report included an assessment of significance, which was undertaken in accordance with Part 5A of the EP&A Act. Subsequently, SEPP No 44 – Koala Habitat Protection does not apply to this Planning Proposal.

- (B4) Is the Planning Proposal consistent with applicable Ministerial Directions (S117 Directions)?

The Planning Proposal is generally consistent with the relevant Section 117 Directions. Where there are inconsistencies, justification has been provided addressing how the inconsistency can be waived consistent with the Directions (see Appendix 3).

C Environmental, social and economic impact

- (C1) Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

The subject land borders the Warriewood/Ingleside escarpment and accommodates a portion of Fern Creek. Accordingly, an Ecological Assessment Report (Place Environmental 2004) was submitted as part of the rezoning application, which assesses any potential impact on flora and fauna, including assessments of significance in accordance with Section 5A of the EP&A Act, and provides mitigation measures to ensure there is no direct impact.

The report concluded that there is no likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of this Planning Proposal. Council's Natural Resources Assessment Officer has reviewed the Ecological Assessment Report, and supports the Planning Proposal.

- (C2) Are there any other likely environmental effects as a result of the Planning Proposal and how are they proposed to be managed?

Other potential environmental effects resulting from this Planning Proposal relate to water management, bushfire hazard, waste management, contamination, geotechnical considerations, heritage, and traffic.

The following reports were submitted with the rezoning application as environmental assessments:

- A waste management statement (United Resources Management Group 2005)
- A Preliminary Geotechnical Investigation and Slope Stability Risk Assessment (Jeffery and Katauskas Pty Ltd 2005)
- A Concept Stormwater Management Plan (Brown Consulting NSW 2004)
- A Preliminary Site Contamination and Acid Sulphate Soil Investigation (Environmental Investigation Services 2005)
- A Traffic and Parking Assessment (John Hewitt Traffic Planning Associates Pty Ltd 2005)
- A Preliminary Bushfire Hazard Assessment (Building Code and Bushfire Hazard Solutions 2007)

With regard to heritage, there are no known heritage items on or near the subject land. It is therefore not considered necessary for a heritage assessment to be undertaken at the rezoning stage.

Following review of the rezoning application and associated documents, Council staff consider that there is no significant reason why the subject lots should not be rezoned.

Further, any future Development Application will require assessment under Section 79C of the EP&A Act and will be subject to several provisions and development controls, including those related to flood, bushfire prone land, waste, contamination, geotech, heritage, and traffic, through the Pittwater LEP and the Pittwater 21 DCP.

(C3) How has the Planning Proposal adequately addressed any social and economic effects?

As mentioned, the subject land makes up Sector 5 of the Warriewood Valley Urban Land Release, in accordance with the State Government's MDP. As the Warriewood Valley Urban Land Release is underlain by the Warriewood Valley Urban Land Release Planning Framework (1997), a suite of studies have been undertaken on Warriewood Valley as a whole to address social and economic effects. This Planning Proposal will therefore not have any negative marked social or economic effects.

D State and Commonwealth interests

(D1) Is there adequate public infrastructure for the Planning Proposal?

Yes. As the subject lots form part of the Warriewood Valley Urban Land Release, public infrastructure is provided through the Warriewood Valley Urban Land Release Planning Framework (1997) and the Warriewood Valley Section 94 Contributions Plan No. 15 (Amendment No. 16).

(D2) What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?

The original Planning Proposal prepared for this site, which was subject to a Gateway Determination issued 10 November 2009 (Appendix 4), was required to consult with the NSW RFS. The RFS comments were not relevant to the rezoning application but advised that a Bush Fire Safety Authority will be required from the RFS at the subdivision stage (Appendix 5).

PART 4 COMMUNITY CONSULTATION

The subject land forms Sector 5 within Warriewood Valley, which is one of two remaining sectors to be rezoned for residential purposes. This Planning Proposal is consistent with the rezoning that has previously occurred in Warriewood Valley. Subsequently, this Planning Proposal is considered a 'low impact' Planning Proposal.

To be in keeping with *A guide to preparing local environmental plans* (Department of Planning 2009), the following community consultation is considered appropriate:

- Advertising in the local newspaper at the start of the exhibition period
- Advertising on Council's website for the duration of the exhibition period
- An exhibition period of 14 days commencing the date the advertisement appears in the local newspaper
- Notifying the adjoining property owners by mail
- Notifying the Warriewood Valley Rezoning Association by mail

Checklist - Consideration of State Environmental Planning Policies

The following SEPPs are relevant to the Pittwater Local Government Area. The Table identifies which of the relevant SEPPs apply to the Planning Proposal (or not) and if applying, is the Planning Proposal consistent with the provisions of the SEPP.

Title of State Environmental Planning Policy (SEPP)	Applicable	Consistent	Reason for inconsistency
SEPP No 1 – Development Standards	YES	YES	
SEPP No 4 – Development without consent...	YES	YES	
SEPP No 6 – Number of Storeys in a Building	YES	YES	
SEPP No 14 – Coastal Wetlands	NO	N/A	
SEPP No 21 – Caravan Parks	NO	N/A	
SEPP No 22 – Shops and Commercial Premises	NO	N/A	
SEPP No 26 – Littoral Rainforests	NO	N/A	
SEPP No 30 – Intensive Agriculture	NO	N/A	
SEPP No 32 – Urban Consolidation	NO	N/A	
SEPP No 33 – Hazardous and Offensive Development	NO	N/A	
SEPP No 44 – Koala Habitat Protection	NO	N/A	
SEPP No 50 – Canal Estate Development	NO	N/A	
SEPP No 55 – Remediation of Land	NO	N/A	
SEPP No 60 – Exempt and Complying Development	YES	YES	
SEPP No 62 – Sustainable Aquaculture	NO	N/A	
SEPP No 64 – Advertising and Signage	NO	N/A	
SEPP No 65 – Design Quality of Residential Flat Development	NO	N/A	
SEPP No 70 – Affordable Housing (Revised Scheme)	YES	YES	

SEPP No 71 – Coastal Protection	NO	N/A	
SEPP (Building Sustainability Index: BASIX) 2004	YES	YES	
SEPP (Exempt and Complying Development Codes) 2008	YES	YES	
SEPP (Housing for Seniors or People with a Disability) 2004	YES	YES	
SEPP (Infrastructure) 2007	NO	N/A	
SEPP (Major Development) 2005	NO	N/A	
SEPP (Mining, Petroleum Production and Extractive Industries) 2007	NO	N/A	
SEPP (Rural Lands) 2008	YES	NO	See below.
SEPP (Temporary Structures and Places of Public Entertainment) 2007	NO	N/A	

The following is a list of the deemed SEPPs (formerly Sydney Regional Environmental Plans) relevant to the Pittwater Local Government Area.

Title of deemed SEPP, being Sydney Regional Environmental Plan (SREP)	Applicable	Consistent	Reason for inconsistency
SREP No 20 – Hawkesbury-Nepean River (No 2 -1997)	NO	N/A	

Justification for inconsistency with SEPP (Rural Lands) 2008

The Planning Proposal intends to rezone non-urban land to 2(f) (Urban Purposes – Mixed Residential) to enable residential development, as the land is within the Warriewood Valley Urban Land Release area. Warriewood Valley is identified in the NSW State Government’s Metropolitan Development Program.

Planning and development of Warriewood Valley is based on Council’s adopted planning strategy – the Warriewood Valley Urban Land Release Planning Framework 1997. The rezoning of Sector 5 lands from non-urban to 2(f) for urban purposes is consistent with Council’s adopted strategy.

Checklist – Consideration of Section 117 Ministerial Directions

1 Employment and Resources

	Direction	Applicable	Consistent
1.1	Business and Industrial Zones	NO	n/a
1.2	Rural Zones	YES	NO
1.3	Mining, Petroleum Production and Extractive Industries	NO	n/a
1.4	Oyster Aquaculture	NO	n/a
1.5	Rural Lands	YES	NO

Justification for inconsistencies with Directions 1.2 and 1.5

The Planning Proposal intends to rezone non-urban land to 2(f) (Urban purposes – Mixed residential) to enable residential development, as the land is within the Warriewood Valley Urban Land Release area. Warriewood Valley is identified in the NSW State Government’s Metropolitan Development Program.

Planning and development of Warriewood Valley is based on Council’s adopted planning strategy – the Warriewood Valley Urban Land Release Planning Framework 1997. The rezoning of Sector 5 lands from non-urban to 2(f) for urban purposes is consistent with Council’s adopted strategy.

2 Environment and Heritage

	Direction	Applicable	Consistent
2.1	Environmental Protection Zones	YES	NO
2.2	Coastal Protection	NO	n/a
2.3	Heritage Conservation	YES	NO
2.4	Recreation Vehicle Areas	YES	YES

Justification for inconsistencies with Directions 2.1 and 2.3

The Planning Proposal intends to rezone non-urban land to 2(f) (Urban Purposes – Mixed Residential) to enable residential development, as the land is within the Warriewood Valley Urban Land Release area. Warriewood Valley is identified in the NSW State Government’s Metropolitan Development Program. Planning and development of Warriewood Valley is based on Council’s adopted planning strategy – the Warriewood Valley Urban Land Release Planning Framework 1997.

Provisions in the Pittwater LEP incorporate requirements for the protection and conservation of environmentally sensitive areas and the conservation of all heritage items, areas, objects, and places of heritage significance. These provisions will continue to apply to the land subject to this Planning Proposal.

3 Housing, Infrastructure and Urban Development

	Direction	Applicable	Consistent
3.1	Residential Zones	YES	NO
3.2	Caravan Parks and Manufactured Home Estates	YES	YES
3.3	Home Occupations	YES	YES
3.4	Integrating Land Use and Transport	YES	YES
3.5	Development near Licensed Aerodromes	NO	n/a

Justification for inconsistency with Direction 3.1

The Planning Proposal intends to rezone non-urban land to 2(f) (Urban Purposes – Mixed Residential) to enable residential development, as the land is within the Warriewood Valley Urban Land Release area. Warriewood Valley is identified in the NSW State Government's Metropolitan Development Program.

Planning and development of Warriewood Valley is based on Council's adopted planning strategy – the Warriewood Valley Urban Land Release Planning Framework 1997 – which is based on a suite of environmental studies, and subsequent objectives, relating to environmental issues, community facilities and infrastructure, heritage, urban design and financial sustainability, to form the fundamental basis for planning and implementation of development in Warriewood Valley.

Provisions in the Pittwater LEP, as it relates to Warriewood Valley, and in turn Sector 5, requires a mix of housing types, encourages efficient use of infrastructure and services, encourages good design, and prohibits residential development until the land is adequately serviced. The provisions will continue to apply to land subject to this Planning Proposal therefore additional clauses are not proposed.

4 Hazard and Risk

	Direction	Applicable	Consistent
4.1	Acid Sulphate Soils	YES	YES
4.2	Mine Subsidence and Unstable Land	NO	n/a
4.3	Flood Prone Land	YES	NO
4.4	Planning For Bushfire Protection	YES	NO

Justification for inconsistencies with Direction 4.3 and 4.4

The Planning Proposal intends to rezone non-urban land to 2(f) (Urban Purposes – Mixed Residential) to enable residential development, as the land is within the Warriewood Valley Urban Land Release area. Warriewood Valley is identified in the NSW State Government's Metropolitan Development Program.

Direction 4.3

The floodprone land relates to the upstream section of Narrabeen Creek, which is in Sector 5. The planning and development of Warriewood Valley is based on utilising the creekline corridor to convey the 1% AEP flood event. Although the floodprone land in Sector 5 is to be rezoned to residential, no residential development will be permitted on that portion of land. Rather, that portion of land (that is floodprone) becomes the multi-functional creekline corridor, which will be owned by Pittwater Council, in accordance with the Warriewood Valley Section 94 Contributions Plan.

Direction 4.4

It is inconsistent insofar as the Planning Proposal does not introduce controls as per 5(b) of the Direction 4.4. Nonetheless, the RFS provided commentary to the original Planning Proposal to which no objection is raised. The RFS letter of 18 December 2009 is attached at Appendix 5.

5 Regional Planning

	Direction	Applicable	Consistent
5.1	Implementation of Regional Strategies	NO	n/a
5.2	Sydney Drinking Water Catchments	NO	n/a
5.3	Farmland of State and Regional Significance on NSW Far North Coast	NO	n/a
5.4	Commercial and Retail Development along the Pacific Hwy, North Coast	NO	n/a
5.5	Development in the vicinity of Ellalong, Paxton and Millfield	NO	n/a
5.8	Second Sydney Airport: Badgerys Creek	NO	n/a

Justification for inconsistency

NIL

6 Local Plan Making

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

Justification for inconsistency with Direction 6.3

The Planning Proposal intends to rezone non-urban land to 2(f) (Urban purposes – Mixed residential) to enable residential development, as the land is within the Warriewood Valley Urban Land Release area. Warriewood Valley is identified in the NSW State Government's Metropolitan Development Program.

Clause 30C of Pittwater LEP applies by prescribing dwelling yields to specific residential sectors in Warriewood Valley. The Planning Proposal intends to amend this clause by inserting a minimum and maximum dwelling range for Sector 5, and provides consistency as the anticipated total dwelling numbers are integral to the overall development of the land release.

7 Metropolitan Planning

	Direction	Applicable	Consistent
7.1	Implementation of the Metropolitan Strategy	YES	YES

Justification for inconsistency

NIL



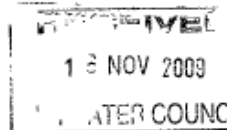
NSW GOVERNMENT
Department of Planning

Office of the Director-General

Contact Margaret Kirton
Phone (02) 9228 6289
Fax (02) 9228 6177
Email margaret.kirton@planning.nsw.gov.au
Postal GPO BOX 30 Sydney NSW 2001

Our ref S07/02019-1

Mr Mark Ferguson
General Manager
Pittwater Council
PO Box 882
MONA VALE NSW 1660



Dear Mr Ferguson,

Re: Planning Proposal to rezone 4 and 8 Forest Road, Warriewood to 2(f) (Urban purposes – mixed residential) to enable residential development in Sector 5 of the Warriewood Valley Urban Land Release Area

I am writing in response to your Council's letter dated 21 August 2009 requesting a Gateway Determination under section 56 of the Environmental Planning and Assessment Act 1979 ('EP&A Act') in respect of the planning proposal to amend Pittwater Local Environmental Plan 1993 by rezoning 4 and 8 Forest Road, Warriewood to 2(f) (Urban purposes – mixed residential) to enable residential development in Sector 5 of the Warriewood Valley Urban Land Release Area

As delegate of the Minister for Planning, I have now determined that the planning proposal should proceed subject to the conditions in the attached Gateway Determination

The Gateway Determination requires that the planning proposal be made publicly available for a period of 14 days. Under section 57(2) of the Act I am satisfied that the planning proposal is in a form that can be made available for community consultation. Council is to ensure that the Sector 5 Masterplan and all relevant studies regarding water and waste management, bushfire protection, contamination, geotechnical and traffic are included with the exhibition material

The amending Local Environmental Plan (LEP) is to be finalised within 6 months of the week following the date of the Gateway Determination

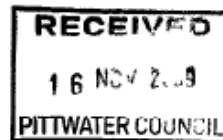
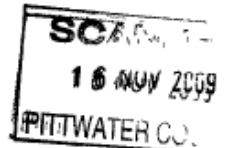
The State Government is committed to reducing the time taken to complete LEPs by tailoring the steps in the process to the complexity of the proposal, and by providing clear and publicly available justification for each plan at an early stage. In order to meet these commitments the Minister may take action under s54(2)(d) of the EP&A Act if the time frames outlined in this determination are not met

Should you have any queries in regard to this matter, please contact the Regional Office of the Department

Yours sincerely,

SHaddad
Sam Haddad
Director-General

10/11/2009





Gateway Determination

Planning Proposal (Department ref: S07/02019-1): To rezone 4 and 8 Forest Road, Warriewood to 2(f) (Urban purposes – mixed residential) to enable residential development in Sector 5 of the Warriewood Valley Urban Land Release Area

I, the Director General as delegate of the Minister for Planning, have determined under section 56(2) of the EP&A Act that an amendment of the Pittwater Local Environmental Plan 1993 to rezone 4 and 8 Forest Road, Warriewood (Lot 1 DP 5055 and Lot B DP 370222) to 2(f) (Urban purposes – mixed residential) should proceed subject to the following conditions

- 1 Community consultation is required under sections 56(2)(c) and 57 of the Environmental Planning and Assessment Act 1979 ("EP&A Act") as follows
 - (a) the planning proposal is classified as low impact as described in *A Guide to Preparing LEPs* (Department of Planning 2009) and must be made publicly available for **14 days**, and
 - (b) the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 4.5 of *A Guide to Preparing LEPs* (Department of Planning 2009)
- 2 Consultation under section 56(2)(d) of the EP&A Act is only required with the following State public authorities that will or may be adversely affected by the proposed instrument
 - NSW Rural Fire Service
- 3 No public hearing is to be held into the matter under section 56(2)(e) of the EP&A Act
- 4 The timeframe for completing the LEP is to be **6 months** from the week following the date of the Gateway determination

Dated 10th day of November 2009


Sam Haddad
Delegate for the Minister for Planning

All communications to be addressed to

Development Control Services
 NSW Rural Fire Service
 Locked Mail Bag 17
 Granville NSW 2142

Development Control Services
 NSW Rural Fire Service
 15 Carter Street
 LIDCOMBE NSW 2127

Telephone (02) 8741 5555

Facsimile (02) 8741 5550

e-mail development.assessment@rfs.nsw.gov.au



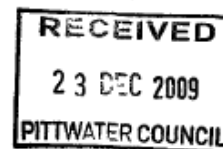
Pittwater Council
 PO Box 882
 MONA VALE NSW 1660

Your Ref R0001/05
 Our Ref LEP/0142
 HQ09/2979

Attention Kelly Wilkinson

18 December 2009

Dear Ms Wilkinson,



**Re: Warriewood Valley Sector 5 – Rezoning
 4 & 8 Forest Road, Warriewood**

I refer to your letter dated 23 November 2009 seeking our comments from the NSW Rural Fire Service (RFS) in relation to the above rezoning

Further to our previous correspondence dated 15 August 2006, I wish to advise that the revised guidelines *Planning for Bush Fire Protection 2006* (PBP) is now in force

The Masterplan for the residential subdivision of the land will require a Bush Fire Safety Authority to be issued by the RFS and will be assessed against the requirements of the new guidelines. In this regard

- 1 Asset protection zones shall comply with section 4.3.1 of PBP, and
- 2 Access shall comply with section 4.3.1 of PBP

For any enquiries regarding this correspondence please contact Garth Bladwell

Yours faithfully,

Mark Hawkins
**A/Team Leader
 Development Assessment & Planning**

For information on *Planning for Bush Fire Protection 2006* visit the RFS web page www.rfs.nsw.gov.au

Kelly Wilkinson
8am to 5:30pm Monday-Thursday
8am to 5pm Friday
Ph: (02) 9970 1283

16 February 2010

The Regional Director
Sydney East Region
Department of Planning
GPO Box 39
SYDNEY NSW 2000

Dear Sir

**RE: AMENDED PLANNING PROPOSAL
4 and 8 Forest Road, Warriewood (Sector 5 of Warriewood Valley Urban Land
Release)
Your Ref. S07/02019-1**

At its meeting of 15 February 2010, Council's Planning and Integrated Built Environment Committee considered a report on the outcomes of the public exhibition of the Planning Proposal to rezone the subject land from non-urban to 2(f) (Urban Purposes- Mixed Residential) under Pittwater LEP 1993. Amendments were made to the exhibited Planning Proposal that requires re-commencement of the process.

On 15 February 2010, Council resolved inter alia:

- “1. That Council continue progressing the statutory rezoning process to rezone Sector 5 of Warriewood Valley to 2(f) Urban Purposes – Mixed Residential to allow residential development.
- 2 That Council forward to the Department of Planning, the amended Planning Proposal (**Attachment 4**) for their consideration.”

In drafting the Planning Proposal, Council had sought the Department's advice as to whether Clause 30E “Public infrastructure in urban release areas” applied to the subject land. Uncertainty is raised in regard to a paragraph contained in the Department's letter of 4 May 2007, which I have attached for your reference. Given the uncertainty, Council has not applied Clause 30E to the Planning Proposal.

I would appreciate if the Planning Proposal be referred to the LEP Review Panel for Gateway Determination in a timely manner. Accordingly, I attach the Planning Proposal for the subject land, the report to Council and the Council minute.

If you have any questions in relation to this matter, please contact Kelly Wilkinson on 9970 1283 who is familiar with this matter.

Yours faithfully

Liza Cordoba
ACTING MANAGER, PLANNING & ASSESSMENT

Attachments: *Planning Proposal*
Report to Council and Minute of 15 February 2010
Department of Planning Letter of 4 May 2007