

**STATEMENT OF
ENVIRONMENTAL EFFECTS**

**PROPOSED RECREATION
FACILITY (INDOOR)
'GYMNASIUM'**

**39 CABBAGE TREE ROAD
BAYVIEW**

OCTOBER 2019



statement of environmental effects

Submission to

NORTHERN BEACHES COUNCIL

**PROPOSED RECREATION FACILITY (INDOOR)
'GYMNASIUM'**

39 CABBAGE TREE ROAD BAYVIEW

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This statement has been prepared in consideration of the Expert Witness Code of Conduct in the Uniform Civil Procedure Rules and the provisions relating to expert evidence. The opinions in the statement represent the professional opinions of the authors, based on an assessment of the facts and circumstances as have been cited in the document.

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1.0 INTRODUCTION

This statement of environmental effects has been prepared in order to provide a planning assessment and other highly detailed information in respect of a development application (the 'development application') seeking development consent for the construction/erection of a recreation facility (indoor) in the form and nature of a rehabilitation gym ('rehab gym') together with associated facilities, car parking and landscaping (collectively, the 'proposed development', 'development proposal' or 'proposal').

Consideration has been given to the environmental merits of the development proposal in light of the following legislation, environmental planning instruments and other subordinate documents:

- *Environmental Planning and Assessment Act 1979* ('EPAA');
- *Contaminated Land Management Act 1997*;
- *Protection of the Environment Operations Act 1997*;
- *Environmental Planning and Assessment Regulation 2000* ('EPAR');
- *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* ('Codes SEPP');
- *State Environmental Planning Policy (Infrastructure) 2007*;
- *State Environmental Planning Policy (Miscellaneous Consent Provisions) 2007*;
- *State Environmental Planning Policy No 19—Bushland in Urban Areas*;
- *State Environmental Planning Policy No 55—Remediation of Land* ('SEPP 55');
- *Bike Pittwater (Northern Beaches) Draft Plan 2016-2021*
- *Pittwater Local Environmental Plan 2014* ('PLEP');

- *Pittwater 21 Development Control Plan 2014* ('PDCP');
- *National Construction Code 2019*; and
- *Social Impact Assessment Guideline* (NSW Department of Planning and Environment, 2017).

In addition, a number of seminal judicial authorities are referred to and discussed in the body of this document. Those authorities relate primarily to the importance of giving weight to the zoning and, as is the case here, to what is a quite confined range of permissible purposes in the subject zone, should it be necessary to resolve any dispute as to the appropriate development of the site. Put simply, the presumption [sic] is that a development proposal that is permissible in the zone will be granted consent, provided the proposal results in acceptable environmental impacts with reference to the relevant matters for consideration under the statute and subordinate documents. In our opinion, that is the case in this application which addresses known environmental issues, exhaustively.

2.0 SITE LOCATION AND DESCRIPTION

2.1 Location

The site is located at No 39 Cabbage Tree Road, Bayview (the 'site'), on the southern side of Cabbage Tree Road.

The site, which is an obtuse triangle in shape, has an area of 980.2sqm and has a northern street frontage of 77.23m to Cabbage Tree Road. The other boundaries of the site have lengths of 54.84m (south-eastern boundary) and 38.25m (south-western boundary), respectively.

The site is relatively level but falls gently across its surface in a south-easterly direction.

Both the south-eastern and south-western boundaries of the site adjoin Bayview Golf Course (the 'Golf Course') which otherwise surrounds the site to the south-east and south-west. The maintenance depot for the Golf Course adjoins the site to the south-west.

The streetscape character of Cabbage Tree Road consists for the most part of a visual dominance of canopy trees on both sides of the street but because of the absence of development on the south side of Cabbage Tree Road, vegetation is more prominent on this side of the street. In close proximity to the site, and under the canopy trees, continuous open space in the form of the Golf Course occurs adjacent to the southern alignment of the site, while residential development occurs to the north. This combination provides a distinctive, albeit somewhat unusual, visual and physical streetscape character.

There is currently no street kerb or footpath on the southern side of this portion of Cabbage Tree Road.

The site, being conveniently positioned at the convergence of routes north to Palm Beach and west to Church Point, enjoys road linkages with Mona Vale, Newport, Avalon Beach and Palm Beach to the north; Warriewood, North Narrabeen and on to Manly in the south; Ingleside, Terrey Hills and on to St Ives and Pymble in the west; and also to North Sydney and Sydney City to the south. The site is also well-located with regard to its proximity to bus services and is within a relatively short walking distance from a range of amenities, services and facilities located within the Mona Vale retail and commercial precinct.

On the opposite side of Cabbage Tree Road from the site, there is low density residential development which is dominated by single dwelling houses of one and two storeys with a diverse style and architecture. To the north-east on the opposite side of Cabbage Tree Road is Aveo Bayview Gardens, which provides assisted living apartments and independent living units for seniors.

The site is located within the Mona Vale locality under PDCP (refer Mona Vale Locality Map in PDCP). In that regard, please see section 5.2.3 ('Locality') of this document.

The site is located within a relatively short walking distance of a variety of public open space areas.

Annexure 1 provide a location plan showing the site.



Annexure 2 provides a cadastral map showing the site.

Annexure 3 provides an aerial photograph of the site.

2.2 The Site

The site is legally described as Lot 2 in Deposited Plan 531960 and is known as No 39 Cabbage Tree Road, Bayview.

The site is currently vacant land, being a residual lot created from the subdivision of a larger parcel of land to enable the construction of Cabbage Tree Road.

The site is an obtuse triangular shaped lot. It has a frontage (that is, a northern boundary) of 77.23m, a south-western boundary of 38.25m, and a south-eastern boundary 54.84m. The surveyed area of the site is 980.2sqm.

The site is surrounded entirely to the south by the adjacent Golf Course. The Golf Course maintenance depot is adjacent to the west. There are detached dwelling houses situated on R2 Low Density Residential zoned land directly across the road to the north.

There is a waterway running nearly parallel with the south-eastern boundary of the site; the waterway is mainly on the adjoining Golf Course, but a small portion of the waterway can be found on the site in its southern corner. There is also a watercourse or drainage channel running roughly parallel with the front boundary of the site, between the road and the site; the watercourse joins into the southern watercourse to the east of the site.

The site is well-vegetated with a row of *Casuarina cunningghmania* (non-locally indigenous River She-Oak) lining the front boundary of the site and also in a clump in the middle of the site. There is no understorey to speak of. The row of *Casuarina* trees delineating the front boundary of the site to some extent screens the site when it is viewed from the roadway. There are also some *Eucalyptus robusta* (Swamp Mahogany) in the western and southern corners of the site.

The land comprising the site is not identified as bushfire prone land, nor is the site heritage listed or located within the vicinity of an heritage item.

Annexure 4 provides annotated photographs of the locality and the site.

3.0 DEVELOPMENT HISTORY

Set out in the Table below is a summary of recent development history pertaining to the site.

DA Number	Development Proposal	Details
DA2018/0567	Construction of a recreation facility (indoor) comprising a two (2) lane commercial swimming pool and gym with associated facilities, car parking and landscaping	Submitted 11/04/2018. Determined 21/12/2018 (refusal).
N0085/14	Construction of two (2) serviced self-care housing dwellings under <i>State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004</i> and strata subdivision into two lots	Submitted 31/03/2014. Determined 15/02/2016 (refusal).
N0045/12	Construction of an affordable rental housing development (refer <i>State Environmental Planning Policy (Affordable Rental Housing) 2009</i>) in the form and nature of an attached dual occupancy and strata subdivision	Submitted 14/02/2012. Determined 01/07/2013 (refusal).

Table. Recent development history.

4.0 DEVELOPMENT PROPOSAL

4.1 Description of the Development

The development proposal is for the purpose of a 'recreation facility (indoor)' in the form and nature of a rehabilitation gym ('rehab gym') together with associated facilities, car parking spaces and landscaping.



The rehab gym will focus on senior members of the community but will also cater to younger persons, both male and female. To cater to the nearby seniors' schemes, one minivan parking space (Toyota HiAce or the like, with a height of 2.2m) is incorporated into the design of the proposed development.

Anecdotal evidence suggests that facilities of the kind proposed are very popular and much in demand, and our firm has prepared many 'change of use' type development applications for recreation facilities (indoor) in existing strata warehouse developments over recent years. There are, however, no such facilities within close proximity of the site or in close proximity to the numerous 'seniors living' developments in the local precinct and beyond.

As Council would be aware, we have an aging population and there is the new rehabilitation hospital (namely, Arcadia Private Rehabilitation Hospital) in Daydream Street, Warriewood, which is in close proximity to the proposed development.

The design of the proposed development has been prepared by Blue Sky Building Designs in association with this firm, and the recreation facility will be located on two enclosed levels elevated above ground level with 10 parking spaces catering to van parking, disabled persons and staff. Bicycle parking is also provided for 3 bicycles and this is intended to tie in with the Councils Bike Path Plan (currently deferred until 2020).

The ground level, which will be used primarily for parking (see above), will be permeable and unenclosed and has been designed to, firstly, provide transparency to on-site vegetation at the rear and onto the Golf Course proper; and, secondly, to mitigate against any impacts that may occur arising from flooding.

A bicycle stand, bin storage area, water tank and entry area will also be located on the ground level.

The main gym hall, together with the reception area and main entry hall, lounge area, and showers and change rooms will be located on the first floor of the



premises. A staff room, plant room and staff amenity area will also be located on the first floor.

On the second level of the premises there will be an exercise room with a mirrored wall (suitable for yoga, stretching, dancing, Pilates, Nia and Zumba), a second foyer/lounge area, toilets, an office, a top floor terrace, and a 'green roof' (referred to as Area H in the Landscape Plan).

In addition to a staircase, a lift will service the facility.

Access to the recreation facility will be via an access ramp/walkway from Cabbage Tree Road. Further, as per Council's recommendations, the proposal has taken into account the possible future location of a shared public pathway along the site's Cabbage Tree Road frontage. The facility will complement possible future infrastructure in the immediate area, namely, the shared pathway and possible new bus stop.

The recreation facility will have a Colorbond® steel roof and fibre cement sheet clad walls (or similar) in a raw concrete finish with timber cladding.

In terms of planning law, the proposal falls entirely within the 'four corners' of the definition of a 'recreation facility (indoor)' in PLEP (see the Dictionary to PLEP). That definition is as follows:

recreation facility (indoor) means a building or place used predominantly for indoor recreation, whether or not operated for the purposes of gain, including a squash court, indoor swimming pool, ***gymnasium***, table tennis centre, health studio, bowling alley, ice rink or any other building or place of a like character used for indoor recreation, but does not include an entertainment facility, a recreation facility (major) or a registered club. *[Emphasis added]*

4.2 Operating Hours

The proposed operating hours of the indoor recreation facility are 8.00am to 6.30pm, Monday to Saturday (both inclusive).



4.3 Staffing and Clients

The maximum number of staff to be employed or otherwise engaged in the recreation facility is 10. However, at any one point in time, only two staff members (namely, one coach and one other staff member [administration/management]) would be required to be present and active at the facility.

As mentioned in section 4.1 ('Description of the Development') of this document, the facility would primarily operate as a recreation establishment for seniors (meaning those over 55), with details as follows:

- the maximum building capacity of the recreation facility is 50 persons at any one time; and
- approximately 20 to 30 persons would be users (that is, clientele) of the facilities offered in the premises at any one time.

Insofar as the operations of the facility are concerned, it is envisaged that the clientele of the business would come from nearby retirement villages or private homes for recreation and rehabilitation purposes.

Cleaners would work outside of the proposed opening hours.

It should be noted that client numbers are transient and will be staggered throughout the day, hence the numbers specified above are calculated on an absolute maximum hourly basis.

The facility will provide a private shuttle service which will collect users from nearby retirements villages or private homes by prior arrangement. The Minivan will be subject to demand and will reduce the use and need for on-site car parking, notwithstanding generous supply.



5.0 STRATEGIC PLANNING CONSIDERATIONS

5.1 Draft Pittwater (Northern Beaches) Bike Plan 2016

As per Council recommendations, consideration has been given toward a future active transport corridor for bicycles that is proposed to run adjacent to the site and along the southern side of Cabbage Tree Road.

The Plan remains very much in draft form, however architectural plans accompanying the development application demonstrate the way the proposed development can be successfully integrated into a shared bicycle path and subject to the final plan to be completed at the Council's own discretion.

Please refer to section 7.9 of this document under 'Key Issues' for further detail.

6.0 STATUTORY PLANNING FRAMEWORK

6.1 Pittwater Local Environmental Plan 2014

6.1.1 General

Pittwater Local Environmental Plan 2014 (PLEP) is the relevantly applicable local environmental plan.

6.1.2 Aims

The aim of PLEP is, among other things, to promote economically, environmentally and socially sustainable development in the former Pittwater local government area (now part of the Northern Beaches local government area) and to ensure that development is consistent with the desired character of Pittwater's localities.

6.1.3 Zoning

The property is zoned RE2 Private Recreation under PLEP 2014.

The objectives of the RE2 zone are as follows (refer item 1, land use table, RE2 zone):

- To enable land to be used for private open space or recreational purposes.
- To provide a range of recreational settings and activities and compatible land uses.
- To protect and enhance the natural environment for recreational purposes.
- To allow development of a scale and character that is appropriate to the nature of its recreational use and is integrated with the landform and landscape.

In our opinion, the proposed development is consistent with such of the zone objectives as are relevant to the nature, scope and purpose of the development proposal. In particular, the development will enable the site to be used for recreational purposes, but the facility will, firstly, be of a scale and character that is appropriate to the nature of the particular recreational use (namely, a rehab gym) and, secondly, will be integrated with the landform and landscape.

The specific zone in which the site is located is, in our view, a very significant factor in assessment of the scheme. Indeed, considerable weight should be given to the fact that the proposed use of the land – namely, indoor recreation – is precisely the type of use that must be taken to have been intended to be captured by the Private Recreation zoning of the land. This matter is discussed in detail in section 5.1.4 ('Permissibility') of this document.

An extract of the PLEP 2014 Zoning Map is provided at **Annexure 5**.

6.1.4 Permissibility

The proposed development, a recreation facility (indoor), is a nominate permissible use, with consent, in the RE2 zone (refer item 3, land use table, RE2 zone).

Existing use rights are not applicable to the development application or the question of its permissibility (the latter being in no doubt).

We respectfully but strongly submit that considerable weight must be given to the fact that:

- the site is zoned RE2 Private Recreation under PLEP; and
- development for the purpose of, relevantly, a 'recreation facility (indoor)' is **nominately** permissible with consent in that zone.

In that regard, McClellan CJ, in *BGP Properties Pty Limited v Lake Macquarie City Council* [2004] NSWLEC 399, had this to say about the matter (at [117]-[119]):

117. **In the ordinary course, whereby its zoning, land has been identified as generally suitable for a particular purpose, weight must be given to that zoning in the resolution of a dispute as to the appropriate development of any site.** Although the fact that a particular use may be permissible is a neutral factor (see *Mobil Oil Australia Ltd v Baulkham Hills Shire Council (No 2)* 1971 28 LGR 374 at 379), planning decisions must generally reflect an assumption that, in some form, development which is consistent with the zoning will be permitted. **The more specific the zoning and the more confined the range of permissible uses, the greater the weight which must be attributed to achieving the objects of the planning instrument which the zoning reflects** (*Nanhouse Properties Pty Ltd v Sydney City Council* (1953) 9 LGR(NSW) 163; *Jansen v Cumberland County Council* (1952) 18 LGR(NSW) 167). Section 3 of the *EP&A Act* provides complex provisions involving extensive public participation directed towards determining the nature and intensity of development which may be appropriate on any site. If the zoning is not given weight, the integrity of the planning process provided by the legislation would be seriously threatened.



118. **In most cases it can be expected that the Court will approve an application to use a site for a purpose for which it is zoned, provided of course the design of the project results in acceptable environmental impacts.**

119. However, there will be cases where, because of the history of the zoning of a site, which may have been imposed many years ago, and the need to evaluate its prospective development having regard to contemporary standards, it may be difficult to develop the site in an environmentally acceptable manner and also provide a commercially viable project.
[Emphasis added]

In the case of the relevant zone—RE2 Private Recreation—it should be noted that the zoning is very specific. Furthermore, the range of permissible uses in the zone is quite confined, unlike the situation with some zones in local environmental plans where the range of permissible uses is extensive. In those instances, it may be appropriate to give neutral weight to the permissibility of the proposed use. However, that is not the case here.

The **presumption** [sic] is that developments that are permissible in the zone will be permitted, provided that the proposal results in acceptable environmental impacts with reference to the statutory matters for consideration: see *Denning Tweed Heads Pty Ltd v Tweed Shire Council* [2018] NSWLEC 1108. See also *Omid Mohebat-Arani v Ku-ring-gai Council* (31 October 2017)[2017] NSWLEC 143; *Carbone v Council of the City of Ryde* [2018] NSWLEC 1253. (**Note:** lest Council be in any doubt about this legal proposition, we wish to point out that there is no shortage of judicial authorities on the point.)

The proposed recreation facility (indoor) will cater to the recreational needs of members of the local community in circumstances where, to

quote McClellan CJ, 'the design of the project results in acceptable environmental impacts.'

6.1.5 Zone Objectives

The relevantly applicable RE2 zone objectives under PLEP (refer item 1, land use table, RE2 zone) are as follows:

- To enable land to be used for private open space or recreational purposes.
- To provide a range of recreational settings and activities and compatible land uses.
- To protect and enhance the natural environment for recreational purposes.
- To allow development of a scale and character that is appropriate to the nature of its recreational use and is integrated with the landform and landscape.

In our opinion, the proposed development is consistent with all four (4) zone objectives. In that regard, the proposed recreation facility (indoor) will enable the site to be used for recreational purposes in a manner that will preserve, so far as is possible, and integrate into the proposed facility the existing natural streetscape and vegetation, while at the same time allowing for appropriate native landscaping and reintroduction of appropriate biodiversity measures for the site.

6.1.6 Height of Buildings

Clause 4.3 of PLEP ('Height of buildings') is a principal development standard of PLEP.

The objectives of clause 4.3 are as follows (refer clause 4.3(1)):

- (a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,
- (b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,

- (c) to minimise any overshadowing of neighbouring properties,
- (d) to allow for the reasonable sharing of views,
- (e) to encourage buildings that are designed to respond sensitively to the natural topography,
- (f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.

By virtue of PLEP Height of Buildings Map (tile HOB 016), the maximum permissible height of a building or structure on the site is 8.5m above the flood planning level.

The development proposal complies with this control.

Please refer also to the architectural drawings accompanying the development application for specific detail.

A Height of Buildings Map extract from PLEP, depicting the site, is provided at **Annexure 6**.

6.1.7 Acid Sulfate Soils and Excavation Landfill

The site is mapped as Acid Sulfate Soils Region 2 under PLEP.

Insofar as Region 2 is concerned, consent is required for the carrying out of works below the natural ground surface as well as works by which the water table is likely to be lowered (refer clause 7.1(2) of PLEP).

Acid sulfate soil is unlikely to be present on the site. However, if at the excavation stage—and minor (but minimal) excavation is involved in the development proposal as the facility will be lie concrete slabs and piling—it transpires that acid sulfate soil is present on the site, an acid sulfate soils management plan addressing the management of acid sulfate soils during and following excavation will be prepared by a suitably qualified consultant.

Annexure 7 provides an Acid Sulfate Soils Map extract from PLEP.

6.1.8 Earthworks

As mentioned in section 5.1.7 ('Acid Sulfate Soils and Excavation Landfill') of this document, the proposed development involves minor excavation. However, the earthworks do not involve the disturbance of more than one tonne of soil. In addition, the water table will not be affected by the proposed works.

Clause 7.2 of PLEP has been considered as part of the development application.

6.1.9 Biodiversity Protection

The land comprising the site is identified as 'Biodiversity' on the Biodiversity Map.

By virtue of clause 7.6(3) of PLEP, before determining a development application for development on land to which clause 7.6 applies, the consent authority must consider the following matters:

- (a) whether the development is likely to have:
 - (i) any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and
 - (ii) any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and
 - (iii) any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and
 - (iv) any adverse impact on the habitat elements providing connectivity on the land, and
- (b) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.



In addition, by virtue of clause 7.6(4) of PLEP, consent must not be granted to development on land to which clause 7.6 applies unless the consent authority is satisfied that:

- (a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or
- (b) if that impact cannot be reasonably avoided by adopting feasible alternatives—the development is designed, sited and will be managed to minimise that impact, or
- (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

The proposed development has been designed and sited, and will be managed, so as to avoid any significant adverse environmental impacts. Most significantly, the proposed development is carefully located in parts of the site of least ecological impact, minimising the removal of significant trees and the impact to any riparian ecology. Additionally, it is not expected that the development will have any appreciable adverse impact on the condition, ecological value and significance of the fauna and flora on the land comprising the site. In this context one does not need to have qualifications in ecology to see that the site is presently significantly degraded from an ecological viewpoint.

See also section 5.2.10 ('Vegetation and Landscaping') of this document for more information on issues pertaining to this matter.

Annexure 8 provides an extract from the Biodiversity Map under PLEP.

6.1.10 Aboriginal Heritage

Aboriginal heritage has been considered in the course of the preparation of this statement of environmental effects.



The site does not contain an 'Aboriginal Object' and isn't identified as an 'Aboriginal Place'. In addition, the site exhibits virtually none of the features or characteristics that are ordinarily associated with an Aboriginal site and that are otherwise referred to in PDCP as having an increased potential for containing relics such as sandstone outcrops, cliff lines, creek lines, foreshore locations or watercourses. (See, however, the following paragraphs.)

Now, as already mentioned, it is the case that, adjacent to the south-eastern boundary of the site, there is a watercourse which encroaches into the site at its southern corner. There is also an open drainage channel running within the road reserve down the eastern half of the road frontage to the site. However, these geographical features, in this case, do not indicate any likelihood that the site contains an 'Aboriginal Object' or is a potential 'Aboriginal Place'.

Accordingly, we have concluded that the proposed development is not likely to have an impact on the conservation of any Aboriginal places and objects.

However, if an object is found or is likely to be found, the matter will be dealt with appropriately in concurrence with the Aboriginal Heritage Office and based upon the recommendations of that Office.

See also section 5.2.8 ('Aboriginal Heritage') of this document.

6.1.11 Essential Services

The site enjoys effective servicing of water, electricity and sewage disposal through connections to existing facilities.

Stormwater will be managed on the site through a combination of conservation and drainage. Please refer to section 5.2.12 ('Stormwater Management') for further information.

The construction of a truck bay and an access driveway in porous material achieves suitable vehicular access to the proposed facility, while at the same time providing a flood sensitive design outcome. Please refer to section 5.2.13 ('Access Parking and Traffic') for additional information.

6.2 Pittwater 21 Development Control Plan 2014

6.2.1 Application and Legal Status

Pittwater 21 Development Control Plan (PDCP) applies to the carrying out of development on the site.

At the outset, it is essential to bear in mind that the Land and Environment Court of New South Wales has held that development control plans (DCPs) contain guideline controls at best: see *Zhang v Canterbury City Council* (1999) 105 LGERA 18.

This principle is also enshrined in sections 3.42 and 4.15(3A) of the EPAA, which are as follows:

3.42 Purpose and status of development control plans

(cf previous s 74BA)

(1) The principal purpose of a development control plan is to provide guidance on the following matters to the persons proposing to carry out development to which this Part [i.e. Part 3 of the EPAA] applies and to the consent authority for any such development:

- (a) giving effect to the aims of any environmental planning instrument that applies to the development,
- (b) facilitating development that is permissible under any such instrument,
- (c) achieving the objectives of land zones under any such instrument.

The provisions of a development control plan made for that purpose are not statutory requirements.



(2) The other purpose of a development control plan is to make provisions of the kind referred to in section 3.43 (1) (b)–(e).

(3) Subsection (1) does not affect any requirement under Division 4.5 in relation to complying development. *[Our emphasis]*

4.15 Evaluation

(cf previous s 79C)

... ..

(3A) **Development control plans** If a development control plan contains provisions that relate to the development that is the subject of a development application, the consent authority:

- (a) if those provisions set standards with respect to an aspect of the development and the development application complies with those standards—is not to require more onerous standards with respect to that aspect of the development, and
- (b) if those provisions set standards with respect to an aspect of the development and the development application does not comply with those standards—is to be ***flexible in applying those provisions and allow reasonable alternative solutions that achieve the objects of those standards for dealing with that aspect of the development***, and
- (c) may consider those provisions only in connection with the assessment of that development application.

In this subsection, ***standards*** include performance criteria. *[Our emphasis]*

Thus, any purported ‘requirement’ (albeit an inappropriate word to be used in the context of a DCP) in PDCP is only a guideline and must be construed, interpreted and applied as such, despite the approach of many consent authorities who tend to construe, interpret and apply controls in development control plans as if

they were mandatory statutory requirements. That is not the case.

6.2.2 Objectives

The key aims of PDCP relate to providing ecologically sustainable development and appropriate environmental, social and economic outcomes.

In our opinion, the proposed development will contribute positively to social and economic objectives by providing the opportunity for employment (both when the development is fully operational as well as during the construction stage) and by strengthening of the local economic base on the Northern Beaches. Of even greater importance, the proposed facility will assist in meeting the social and recreational needs of the local community.

6.2.3 Locality

The site is located within the Mona Vale locality in PDCP (refer Mona Vale Locality Map). Insofar as the desired future character of the Mona Vale locality is concerned, the following are, as we see it, the more relevant provisions of the locality statement:

The Mona Vale locality will contain a mix of residential, retail, commercial, industrial, recreational, community, and educational land uses.

... ..

Retail, commercial and light industrial land uses will be employment-generating. ...

Future development is to be located so as to be supported by adequate infrastructure, including roads, water and sewerage facilities, and public transport.

Future development will maintain a building height limit below the tree canopy and minimise bulk and scale. Existing and new native vegetation, including canopy trees, will be

integrated with the development. Contemporary buildings will utilise facade modulation and/or incorporate shade elements, such as pergolas, verandah's [sic] and the like. Building colours and materials will harmonise with the natural environment. Development on slopes will be stepped down or along the slope to integrate with the landform and landscape, and minimise site disturbance. Development will be designed to be safe from hazards.

... ..

A balance will be achieved between maintaining the landforms, landscapes and other features of the natural environment, and the development of land. As far as possible, the locally native tree canopy and vegetation will be retained and enhanced to assist development blending into the natural environment, and to enhance wildlife corridors.

... ..

We are of the opinion that the development proposal is consistent with this desired future character. In this case streetscape appearance will be maintained, vegetation will remain a predominant component of the site character and landforms and waterway features will be preserved.

The more important relevantly applicable controls in PDCP are separately addressed below.

6.2.4 Aboriginal Heritage

Please refer to section 5.1.10 ('Aboriginal Heritage') of this document.

6.2.5 Flood Planning

The applicants hydraulic engineering consultant identifies the site as being in a 'low risk' flood precinct. The mapping in PDCP shows the site as a 'medium risk precinct'. The former information was provided by Council on 26 March 2018 and



presumably updates the information in the PDCP.

The first floor of the development has an RL of 4.30m AHD, which satisfies the required minimum habitable floor level, by exceeding the FPL of RL 3.18. The first floor also lies 1.12m above the PMF level.

For further information please refer to the Flood Risk Assessment prepared by Ms Kate Waddington.

As the development proposes to alter the flood storage area of the site, this impact will be compensated through the levelling of the permeable subfloor of the parking area, thus ensuring no net loss of flood storage in compliance with Section B3.18 of PDCP. This is addressed in further detail in the Flood Mitigation Plan within the abovementioned Flood Risk Assessment report.

In terms of the issue of flood evacuation response and shelter in place, the proposed two-storey enclosed development, to be constructed above the unenclosed ground level, would be constructed above the PMF level, thus providing a suitable option for staff and users to 'shelter in place' during significant flood events. The 'flood life hazard category' affecting the site is H5.

Occupants would be able to safely shelter in place on the ground level and first level of the facility for events up to and including the PMF. Over 600sqm of floor space would be available for flood refuge, which comfortably exceeds the 1sqm requirement per person for a short duration event.

The Flood Risk Assessment accompanying the development application concludes that the works are not expected to have a significant impact on upstream or downstream flood levels, flow velocities or distribution, or flood response or hazards, or upon the safe evacuation of the property or the neighbourhood.



All controls of Northern Beaches (Pittwater [sic]) Council's shelter-in-place requirements can be satisfied by the proposal, designating the development a tolerable flood risk for flood emergency response planning in accordance with PDCP.

Annexure 8 provides an extract from the relevantly applicable Flood Risk Map.

6.2.6 Tidal Inundation

The site has been identified as being affected by estuarine tidal inundation on Council's Estuarine Hazard Mapping.

The Estuarine Risk Management Policy for Development in Pittwater (refer Appendix 7 to PDCP) and the relevant Section B3.9 PDCP Estuarine Hazard controls apply to any proposed development of the site.

In accordance with the Pittwater Estuary Mapping of Sea Level Rise Impacts Study (2015), an estuarine planning level (EPL) based upon the local (still) water level (2050 sea level rise scenario) + 0.3m freeboard, i.e. 2.24m AHD, has been adopted by Council for the site.

As the first floor level of the recreation facility is proposed to be at RL 4.30m AHD, the proposal complies with the relevant requirements of the Estuarine Risk Management Policy as well as the controls in Section B3.9 ('Estuarine Hazard') of PDCP.

In addition, there will be a permeable and unenclosed parking area on the ground level of the facility. The rationale behind this area being unenclosed is twofold: firstly, to mitigate against any impacts arising from flood inundation and overland surface flows and, secondly, to minimise visual impact of the proposal through allowing transparency to local endemic vegetation and the Golf Course. Furthermore, the use of porous materials in the parking area

provides an aesthetic, flood sensitive solution to the mitigation of estuarine hazards.

6.2.7 Climate Change

In light of the controls in Section B3.23 PDCP Climate Change (Sea Level Rise and Increased Rainfall Volume), climate change impacts related to flooding need to be assessed in relation to the proposed development.

As mentioned in section 5.2.5 ('Flood Planning') of this document, the proposed floor levels exceed both the FPL and PMF flood depths. In doing so, the proposal provides a conservative allowance for the impacts of climate change with respect to current predictions for both sea level rise and increased rainfall volume.

When assessed in the context of the abovementioned controls, we are of the opinion that the proposed development meets Council's criteria as respects the intensification of development.

6.2.8 Land Contamination and Remediation

The site is classified as contaminated land or potentially contaminated land as a result of the adjoining Golf Course maintenance depot. As such, the Section B3.6 PDCP Contaminated Land and Potentially Contaminated Land controls are applicable.

Pursuant to section B3.6 of PDCP, Council shall not consent to the carrying out of any development on land unless it has considered the provisions of *State Environmental Planning Policy No 55—Remediation of Land* (SEPP 55).

In our opinion, the likelihood of encountering contaminated soils on the site is extremely low, having regard to the following factors:

- Council's records indicate that the site has never been built upon or used for any purpose.



- Council's records indicate that the site has been vacant for a significant period of time, with there being no record of contamination (see below).
- There is no evidence of past land uses which may have contaminated the site. Previous assessments of applications for the maintenance facility found that there may be some contamination of that site due to the presence of a fuel tank and chemical storage. The works proposed at that time sought to improve the method of storage to reduce future potential for contamination.
- The site and surrounding land are currently not zoned to allow for any uses or activities listed in Table 1 of the contaminated land planning guidelines of SEPP 55.
- The site does not constitute land declared to be an 'investigation area' by a declaration in force under Division 2 of Part 3 of the *Contaminated Land Management Act 1997* (NSW).

In light of the above factors, we are of the opinion that no further investigation of the land comprising the site is necessary or warranted. In our view, the site is zoned appropriately and is eminently suited to the development proposal.

Clause 7 (1)(a) of SEPP 55 requires the consent authority to consider whether land is contaminated.

The Council officer's assessment report on DA2018/0567 states (on p 19) that:

Council records indicate that the subject site has been vacant for a significant period of time with no record of contamination. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the proposed land use.

Accordingly, we submit that Council, as consent authority, can grant consent to the proposed development, subject to a merits assessment of the proposal.

6.2.9 Vegetation and Landscaping

A report from a suitably qualified and experienced arborist, Ms Catriona McKenzie, accompanies the development application. The report assesses all trees on the site and their health, condition and safe useful life expectancy and makes justified retention/removal recommendations as well as specified tree protection measures where applicable.

A landscape plan prepared by Ms Pamela Fletcher also accompanies the development application. The plan provides for existing site landscaping to be maintained and enhanced so far as possible and thus allows for the retention of native trees as recommended in the arborist report.

As the proposal necessitates the removal of some significant trees, Tree T18 will be replaced by a new tree to be planted in the eastern corner of the site. The plan also includes provision for the planting and maintenance of a range of native shrubs and grasses which will aid screening from the road and also increase the visual amenity of the site in a flood sensitive manner.

The aim of the landscaping, insofar as the streetscape of Cabbage Tree Road is concerned, is as follows:

- To address and minimise any otherwise untoward disruption to physical and visual streetscape amenity as a result of the carrying out of the development proposal. In that regard, the physically and visually significant row of Casuarina trees along the Cabbage Tree Road frontage will be primarily retained,

except where access to the site is to be provided.

- To soften and complete the built form of the development with landscaping. The extent of built form presented by the proposed development allows for effective and substantial landscaping and tree canopy replacement. No replacement tree planting is proposed along the Cabbage Tree Road frontage, as the proposed development and possible future shared path involves the removal of only eight of the existing *Casuarina cunninghamiana* to allow for vehicular and pedestrian ingress and egress.

In terms of the controls in Part D9.1 ('Character as viewed from a public place') of PDCP, the development proposal provides a built form that is for the most part secondary to landscaping and vegetation. In that regard, the built form will not dominate the streetscape by reason of any loss of existing trees.

The existing row of *Casuarina cunninghamiana* (River She-Oak), in association with the existing *Eucalyptus robusta* (Swamp Mahogany) trees, provides the majority of the existing landscape amenity to the streetscape. The development proposal retains and protects this streetscape element, to the maximum extent possible, in order to allow for the integration of the development into the landscape character. Some loss of vegetation is, however, necessary in order to provide access from the street to the proposed facility. Nonetheless, these trees will be replaced with *Eucalyptus robusta* (Swamp Mahogany) species, where appropriate, as recommended in the arborist and ecologist reports.

In short, both in terms of bulk and scale and landscaping, the development proposal reflects

the aesthetics of the open space context in which the site is strategically located.

6.2.10 Fauna Impact

The site is located wholly within a High Priority wildlife corridor under PDCP. High Priority wildlife corridors are considered to be areas essential for fauna movement under PDCP.

The controls in Section B4.6 ('Wildlife corridor') of PDCP have as a stated outcome 'the retention and enhancement of wildlife corridors ensuring/providing the connection of flora and fauna habitats'.

Close attention has been given to the specificities of the controls in Section B4.6, and to Council's assessment of the previous development application (namely, DA2018/0567). In response, this development proposal:

- incorporates architectural and landscaping measures to minimise and mitigate the impacts on local habitats by retaining locally native plant species to support the local wildlife corridor, especially the tall canopy trees that characterise the area (in that regard, please refer to the reports prepared by Urban Forestry Australia and Narla Environmental that accompany the development application);
- includes the planting of native species to offset the removal of trees, both native and introduced, in order to maintain and also regenerate local habitat;
- retains large mature native trees on the site as far as possible, respecting the canopy cover that characterises the area;
- ensures that over 60% of the proposed planting incorporates native vegetation (as per the species listed in Native Plants

for Your Garden available on the Pittwater Council website); and

- includes the removal of the large expanse of environmental weeds that currently dominate the understory vegetation of the site, so as to further stimulate regeneration.

Furthermore, the retention of key mature native trees and the removal of existing weeds currently dominating the ground will mitigate, as far as possible, any disturbance to the wildlife corridor.

In addition to all of the above, due weight must, as a matter of planning law, be given to the zoning of the site as RE2 Private Recreation, the quite constrained range of permissible uses in that zone, the purpose of the proposed development, and the current undeveloped nature of the site, while at the same time giving due weight to any environmental impacts of the development.

6.2.11 Stormwater Management

The development application, and this statement of environmental effects, have been prepared in light of the controls in Section B5 ('Water Management') of PDCP.

More specifically, stormwater management will be achieved on the site through the following measures:

- rainscaping of paved ground surfaces;
- conservation of rainwater captured on the roof area through drainage to an 8KL water tank is proposed to be located on the ground floor of the development;
- reticulation of water stored in the rainwater reuse tank for use in toilets and for irrigation; and

- use of a rain garden drainage system on the roof garden and terrace areas via the existing watercourse along the Golf Course boundary.

For further information and detail, please refer to the Stormwater Management Plan prepared by Ms Kate Waddington which accompanies the development application.

6.2.12 Access Parking and Traffic

The development application, and this statement of environmental effects, have been prepared in light of the access and parking controls in Section B6 of PDCP.

Pursuant to section B6.2 of PDCP, safe and convenient access and parking must be provided to the development.

A recreation facility (indoor) is one of the several types of development specified in the definition of 'business development' in Section A1.9 ('Definitions') of PDCP as being a business development. As such, in light of Table 1 in Section B6.3 of PDCP, 2.5 car parking spaces per 100sqm of 'Gross Lettable Area (GLA)' / 'Gross Floor Area (GFA)' [sic] are to be provided on site.

Given that the proposed development involves an area of 400 sqm GFA, 10 car spaces are proposed to be provided for the exclusive use of staff and patrons, including one disability parking space and one space dedicated to van parking. Additionally, a van drop off space and bicycle racks are also proposed to be located on the ground floor level. The proposed development is compliant with the minimum requirements for parking under PDCP.

Also, given that the proposed development does not exceed 400 sqm GFA, the facility is not required to provide space for delivery or courier vehicles on site.



There is no on-street parking in close proximity to the site along Cabbage Tree Road, with the nearest available on street parking being across the road and around the corner on Annam Road. There is no footpath on the southern side of Cabbage Tree Road, and no pedestrian crossing facilities in a direct route to the facility from Annam Road.

An indented servicing bay is proposed to be located at the driveway entry to the facility. As per engineering specifications, the bay is wide enough to allow a garbage truck to pull in safely and service the facility without obstructing traffic along Cabbage Tree road or restricting access to the internal facility driveway.

As the facility does not propose to undertake any commercial sales of food, drink or other convenience items, a reserved space for deliveries is not required.

A detailed Plan of Management (POM) accompanies the development application and details the operations of the proposed recreation facility. In addition, a Traffic and Parking Assessment prepared by McLaren Traffic Engineering also accompanies the development application. The consultants conclude that:

- The on-site parking will be reserved for use by staff, a people mover van and both able bodied and disabled patrons. On this basis, the provision of 10 car spaces is more than adequate to serve the needs of the centre.
- The proposed parking supply is sufficient according to the requirements of PDCP, and is supported.

In our opinion, given the local patronage of the facility, and the availability of a small shuttle bus to transport patrons, the proposed use is unlikely to generate traffic and parking demand outside of that proposed.

We agree with the conclusions expressed by McLaren Traffic Engineering.

6.2.13 Site Works Management

The development application, and this statement of environmental effects, have been prepared in light of the controls in Section B8 ('Site Works Management') of PDCP.

Those controls require that appropriate measures be taken to address the issues of construction and demolition impacts, erosion and sedimentation management, waste minimisation, site fencing and security, works in the public domain and traffic management where required.

Appropriate site management practices will be adopted to prevent public access during excavation and construction and to prevent erosion and sedimentation in accordance with the provisions of the *Protection of the Environment Operations Act 1997* (NSW).

Further, as the site is of an appropriate size, it is expected that all construction materials will be stored on-site throughout the construction process.

Sediment control measures will be provided prior to works commencing on site, in order to prevent the migration of sediment off the site into any waterway, drainage system, public reserve, road reserve or adjoining private land. As Council noted in the assessment report of Development Application DA2018/0567 (refer page 9 of the report), erosion and sediment control is an issue that can be managed during construction by way of the imposition of suitably worded conditions of consent, so as to adequately satisfy the issue.

The site will be protected by site fencing for the duration of the works.

6.2.14 Accessibility

An Access Report prepared by Code Performance Pty Limited accompanies the development application.

The Access Report provides recommendations for the development in order for the development to comply with the requirements of the BCA, the *Disability Discrimination Act 1992* (Cth) and *Australian Standard 1428.1*, the provisions of which have been adopted in the proposal.

For further detail please refer to the Access Report as well as the architectural plans.

6.2.15 Excavation and Landslip Hazard

As mentioned in section 5.1.8 ('Earthworks') of this document, the development proposal involves minimal excavation.

6.2.16 Erosion and Sediment Management

Appropriate erosion and sedimentation management measures, so as to ensure that there is low impact in terms of runoff with a view to meeting the controls contained in Section B8.2 ('Construction and Demolition - Erosion and Sediment Management') of PDGP, are included as part of the development application.

Please refer to the erosion and sediment management plan for further information.

6.2.17 Waste Minimisation

Waste generation as a result of construction works will be minimised and disposed of at an appropriate waste facility. Alternatively or additionally, waste will be recycled and re-used on site to the maximum extent possible.

For further detail please refer to the Waste Management Plan accompanying the development application.

6.2.18 Site Fencing and Security

Appropriate site protection will be undertaken during the construction stage of the development, so as to ensure public safety and the protection of the public domain, as required by Section B8.4 ('Construction and Demolition - Site Fencing and Security') of PDCP.

6.2.19 Landscaped Area

As a 'business development' and, in particular, a recreation facility (indoor), the proposal has been designed in light of the controls contained in Section C2.1 ('Landscaping') of PDCP. (Note. Section C2 of PDCP contains design criteria for business development.)

The stated outcomes of the controls in Section C2.1 are to ensure that built form is softened by landscaping measures, being those appropriate to the scale of the development and according to an approved masterplan.

The proposed development will remove existing environmental weeds that dominate the understory of the site and will treat the area with appropriate soil and complement the built form with new native shrubs and groundcover species, as appropriately identified by Council. Additional canopy planting will also be provided.

Furthermore, the proposed development is designed to maintain, as much as possible, the existing mature and healthy canopy trees.

For more detail please refer to the landscape plan prepared by Ms Pamela Fletcher accompanying the development application.

We note that the eaves of the structure breach the building envelope, as permitted by the control. We also note that the building envelope controls do apply for commercial development (see under).

Please refer to the architectural plans for further detail.

6.2.20 Building Envelope

At the outset, it should be noted that the controls in section D2.7 ('Building envelope') of PDCP **only** apply to land in the Mona Vale Locality zoned R2 Low Density Residential, R3 Medium Density Residential or E4 Environmental Living.

Accordingly, the controls do not apply to the land comprising the site which is zoned RE2 Private Recreation under PLEP 2014.

Be that as it may, in a case *where* the controls apply, buildings are to be sited within a building envelope projected at 45 degrees from a height of 3.5m above natural ground level at the side boundaries of the site or from the FPL on flood affected land. The stated outcomes of the building envelope control are as follows:

- The bulk and scale of the built form is minimised.
- Equitable preservation of views and vistas to and/or from public/private places.
- A reasonable level of privacy, amenity and solar access is provided and maintained.
- Vegetation is retained and enhanced to visually reduce the built form.

Now, although the building envelope controls do not technically apply, we nevertheless wish to point out that the street facade of the proposed recreation facility has been designed with care. Levels of the facility have been stepped and modulated to provide a refined fine grained building, with an articulated street form. Bulk and scale have been minimised by virtue of clever design and the retention of mature planted indigenous trees along the front property boundary. In addition, projecting elements and awnings have been included within the design to also achieve the outcomes referred to above.

Furthermore, the development proposal has been designed such that the development would comply with the building envelope controls (other than in a minor respect at the south-eastern boundary and as respects the eaves, the latter being permissible in any event)—**were** it the case that those controls applied, thus ensuring that the abovementioned outcomes are achieved. The minor ‘breach’—for, as mentioned, it is **not** a breach as such—is unable to easily be perceived from the street and would only affect the privacy, shadowing and the views of a vegetated and undeveloped section of the Golf Course.

Please refer to the architectural plans for further detail.

6.2.21 Visual Appearance and Compatibility

The controls contained in Section D9.1 (‘Character as viewed from a public place’) of PDCP require, among other things, that the bulk and scale of development be minimised.

In addition, buildings which front the street must have a ‘street presence’ and incorporate design elements (such as roof forms, textures, materials, the arrangement of windows, modulation, spatial separation, landscaping etc) that are compatible with any design themes for the locality.

Blank street frontage facades without windows are not permitted. Walls without articulation should not have a length greater than 8 metres to any street frontage.

The scheme is consistent with these guideline controls.

In addition, the controls in Section D9.1 provide that any building facade to a public place must incorporate at least two of the following design features: entry feature or portico; awnings or other features over windows; verandahs, balconies or window box treatment to any first



floor element; recessing or projecting architectural elements; open, deep verandahs; or verandahs, pergolas or similar features above garage doors.

The proposed development incorporates **all of the above design features** other than those inapplicable by their very nature (i.e. verandahs, pergolas or similar features above garage doors) or as a design choice (i.e. entry feature or portico).

The proposed structure will be relatively low-lying, sympathetic to the surrounding built-form and environment (ie the dwelling houses on the north side of Cabbage Tree Road).

The street facade of the proposed recreation facility has been designed with care. Levels of the facility have been stepped and modulated to provide a refined building, with an articulated street form.

In terms of compatibility with surrounding and nearby development, the planning principle on compatibility in the urban environment enunciated by Roseth SC in *Project Venture Developments v Pittwater Council* [2005] NSWLEC 191 is of some relevance here. In that case Senior Commissioner Roseth had this to say at [22]-[24]:

22 There are many dictionary definitions of *compatible*. The most apposite meaning in an urban design context is *capable of existing together in harmony*. *Compatibility* is thus different from *sameness*. It is generally accepted that buildings can exist together in harmony without having the same density, scale or appearance, though as the difference in these attributes increases, harmony is harder to achieve.

23 It should be noted that compatibility between proposed and existing is not always desirable. There are situations where extreme differences in scale and appearance produce great urban design involving landmark

buildings. There are situations where the planning controls envisage a change of character, in which case compatibility with the future character is more appropriate than with the existing. Finally, there are urban environments that are so unattractive that it is best not to reproduce them.

24 Where compatibility between a building and its surroundings is desirable, its two major aspects are physical impact and visual impact. In order to test whether a proposal is compatible with its context, two questions should be asked.

- Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.
- Is the proposal's appearance in harmony with the buildings around it and the character of the street?

25 The physical impacts, such as noise, overlooking, overshadowing and constraining development potential, can be assessed with relative objectivity. In contrast, to decide whether or not a new building appears to be in harmony with its surroundings is a more subjective task. Analysing the existing context and then testing the proposal against it can, however, reduce the degree of subjectivity.

In our opinion, the physical impact of the proposed development will be restricted to some minor overshadowing of the Golf Course land. There will be no appreciable view loss, privacy impact or visual bulk impacts to users of the Golf Course or occupants of nearby residences. In no sense could the physical impacts be considered to be significant or be so unacceptable as to warrant refusal of the development application.

As regards the visual appearance of the development in its setting, the design of the development is such that, when viewed from all sides, it will be relatively unobtrusive and non-



dominating. The development manifests good design with a high quality of finishes and materials, meaning that it will sit in harmony with nearby residential development in the wider context. From Cabbage Tree Road, the built form will be significantly screened by much of the existing vegetation that will be retained in the road reserve and also by the screen planting proposed along the front boundary and on the site itself.

External finishes have been chosen so as to harmonise with the natural environment.

6.2.22 Design Criteria

In preparing the development application, due regard has been had to the design criteria in Section C2 ('Design Criteria for Business Development') of PDCP.

Although the proposed facility is a 'business development' within the meaning of PDCP, the proposed recreation facility does not involve the preparation or service of food or drink. Accordingly, the facility does not require a delivery area and is not subject to food area design standards (cf Section C2.21 ('Food Premises Design Standards') and the various Standards referred to therein).

The proposal is compliant with the minimum floor to ceiling height of 2400mm on all levels in accordance with the *National Construction Code 2019*. Awnings have been appropriately integrated into the design of the proposed facility.

6.2.23 Colours and Materials

The external colours and materials of the proposed building will be consistent with Council's 'requirements' and will be 'dark and earthy' in tone, thus enhancing the visual quality of the streetscape and minimising any possible

disruption to the 'open space feel' and appearance of site.

In short, the external appearance of the built form will ensure that the development harmonises with the natural environment and that the visual prominence of the structure is minimised.

6.2.24 Character and Scenic Protection

In our opinion, the development proposal achieves the desired character of the locality as listed in Section A4.9 ('Mona Vale Locality') of PDCP through the integrity of its design. In that regard, the proposed development:

- responds to, reinforces and sensitively relates to the spatial characteristics of the existing built and natural environment;
- enhances the existing streetscapes and promotes a scale and density that is in keeping with the height of the natural environment;
- ensures that the visual impact of the built form is softened by landscaping and vegetation;
- will not dominate the streetscape and is at a 'human scale';
- preserves and enhances district and local views, thus reinforcing and protecting Pittwater's natural context; and
- minimises any visual impact on the natural environment when viewed from Cabbage Tree Road as well as from the Golf Course which partially encircles the site.

We respectfully submit that, given the transparency of its design, the proposed development will be effectively integrated with the immediate and surrounding landscapes and is consistent with the visual expression of the Mona Vale locality.

6.2.25 Visual and Acoustic Privacy

The development proposal maintains excellent levels of visual and acoustic privacy through appropriate building design and orientation.

Intervening landscape elements will help to achieve secondary privacy attenuation.

The development proposal will not conflict with the adjoining Golf Course use, nor is it expected that the day-to-day operations and activities of the Golf Course will affect the operations and activities of the indoor recreation facility. The design of the facility has addressed these issues to the fullest extent possible. (See also section 5.2.29 'Safety Issues' of this document.)

Acceptable levels of privacy are currently afforded to the occupants of the nearby residential properties. Those levels of privacy are not likely to be detrimentally affected as a result of the proposed development, given relevant separation distances. In that regard, the existing and proposed landscaping along the Cabbage Tree Road frontage of the site will also assist in ensuring that there will be no loss of privacy for those residential properties.

An acoustic report accompanies the development application.

6.2.26 Solar Access

There are no residential properties immediately adjoining the site. Relatively minor overshadowing would only occur to the Golf Course and part of the Golf Course maintenance yard.

For further detail please refer to the shadow diagrams within the set of architectural plans accompanying the development application
Safety

6.2.27 Waste Management

The proposed development will be provided with appropriately sized and conveniently located and accessible waste management facilities that will maximise recycling by the provision of appropriate facilities.

For further detail please refer to the Waste Management Plan accompanying the development application.

6.2.28 View Sharing

The development proposal will not materially affect views from any neighbouring properties. The level nature of the site ensures that existing vistas towards the golf course from adjoining properties will be largely maintained.

6.2.29 Safety Issues

It is not expected that there will be any untoward safety issues for the users of the proposed indoor recreation facility as a result of the operations and activities of the Golf Course. In that regard, the built form of the proposal has taken that issue into account in terms of design detail and location.

The application is accompanied by a Plan of Management (POM), which outlines strategies and approaches for the prevention and minimisation of environmental harm consequent of the use of the site as an indoor recreation facility, in the areas surrounding the facility as well as within the facility itself.

7.0 KEY ISSUES

7.1 Compliant Use

The proposed use is nominately permissible in the RE2 Private Recreation zone under PLEP and is compliant with the relevantly applicable regime of planning controls.



Please refer to the various judicial authorities referred to and discussed in section 5.1.4 ('Permissibility') of this document. As mentioned, those authorities relate primarily to the importance of giving weight to the zoning and, as is the case here, to what is a quite confined range of permissible purposes in the subject zone, should it be necessary to resolve any dispute as to the appropriate development of the site. Put simply, the presumption [sic] is that a development proposal that is permissible in the zone will be permitted, provided the proposal results in acceptable environmental impacts with reference to the statutory matters for consideration.

In our opinion, that is indeed the case here as respects the development proposal.

7.2 Height of Buildings

As mentioned previously, the maximum permissible height of a building or structure on the site is 8.5m above the flood planning level.

The development proposal complies with this control.

7.3 Environmental Impact

In our opinion, the proposal will have a negligible environmental impact internal to the site and no adverse impact upon the public domain.

The proposal will have a positive social impact by providing a useful community indoor recreation facility in this area, promoting a healthy active pastime for seniors and others (and including disabled persons).

The proposal will have no adverse economic impact and will have a small positive economic impact by providing opportunities for local employment.

7.4 Social Impact

The expression 'social impacts' is defined in Alan Gilpin's *An Australian Dictionary of Environment and Planning* (Melbourne: OUP, 1990, p 184) as follows:

Social impacts are defined as those changes in social relations between members of a community, society, or

institution, resulting from external change. The changes in social relationships can result from severance, both physical and psychological; general life-style; group relationships; cultural life (language, rituals, and dress); attitudes and values; obligations to kin and marriage patterns; social tranquillity (disrupted, for example, by the arrival of a large all-male workforce); relocation of large populations. [Cross-reference omitted.]

The *Social Impact Assessment Guideline* (NSW Department of Planning and Environment, 2017) is to be used in assessing the social impacts of State significant mining, petroleum and extractive industry development. Obviously the proposed development is not of those typologies. However, the Guideline contains a most useful description of what is meant by the phrase 'social impact', and the description has been cited with approval and applied by judges of the Land and Environment Court including, quite recently, Preston CJ in *Gloucester Resources Limited v Minister for Planning* [2019] NSWLEC 7.

The Guideline describes a social impact as 'a consequence experienced by people due to changes associated with a State significant resource project' (p 5). The Guideline lists nine (9) key categories in which social impacts may occur: way of life; community; access to and use of infrastructure, services and facilities; culture; health and wellbeing; surroundings; personal and property rights; decision-making systems; and fears and aspirations (p 5).

The Guideline states:

As a guide, social impacts can involve changes to people's:

- **way of life**, including:
 - o how people live, for example, how they get around, access to adequate housing
 - o how people work, for example, access to adequate employment, working conditions and/or practices
 - o how people play, for example, access to recreation activities
 - o how people interact with one another on a daily basis



- **community**, including its composition, cohesion, character, how it functions and sense of place
- **access to and use of infrastructure, services and facilities**, whether provided by local, state, or federal governments, or by for-profit or not-for-profit organisations or volunteer groups
- **culture**, including shared beliefs, customs, values and stories, and connections to land, places, and buildings (including Aboriginal culture and connection to country)
- **health and wellbeing**, including physical and mental health
- **surroundings**, including access to and use of ecosystem services, public safety and security, access to and use of the natural and built environment, and its aesthetic value and/or amenity
- **personal and property rights**, including whether their economic livelihoods are affected, and whether they experience personal disadvantage or have their civil liberties affected
- **decision-making systems**, particularly the extent to which they can have a say in decisions that affect their lives, and have access to complaint, remedy and grievance mechanisms
- **fears and aspirations** related to one or a combination of the above, or about the future of their community.

Social impacts can be positive or negative; tangible or intangible; direct, indirect or cumulative; directly quantifiable, indirectly or partly quantifiable or only able to be described and assessed in qualitative terms; and experienced differentially (p 6). The Guideline states:

Social impacts vary in their nature, and can be:

- positive (for example, increased local and regional job opportunities) or negative (for example, increased prevalence of certain physical health conditions)
- tangible (for example, availability of affordable housing) or intangible (for example, social cohesion)



- direct (that is, caused by the project), indirect (that is, caused by a change that is caused by the project), or cumulative (see Box 1)
- directly quantifiable, indirectly or partly quantifiable (including by using proxy indicators), or only able to be described and assessed in qualitative terms
- experienced differently:
 - o by different people and groups within a community (for example, an increase in the cost of housing may be positive for homeowners wanting to rent out or sell their properties, but negative for individuals and families wanting to enter the same market)
 - o by different communities (for example, people neighbouring a project may experience most of the noise and dust impacts, while people in the region's nearest town may experience most of the job opportunities)
 - o at different times and stages of the project (for example, construction and commissioning, operation, decommissioning and closure, and post closure management).

In our opinion, in view of the fact that the proposed development has a much reduced footprint than that of the development the subject of Development Application DA2018/0567, in order to allow for appropriate endemic planting, retention of canopy and reintroducing biodiversity on to the site (by virtue of our ecologist), the proposed development will not have a detrimental social impact in the locality considering the character of the proposal.

The proposal is consistent with the recreational character of the area (of the adjoining Golf Course). In terms of the types of social impacts referred to in the Guideline, the proposed development:

- will not involve any radical or negative changes to people's **way of life**, but on the contrary will have a positive impact on 'how people play, for example, access to recreation activities';
- will not have a negative impact on **how people interact with one another on a daily basis**, but on the contrary will cater to the recreational and



rehabilitation needs of the local community (in particular, seniors lining in close proximity to the site of the proposed facility);

- will not have a negative impact on **access to and use of infrastructure, services and facilities**, whether provided by local, state, or federal governments, or by for-profit or not-for-profit organisations or volunteer groups;
- will not have a negative impact on **culture**, including shared beliefs, customs, values and stories, and connections to land, places, and buildings (including Aboriginal culture and connection to country);
- will promote and enhance **health and wellbeing**, including physical and mental health, by catering to the recreational and rehabilitation needs of the local community (in particular, seniors lining in close proximity to the site of the proposed facility);
- will not have a negative impact on the **surroundings of the site**, including access to and use of ecosystem services, public safety and security, access to and use of the natural and built environment, and its aesthetic value and/or amenity;
- will not have a negative impact on **personal or property rights**, including whether their economic livelihoods are affected, and whether they experience personal disadvantage or have their civil liberties affected;
- will not have a negative impact on **decision-making systems**, particularly the extent to which they can have a say in decisions that affect their lives, and have access to complaint, remedy and grievance mechanisms;
- will not have a negative impact on **fears and aspirations** related to one or a combination of the above, or about the future of their community.

In his assessment report on Development Application DA2018/0567, the council officer opined in relation to



the development the subject of that application (refer p 6):

The proposed development will have a detrimental social impact in the locality considering the character of the proposal. The proposal is not considered to generally maintain the character of the area, nor achieve the desired future character of the area as set out in the locality statement.

With all due respect to the Council officer, we submit that he/she did not address his/her mind to the right matters when considering the matter of social impacts. Indeed, we would go further and state that the Council officer misdirected himself/herself in law, by giving a legally incorrect meaning to the expression 'social impact', and by defining otherwise than in accordance with law the question of fact to be answered: see *Edwards v Bairstow* [1956] AC 14; *R v Australian Stevedoring Industry Board; Ex parte Melbourne Stevedoring Co Pty Ltd* (1953) 88 CLR 100.

Now, when regard is had to the desired character of the Mona Vale locality, the only reasonable conclusion that can be drawn is that the proposed facility the subject of the present development application is consistent with the locality statement, in that:

- the desired character recognises that the Mona Vale locality will contain a mix of residential, retail, commercial, industrial, recreational, community, and educational land uses;
- the proposed development will not detract from the fact that existing residential areas are sought to remain primarily low-density with dwelling houses a maximum of two storeys in any one place in a landscaped setting, integrated with the landform and landscape;
- the proposed development will maintain a building height limit below the tree canopy and minimise bulk and scale;
- the proposed development will ensure that existing and new native vegetation, including canopy trees, will be integrated with the development; and

- the proposed development will not affect any heritage items or conservation areas indicative of the Guringai Aboriginal people and of early settlement in the locality.

7.5 Economic Impact

In our opinion, the proposed development will not have a detrimental economic impact on the locality, considering the nature of the existing land use and the proposed development. In addition, the development will provide additional local employment opportunities.

7.6 Suitability of the Site

In addition to its relevantly appropriate RE2 zoning, the adjacent development does not impose any material or significant development constraints. The site is well-located as respects the availability of public transport and utilities, and the development itself will not cause any untoward levels of traffic demand (refer McLaren report).

The site itself is of an appropriate size and moderate grade for the proposed development and has no prohibitive physical or engineering constraints. Careful consideration has been given to all aspects pertaining to the site and the proposed recreation facility has been designed to best utilise the area available on the site and be compatible with the surrounding and nearby environment. In addition, the proposed development will have a positive ecological impact and is suitable in character in the context of its setting and surrounds.

The likelihood of encountering contaminated soils on the site is low, having regard to a number of factors that have been previously mentioned. In that regard, please refer to section 5.2.8 ('Land Contamination and Remediation') of this document.

7.7 Utilities

The site is able to be fully provided for, as respects all relevant utility services as outlined in section 5.1.11 ('Essential Services') of this document.

The provision of an indented servicing bay has been designed according to engineering specifications in order to allow a garbage truck to pull in from the road and safely collect waste from the facility without obstructing traffic along Cabbage Tree Road, while still maintaining unrestricted access to the facility via the internal driveway: refer architectural drawing Sheet No A103 (Level 0 – Parking).

Further, the proposal complements possible future infrastructure in the immediate area, namely, a new shared pathway and new bus stop as per the Council's recommendations.

7.8 Public Interest

The expression 'public interest', in environmental planning law, does not provide a consent authority to invoke or rather purport to invoke some general notion or concept of public interest so as to add additional criteria or heads of consideration to those specified in, relevantly, section 79C of the EPAA: see *Howard Hargrave Pty Ltd v Penrith Municipal Council* (1958) 3 LGRA 260.

The proposal is compatible with both the surrounding built and natural environment, will provide a much-needed indoor recreation facility in the locality, will have positive social and economic effects, is strategically and suitably located having regard to the proposed use, and can be carried out with little or no adverse environmental impact.

In our opinion and respectful submission to Council, the public interest is best served by providing opportunities for appropriate and responsible development that can be carried out with minimal adverse environmental impacts. Such is the case in this instance.

7.9 Draft Pittwater Bike Plan 2016

Under the draft Bike Pittwater Plan 2016, the section of road adjacent to the site has been nominated for a 'Possible Shared path' and a 'Possible On-Road Network'.

As aforementioned in section 5.1 of this document, consideration has been given toward the location of a possible future shared path in accordance with Council recommendations. The inclusion of a possible location for the shared path has been included in the architectural plans to demonstrate the compatibility of the proposed development with an active transport corridor.

The aims of the Bike Pittwater Plan are as follows;

- To improve and maintain cycling infrastructure;
- To improve the awareness and safety for cyclists;
- To promote cycling as a convenient and enjoyable travel option;
- To develop and maintain relationships with key organisations to promote and fund cycling projects; and
- To facilitate opportunities for recreational cyclists.

As the proposed development has the ability to enhance both existing and future features of the healthy built environment within the locality, encouraging exercise and activities such as cycling, we believe that the proposed development, in its nature as a rehab gym, is consistent with the aims of Bike Pittwater. The proposed gym will augment the bike path by providing a place for cyclists to rest and refresh.

We respectfully submit to Council that the proposed development is consistent with the objectives of a 'healthy' built environment as well as the aims outlined in the proposed Northern Beaches Bike Plan. The recreation facility and the bike transport network would be able to integrate seamlessly and positively.

8.0 CONCLUSION

This document addresses the statutory regime applicable to the development proposal and demonstrates that the proposed development is appropriate and will complement the site and its surrounds.



The proposed development is nominately permissible, with development consent, in the RE2 Private Recreation zone under PLEP.

As already mentioned, the specific zone in which the site is located is, in our view, highly significant. Indeed, considerable weight should be given to the fact that the proposed use of the land—namely, indoor recreation—is **precisely** the type of use that must be taken to have been intended to be captured by the Private Recreation zoning of the land. Indeed, the case law establishes that there is a presumption that development which is otherwise permissible with consent in the zone should be consented to, provided the proposal results in acceptable environmental impacts with reference to the statutory matters for consideration.

This statement of environmental effects, when read in conjunction with the various reports and other documents prepared by consultants and which accompany the development application, demonstrates that the development proposal results in **acceptable** environmental impacts with reference to the matters for consideration set out in section 4.15 of the EPAA.

The proposed development is compliant with the relevantly applicable regime of planning controls contained in PLEP as well as relevant guideline controls within PDCP.

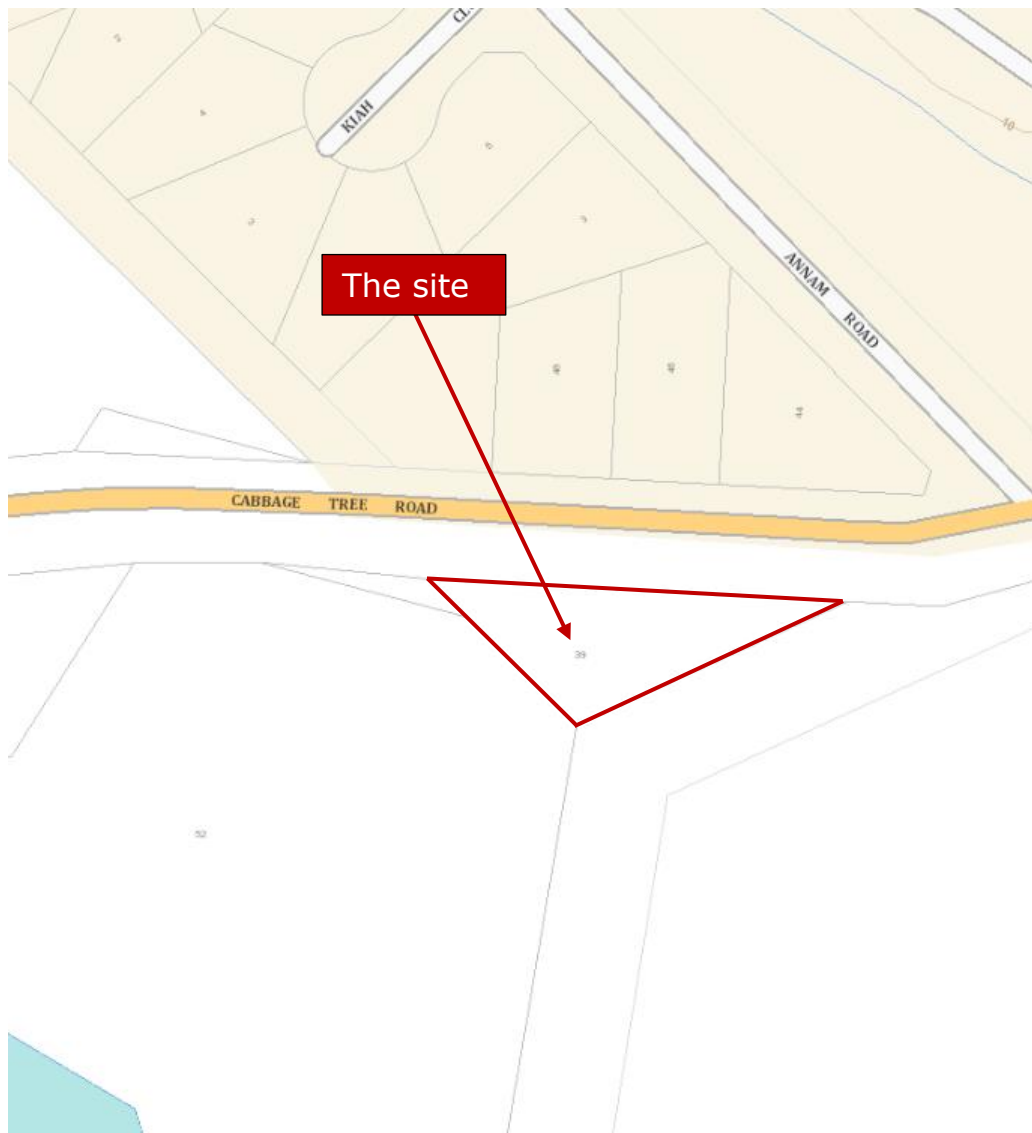
The development will cater to the recreational needs of members of the local community including residents of Aveo Bayview Gardens and other nearby seniors living facilities and will assist in the promotion of local employment.

The heads of consideration listed in section 4.15 of the EPAA have been considered, to the extent to which they are relevantly applicable. In our opinion, there are no matters which would prevent Council as consent authority from granting consent to the proposal in this instance.

In our opinion, the development proposal merits support by the consent authority and a grant of conditional development consent.

ANNEXURE 1

LOCATION PLAN (EXTRACT FROM SIX MAPS)



LOCATION PLAN

EXTRACT FROM SIX MAPS



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July 2019
 Ref: cra.cab39b

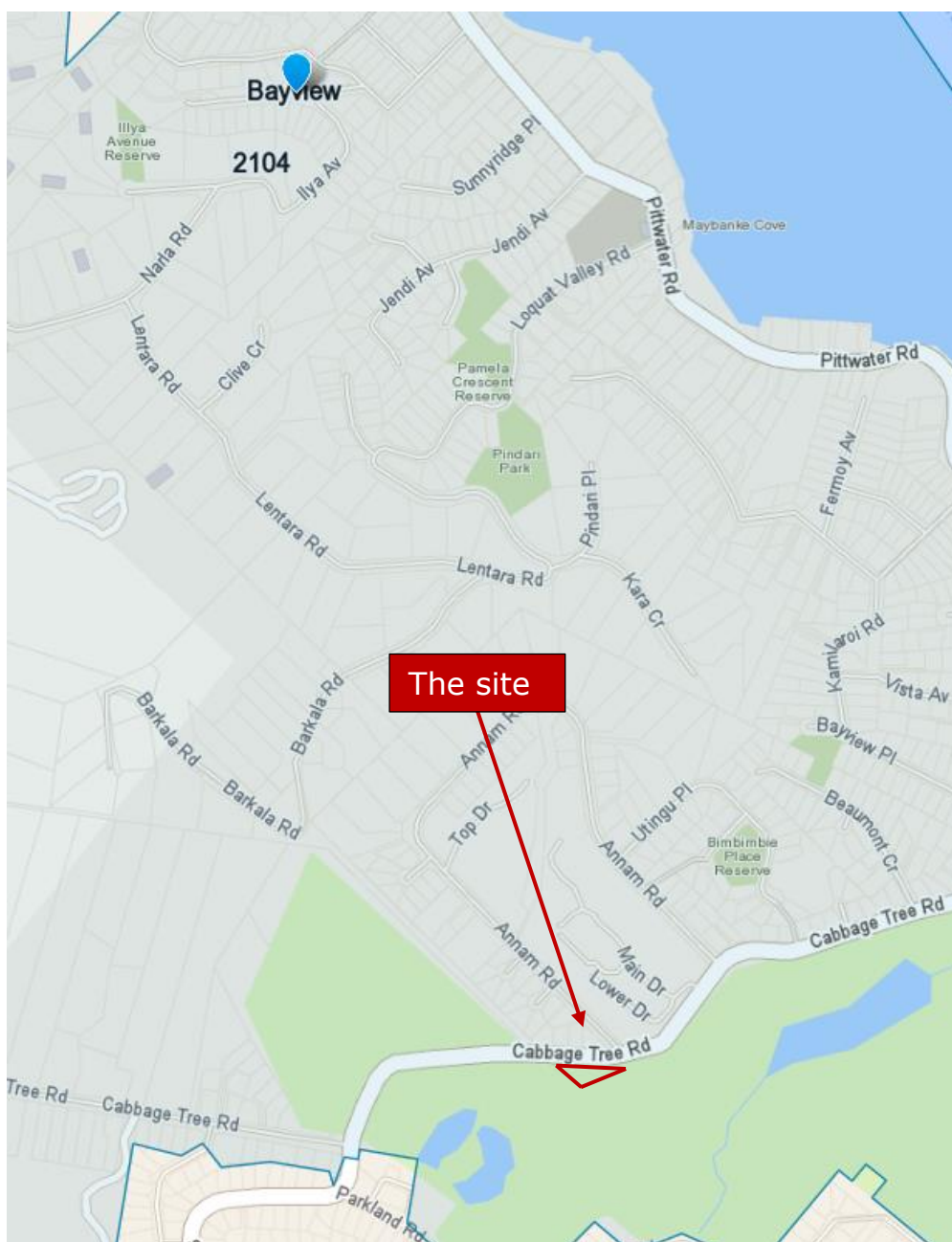
Annexure 1

DRAWN: TG

39 Cabbage Tree
 Road Bayview

ANNEXURE 2

CADASTRAL MAP (EXTRACT FROM SIX MAPS)



CADASTRAL MAP

EXTRACT FROM SIX MAPS



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ANNEXURE 3

AERIAL PHOTOGRAPH (EXTRACT FROM SIX MAPS)



AERIAL PHOTOGRAPH

EXTRACT FROM SIX MAPS



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ANNEXURE 4

PHOTOGRAPHIC PALETTE



Photograph 1 – View looking east along Cabbage Tree Road. The site is to the right of frame.



Photograph 2 – View looking west along Cabbage Tree Road. The site is left of frame.



Photograph 3 – View from Cabbage Tree Road towards the Bayview Golf Course with the eastern boundary of the site in the foreground.



Photograph 4 – View of the site looking south, closer in proximity to the western boundary of the site (right of frame). The Bayview Golf Course is in the background.



Photograph 5 – View of the western boundary of the site and the Bayview Golf Course 'Depot'.



Photograph 6 – Line of River She-Oak canopy trees along the north boundary of the site. Most of these trees will be maintained excepting those necessary to be removed, in order to permit vehicular access.



Photograph 7 – Group of medium to low retention value canopy trees (T09 to T14) on the western boundary of the site. These trees are proposed to be retained. Trees identified as 'dead' in the arborist report will be removed.



Photograph 8 – Group of Trees (T17) of low retention value are proposed to be removed.



Photograph 9 – Environmental weeds are currently dominant over the majority of the site.



Photograph 10 – View of the environmental weeds currently dominant in the mid and understory of site.



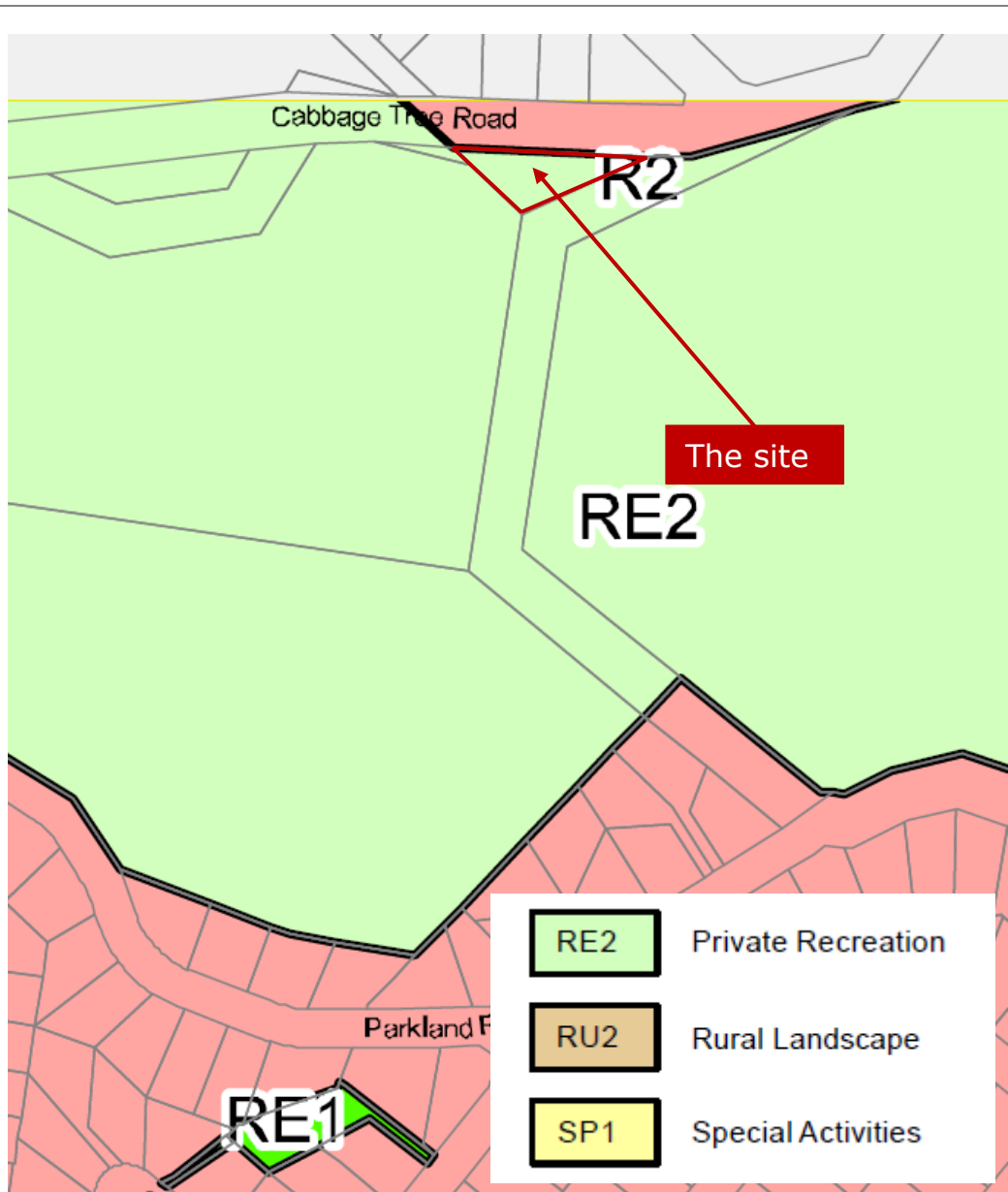
Photograph 11 – View of the nearby traffic safety island providing safe pedestrian access to the site from the pathway along the northern side of Cabbage Tree Road.



Photograph 12 – View of nearby dwelling houses on the northern side of Cabbage Tree Road.

ANNEXURE 5

ZONING MAP (EXTRACT FROM PLEP)



ZONING MAP

EXTRACT FROM PLEP



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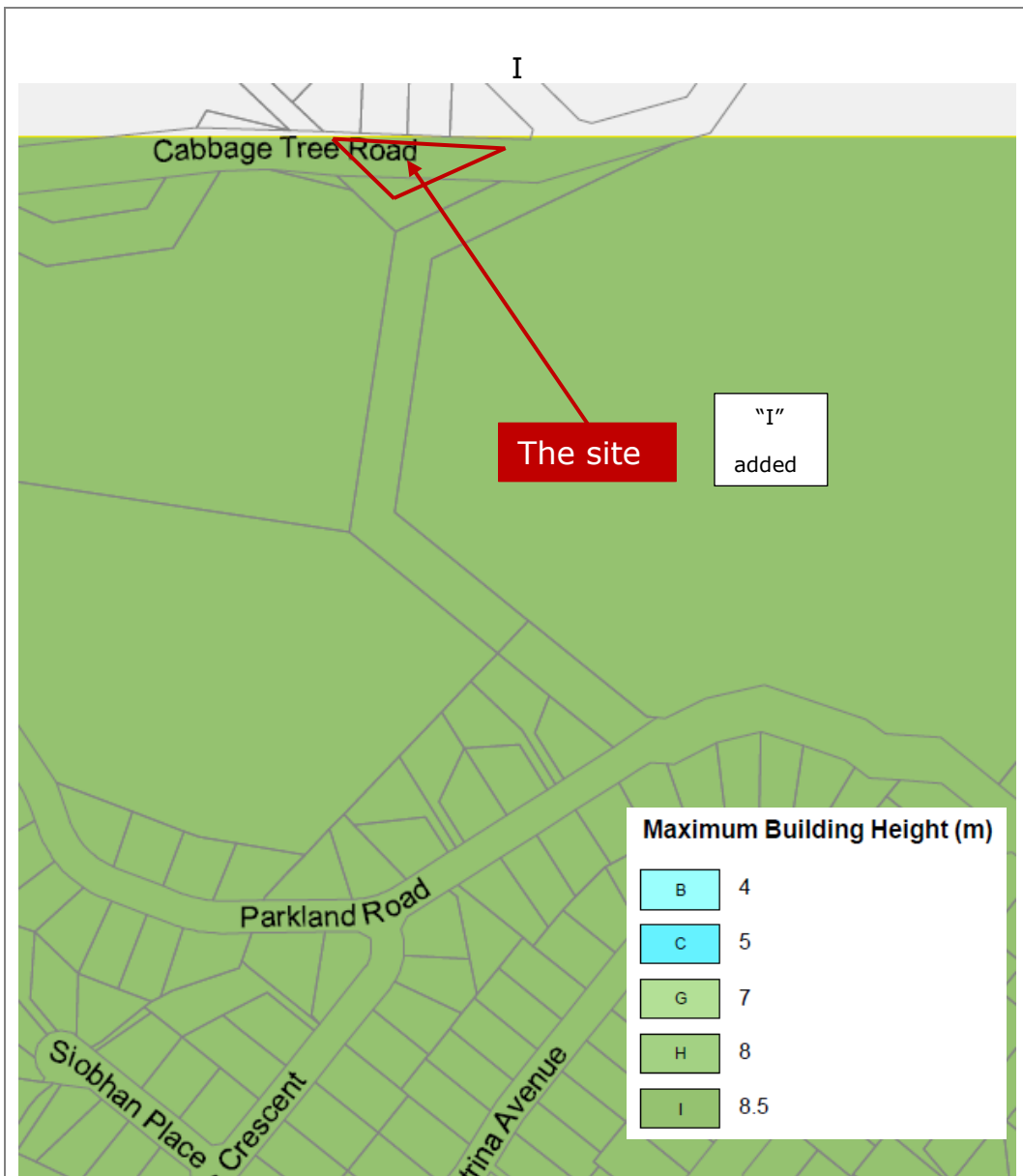
Annexure 5

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ANNEXURE 6

HEIGHT OF BUILDINGS MAP (EXTRACT FROM PLEP)



HEIGHT OF BUILDINGS MAP

EXTRACT FROM PLEP



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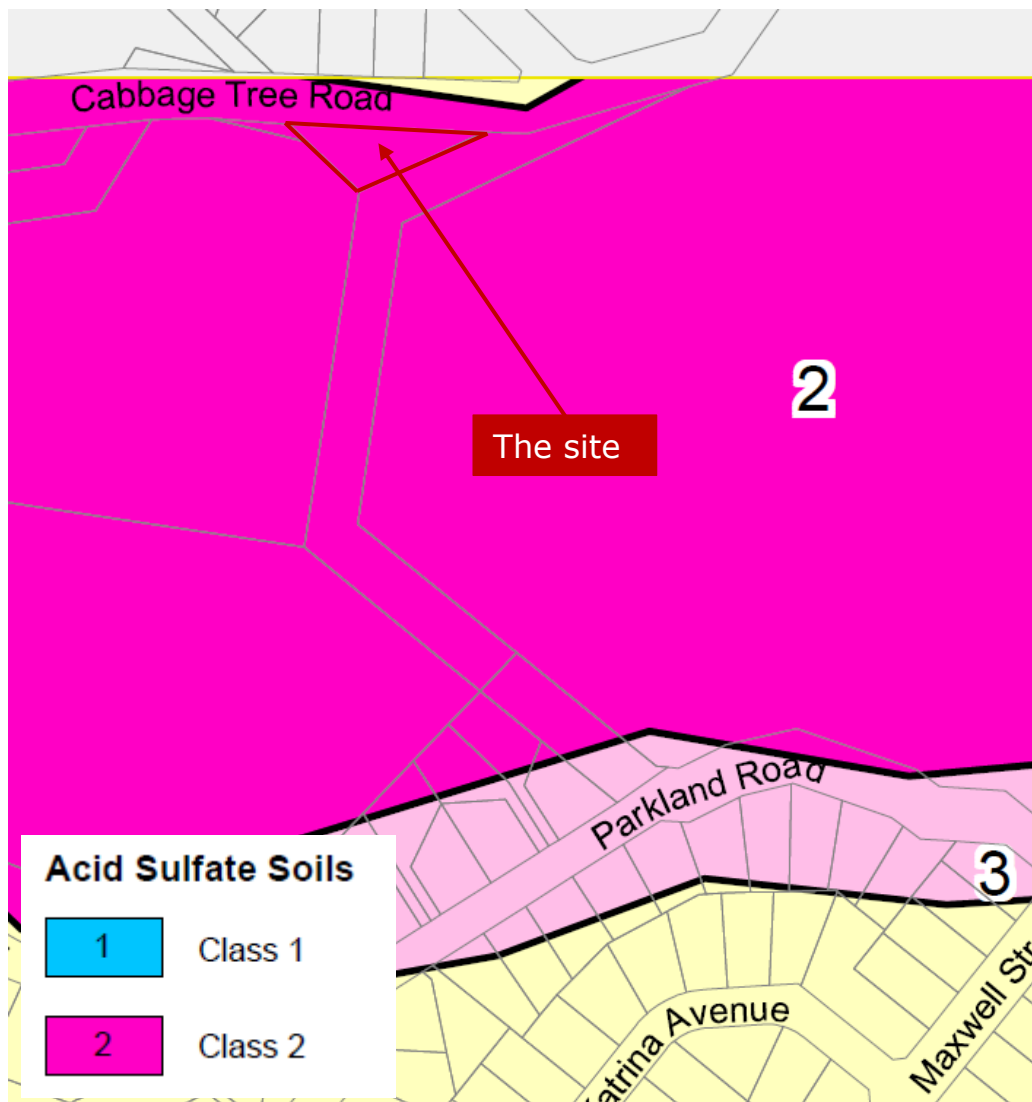
Annexure 6

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ANNEXURE 7

ACID SULFATE SOILS MAP (EXTRACT FROM PLEP)



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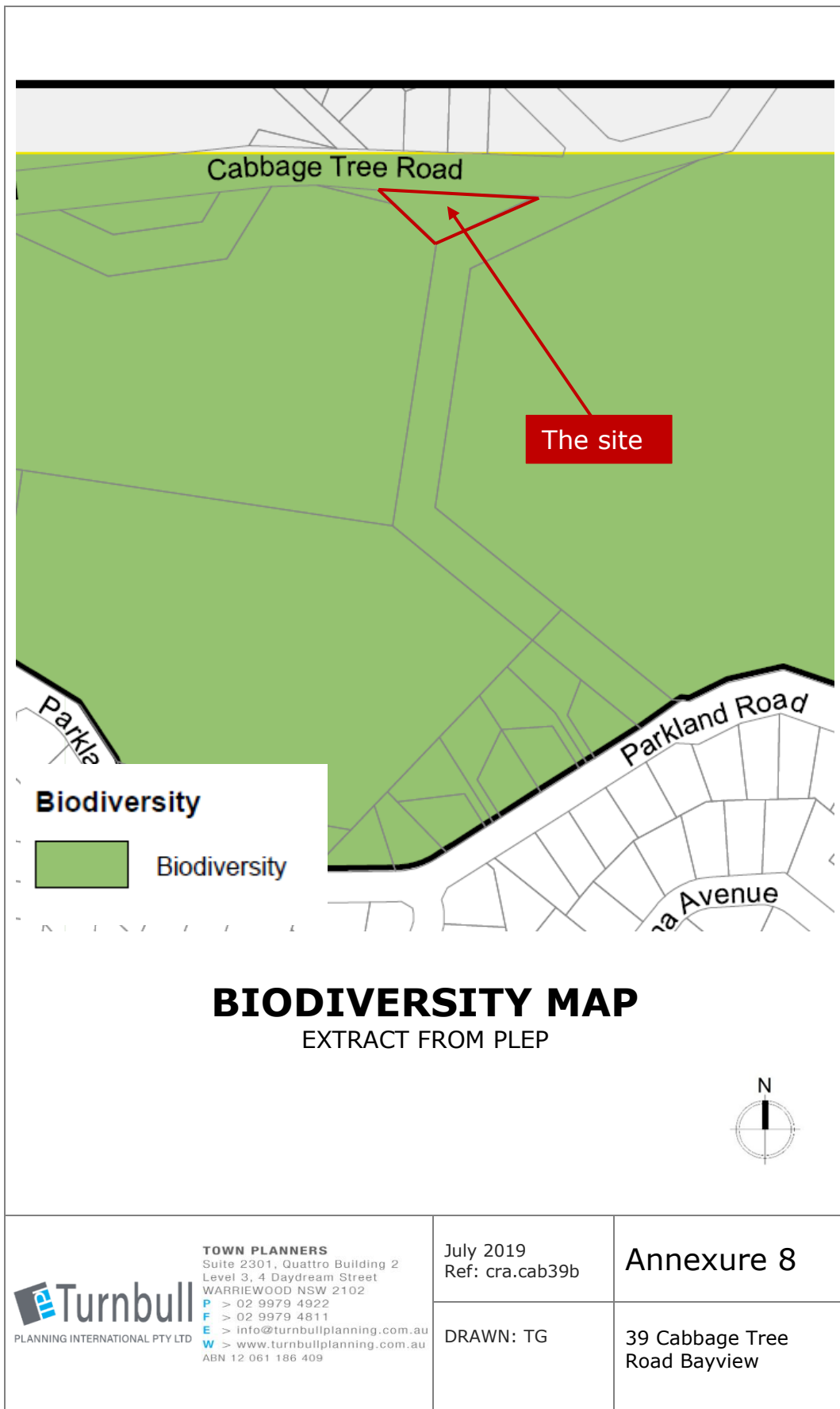
Annexure 7

DRAWN: TG

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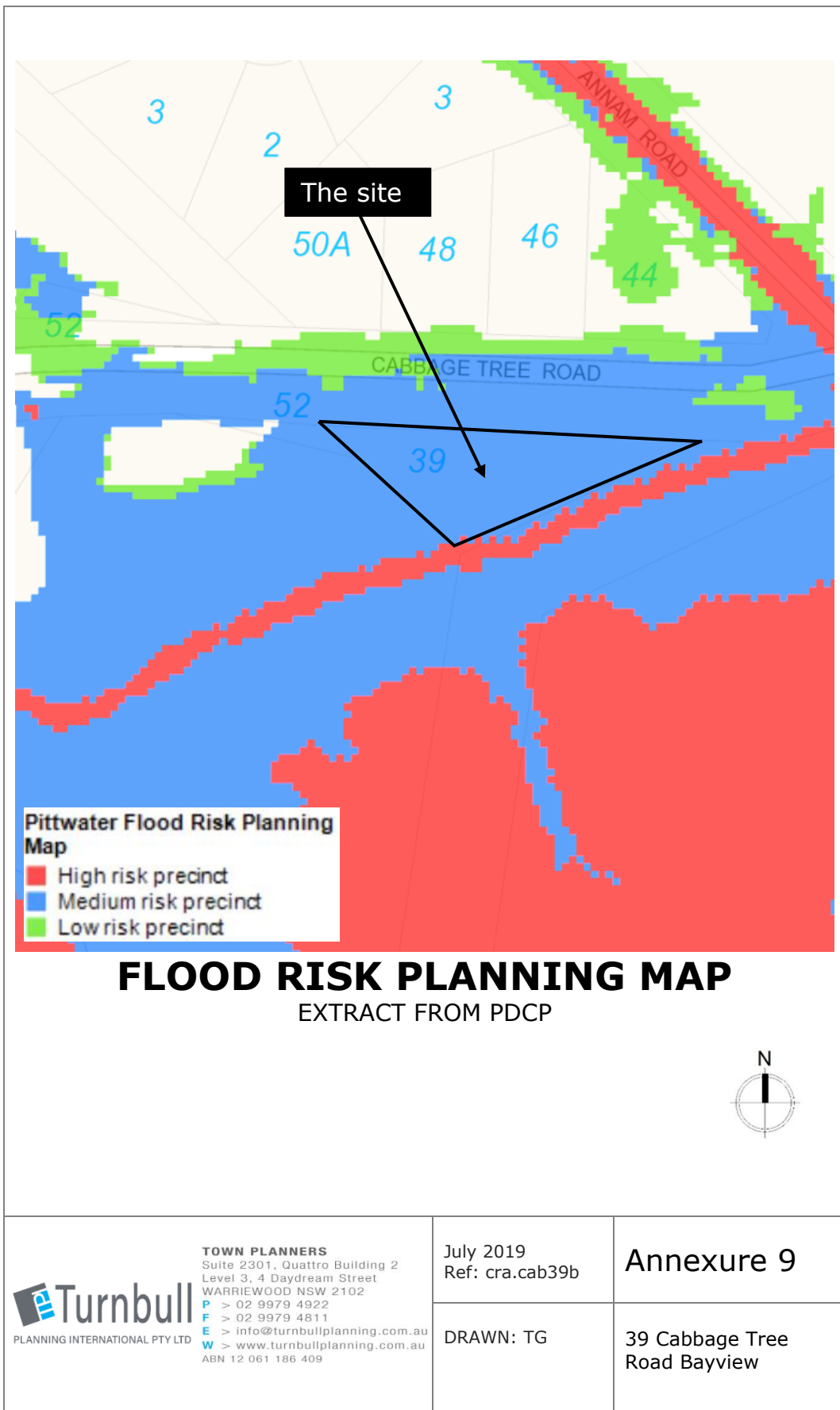
ANNEXURE 8

BIODIVERSITY MAP (EXTRACT FROM PLEP)



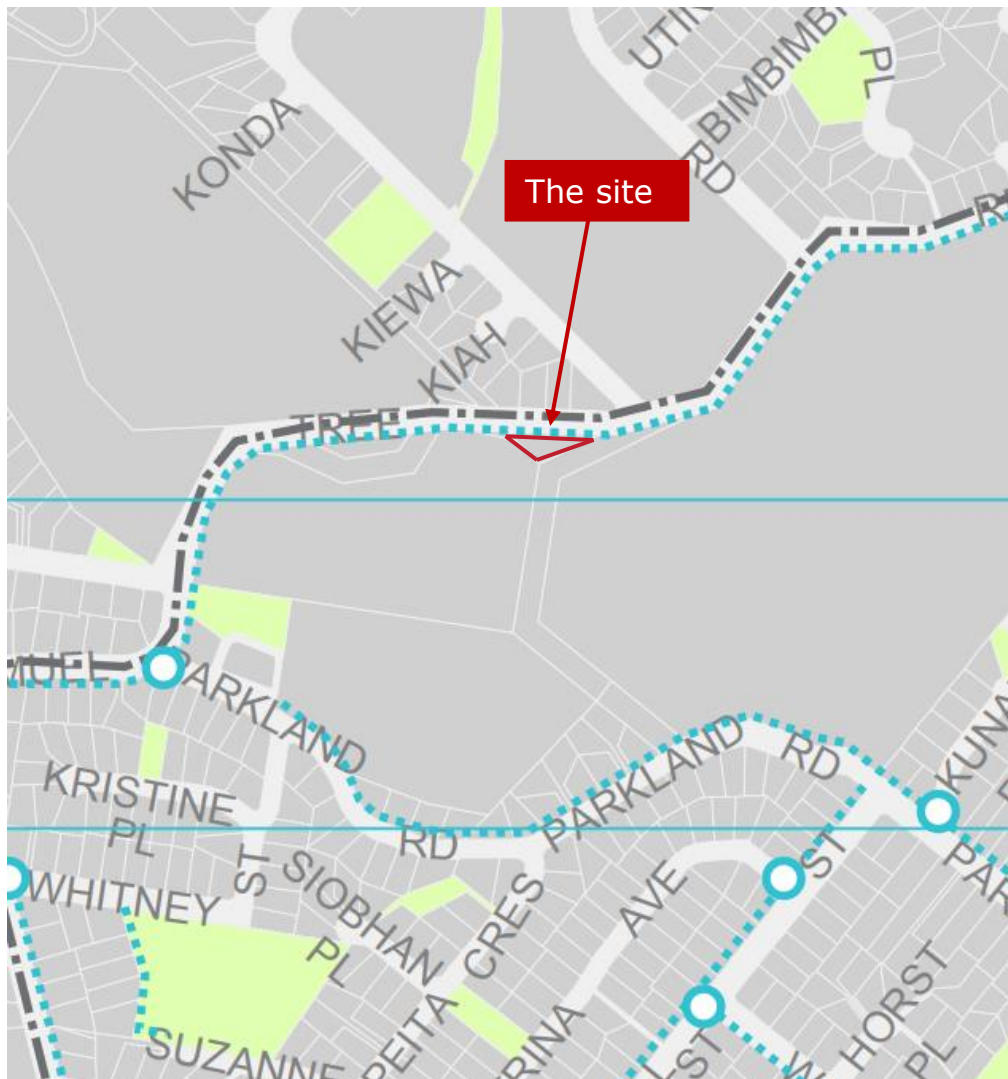
ANNEXURE 9

FLOOD RISK PLANNING MAP (EXTRACT FROM PDCP)



ANNEXURE 10

PITTWATER ACTIVE TRAVEL MAP (EXTRACT FROM BIKE PITTWATER
2016)



PITTWATER ACTIVE TRAVEL MAP

EXTRACT FROM 'BIKE PITTWATER 2016'



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Annexure 10

DRAWN: CW

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