



SUBJECT: R0001/10 - 23B Macpherson Street, Warriewood - Outcome of public exhibition of LEP amendment/Planning Proposal and draft DCP amendment

Meeting: Planning an Integrated Built Environment Committee

Date: 15 November 2010

STRATEGY: Land Use & Development

ACTION: Coordinate land use planning component of land release

PURPOSE OF REPORT

The purpose of this report is to inform Council of the outcome of the public exhibition of the LEP amendment/Planning Proposal and the draft amendment to the Pittwater 21 Development Control Plan (DCP) relevant to the planned Focal Neighbourhood Centre for Warriewood Valley.

This report also outlines the outcome of the Court hearing relevant to Development Application (DA) N0603/09 for a retail facility at 23B Macpherson Street, Warriewood. This decision vindicated Council's decision to amend the zone applying to 23B Macpherson Street, Warriewood to limit the retail component to a smaller floor space.

1.0 BACKGROUND

- 1.1 At its meeting of 19 April 2010, Council was informed of advice from Mallesons (dated 25 March 2010) pertaining to the "opportunities of inserting into the LEP that any size of 2,222 square metres of the Focal Neighbourhood Centre is prohibited", in response to a decision of Council on 21 December 2009.
- 1.2 Council staff prepared a Planning Proposal to limit the retail floor space at 23B Macpherson, Warriewood as well as a draft amendment to the Pittwater 21 DCP, and presented these to Council on 17 May 2010.

At that meeting Council resolved:

1. *That Council endorse progression of the statutory rezoning process to limit the retail floor space of any future retail facility development on 23B Macpherson Street, Warriewood, as set out in Attachment 1, subject to Point c (d) in Part 2 within the Planning Proposal (on page 193 of the Agenda) being amended to read:-*

"c. amend Schedule 11, Part 2 Zone objectives of the Warriewood Valley Urban Land Release, Zone 2(f) (Urban Purposes – Mixed Residential) to include additional objective as follows:

'(d) to provide opportunities for a Focal Neighbourhood Centre with a limited overall retail floor space area of 855m² to 2,222m² and that large individual premises exceeding 800m² (for example, large supermarkets) in Warriewood are generally not supported.';"

2. *That Council be advised of the directions issued by the Department of Planning in relation to the Gateway Determination.*

3. *That Council endorse Draft Pittwater 21 DCP amendment, as set out in Attachment 2, for statutory exhibition and consultation for at least 28 days with submissions invited from the public, in conjunction with the Planning Proposal.*
4. *That following the period of public exhibition and consideration of any submissions received, the Planning Proposal and the draft Pittwater 21 Development Control Plan amendment be reported back to Council for further consideration.*

1.3 In resolving as above the Council sought to have the following matters inserted into the LEP via the Planning Proposal:

- (a) Amend the provisions of clauses 30B (2), (2A) and (2B) within Division 7A Warriewood Valley Urban Land Release such that Council may grant consent for development that is *consistent with* rather than 'has considered' the objectives of the zones 2(f), 4(b) and 3(e) respectively;
- (b) Amend the wording of Division 7A Warriewood Valley Urban Land Release, clause 30B(4) so that it requires any consent to development of land must be consistent with rather than 'must consider' any development control plan which may apply to the land;
- (c) Amend Schedule 11, Part 2 Zone objectives of the Warriewood Valley Urban Land Release, Zone 2(f) (Urban Purposes – Mixed Residential) to include additional objective as follows:

'(d) to provide opportunities for a Focal Neighbourhood Centre with a limited overall retail floor space area of 855m² to 2,222m² and that large individual premises exceeding 800m² (for example, large supermarkets) in Warriewood are generally not supported.'
- (d) Insert the new clause after Division 7A, 30B (4) as follows:

'(5) The Council must not grant consent for development on land within Warriewood Valley for the purposes of neighbourhood shops where the total combined retail floor space area is below 855m² or above 2,222m².'
- (e) Amend the definition of 'neighbourhood shop' in Pittwater LEP 1993 Schedule 10 as follows:

"neighbourhood shop means retail premises not exceeding 800m² in retail floor area used for the purposes of selling small daily convenience goods such as foodstuffs, personal care products, newspapers and the like to provide for the day-to-day needs of people who live or work in the local area, and may include ancillary services such as a post office, bank or dry cleaning, but does not include restricted premises."

1.4 Council staff subsequently commenced the statutory rezoning process by forwarding the Planning Proposal (and other relevant documentation) to the Department of Planning seeking a Gateway Determination.

The Department of Planning issued a Gateway Determination on 21 June 2010, requiring changes to be made to the Planning Proposal document. Councillors were advised via memo dated 28 June 2010.

1.5 Council staff considered the conditions set out in the Gateway Determination to be ambiguous as there was an inconsistency between the changes required. Council officers sought clarification from the Department of Planning on the exact amendments required under the terms of the Gateway Determination to ensure that the changes did not alter Council's intention.

- 1.6 On 18 July a new Gateway Determination was issued, making clear the required changes to the LEP amendment/Planning Proposal. Councillors were notified via memo dated 29 July 2010.
- 1.7 The Gateway Determination retained Council's intention to progress an LEP amendment to impose a floorspace limitation on any retail tenancy on the site, however it agreed with only part of Council's Planning Proposal as follows:
- Not agree to (a) and (b)
 - Agree to (c) but amend it by removing the reference to 855m² to read as follows:
'(d) to provide opportunities for a focal neighbourhood centre with a limited overall retail floor space area of 2,222m² and that large individual premises exceeding 800m² (for example, large supermarkets) in Warriewood are generally not supported.'
 - Agree to (d) but amend by deleting the words *'...is below 855m²...'* to read as follows:
"(5) The Council must not grant consent for development on land within Warriewood Valley for the purposes of neighbourhood shops where the total combined retail floor space area is above 2,222m²."
 - Not agree to (e) being a changed definition of "neighbourhood shop" in the Pittwater LEP
 - Include an additional clause to read as follows:
'If a development application has been made before the commencement of this Plan in relation to land to which this Plan applies and the application has not been finally determined before that commencement, the application must be determined as if this Plan had been exhibited but had not commenced.'

2.0 PUBLIC EXHIBITION

- 2.1 The LEP amendment/Planning Proposal was amended in accordance with the Gateway Determination and placed on exhibition. The draft amendment to Control C6.15 of the Pittwater 21 DCP was exhibited concurrently, in accordance with Council's resolution of 17 May 2010.

The exhibition period commenced on Wednesday 28 July 2010 and ended on Thursday 26 August 2010 (30 days inclusive).

The following documents were also made available during the public exhibition:

- The Gateway Determination (dated 18 July 2010)
- The Council report and minute (dated 17 May 2010)
- The map relevant to Control C6.15 of the Pittwater 21 DCP
- A copy of the *Warriewood Valley Planning Framework 2010*
- A copy of the *Demographic and Facility/Service Needs Studies, Ingleside-Warriewood Urban Release Area* (Travers Morgan 1994)
- A copy of the Section 117 Local Planning Directions

- 2.2 730 notification letters were sent to landowners within a 400m radius of the subject site including the owners of Warriewood Square and the Warriewood Valley Rezoning Association.

The Department of Environment, Climate Change and Water (NSW Office of Water) were consulted in accordance with the Gateway Determination, and correspondence was sent to both the Major Projects and Assessment team and the Licensing team within the NSW Office of Water.

- 2.3 A total of 12 submissions were received. Ten submissions were from landowners in Warriewood Valley including a submission from the landowner of 23B Macpherson Street, Warriewood, a submission from the landowner's Solicitor and a petition containing 77 signatures from residents of the Warriewood Brook Retirement Village.

Two responses were also received from the NSW Office of Water.

From the issues raised in submissions, it can be deduced that eight (including the landowner and the landowner's Solicitor) oppose the LEP amendment/Planning Proposal and draft DCP amendment to impose a floorspace limitation. Three submissions of support were received, and one submission is unclear.

3.0 ISSUES RAISED IN SUBMISSIONS

- 3.1 A submission was received from the landowner of 23B Macpherson Street, Warriewood, in addition to a separate submission from the landowner's Solicitor. Both submissions opposed the LEP amendment/Planning Proposal and draft DCP amendment.

3.1.1 Comments made in submissions:

- (a) The Planning Proposal serves no practical purpose as the Pittwater LEP '*...already provides planning certainty for a focal neighbourhood centre at the site.*'
- (b) The Planning Proposal is incomplete as it does not reference '*...critical documents...*' being a report prepared for the applicant by Hill PDA in 2009.
- (c) The Planning Proposal is flawed as it fails to identify matters addressed in correspondence from Hill PDA dated 9 September 2009.
- (d) The Planning Proposal fails to have regard to the *Promoting Economic Growth and Competition Through the Planning System Review Report* prepared by the NSW Department of Planning and the Better Regulation Office, NSW Department of Premier and Cabinet.
- (e) The Planning Proposal will result in the site being commercially unviable:

'...outcome of the amendment to the LEP proposed by Council...is that a viable retail development for the site cannot succeed.'

'Attempting to limit the size of any one shop in the focal neighbourhood centre to only 800m² will have the result that a developer will not risk failure and as a consequence, will not develop the site for that purpose.'

3.1.2 Response to comments:

- (a) LEP Amendment No. 90 (R0002/09) permitted "neighbourhood shop" and "restaurant" on the site, which provides planning certainty relative to the Focal Neighbourhood Centre at the site. The current LEP amendment/Planning Proposal

and draft DCP amendment, intending to insert a maximum floor space relevant to the planned Focal Neighbourhood Centre (i.e. 855-2,222m²), as well as a maximum floor space for a single retail tenancy, provides further planning certainty for the incoming population of Warriewood Valley.

- (b) The LEP amendment/Planning Proposal does not reference the 2009 Hill PDA report, nor do Council officers consider the 2009 Hill PDA report to be a '*...more detailed and relevant...*' report or an '*...independent assessment...*', as it was commissioned by the Applicant for the purposes of assessing the "commercial viability" of the floor space proposed, as confirmed by Hill PDA in a letter to Council dated 9 September 2009.
- (c) The 2009 Hill PDA study was referred to in the Planning Proposal for LEP Amendment No. 90 (R0002/09) as it demonstrated there was still retail floor space demand that would support the establishment of a Focal Neighbourhood Centre in Warriewood Valley. It was later confirmed by Hill PDA that this report was a 'commercial viability' analysis.
- (d) This report (dated April 2010) recommends that the Department of Planning develop a SEPP that ensures there is no restriction on the number and types of retail outlets specified for a particular zone, including finalising the exhibited Draft Activity Centres Policy (exhibited April 2009).

The Draft SEPP (Competition) 2010 was placed on exhibition between 27 July 2010 and 26 August 2010. The exhibition commenced after the Gateway Determination was issued by the Department of Planning for this LEP amendment/Planning Proposal. The Department, in accepting this LEP amendment/Planning Proposal, considered and approved Council's proposal to insert a floor space provision by accepting the justification to Ministerial Direction 6.3 (Site Specific Purposes) under Section 117 of the EP&A Act.

- (e) Such a sentiment relates to the landowners desire for a supermarket to be built on the site.

3.2 Eight submissions were received from other landowners in Warriewood Valley.

A number of submissions proclaimed support for the 'DA' or the 'proposed shopping centre', being DA N0603/09 that was refused by Council on 21 June 2010, rather than making reference to the LEP amendment/Planning Proposal and the draft DCP amendment. Where this occurred, the submission was deemed to oppose the LEP amendment/Planning Proposal and draft DCP amendment.

3.2.1 Comments made in submissions:

- (a) '*...in favour of the proposed shopping centre...provided that none of the existing homes can hear any exhaust fans, extractors or generators ie are the acoustic barriers totally efficient?*'

'We think the suggested shops will be an excellent addition to 'life in the valley' and will ease traffic in congested entries and parking to Warriewood Square.'

- (b) *'Regardless of what steps Council takes to limit the size of the retail component, the document to which Council should refer (the Ingleside/Warriewood Urban Land Release Area Demographic and Facility/Service Needs Studies 1994) supports a total of 1538 sq m'*

'...against the proposal to cap the retail floor space as proposed in Council's Planning Proposal or to cap the size of the supermarket in the LEP and DCP. We believe the proposal as submitted will cater for our convenience needs. Limiting the retail floor space as proposed, particularly of the supermarket, will not provide for the level of choice and competitive prices we expect and need, and is unlikely to provide a sufficient anchor point for the other shops.'

'...the residents are overwhelmingly supportive of a good sized centre and we therefore ask Council to withdraw their current proposal to limit the retail floor space on this site.'

'We strongly object to this proposal, as it will clearly make any commercial retail shopping development unsustainable and unviable...we urge council to consider the wider Warriewood community's need for a vibrant (and viable) Focal Neighbourhood Centre, which would clearly not be achieved by limiting the floor space to an amount that would and could not attract appropriate investment or a sustainable retail and community development.'

- (c) *'The FNC should be on the Flower Power site – no one will argue with this in Warriewood.'*
- (d) *'Re: Planning Proposal and Amendment to Pittwater 21 Development Control Plan...we would like to offer our support for the construction of the above project.'*
- (e) *'If you reduce our council fee...I'll agree dis [sic] plan.'*

3.2.2 Response to comments:

- (a) Any DA for the construction of a Focal Neighbourhood Centre must have regard to noise impact.
- (b) The floor space range specified in the *Warriewood Valley Planning Framework 2010* and the Pittwater 21 DCP (and that which is proposed for inclusion in the Pittwater LEP) is the result of the *Ingleside/Warriewood Urban Land Release Area Demographic and Facility/Service Needs Studies*, which was commissioned by Council to:

'...identify the range and appropriate level of provision of retail and service facilities that will need to be provided to support the project new population within the release area...'

- (c) The strategic documents relating to the future of Warriewood Valley recognised the demand for a retail facility, which was expected to be located at the junction of Macpherson Street and Garden Street. The site specific adopted masterplans, compiled by the landowners for Sector 8 (including 23B Macpherson Street, Warriewood) and Sector 3 (including Flower Power), showed a retail facility and no retail facility respectively.
- (d) This submission was deemed to oppose the LEP amendment/Planning Proposal and draft DCP amendment.
- (e) Not a valid reason or justification.

4.0 SUBMISSION FROM THE NSW OFFICE OF WATER

The Department of Environment, Climate Change and Water (NSW Office of Water) were consulted in accordance with the Gateway Determination.

The NSW Office of Water advised no objection to the Planning Proposal and draft DCP amendment as it appears there will be no adverse impact on Fern Creek:

- *'NOW's key issues in relation to the subject site are to ensure Fern Creek is adequately protected as a stable, natural functioning system and that a 25 metre wide riparian area (measured from centreline of creek) is rehabilitated and protected adjacent to the creek. NOW requires the riparian land remains, or becomes vegetated with fully structured local native vegetation (trees, shrubs and groundcover species) at a density that occurs naturally. Any new development associated with the site (eg carparks, pedestrian pathways, water quality treatment measures, detention basins) and any Asset Protection Zone requirements should be located outside the riparian land. It would appear the proposed amendments to the LEP and DCP will not adversely affect Fern Creek or the value and function of the riparian land. The NOW does not have an issue with the proposed amendments provided this is the case.'*
- *'Please note that within riparian corridors hard stand engineering works cannot be placed. For example, car parking areas cannot be placed within the riparian corridor...The NSW Office of Water requires that planning proposals, and amendments to planning mechanisms such as Development Control Plans (DCP) or Local Environmental Plans, do not result in negative impacts on watercourses and riparian land. The current planning proposal and the current amendment to the DCP do not appear to impact on Fern Creek or the associated riparian area.'*

5.0 CORRESPONDENCE FROM THE DEPARTMENT OF PLANNING REGARDING THE HILL PDA REPORTS

The Department of Planning sought clarification from Council in response to representations made by the landowner and the landowner's Solicitor to the exhibition of the LEP amendment/Planning Proposal.

The Department of Planning requested Council to clarify why the 2006 Hill PDA report was referenced in relation to the current LEP amendment/Planning Proposal (R0001/10) rather than both the 2006 Hill PDA report and the Applicant's 2009 Hill PDA report, which was referenced in the Planning Proposal to permit "neighbourhood shop" and "restaurant" on the subject site (R0002/09).

Council responded that both the 2006 and 2009 Hill PDA reports were referenced in the LEP amendment/Planning Proposal that sought to permit "neighbourhood shop" and "restaurant" on 23B Macpherson Street, Warriewood, but that the purpose was to demonstrate the demand for retail uses in Warriewood Valley existed. Hill PDA, in its letter to Council (dated 9 September 2009), advised that the 2009 report was in fact a "commercial viability" report.

The current Planning Proposal is based on the 2006 Hill PDA report as it was commissioned by Pittwater Council for the purpose of testing whether the development of a retail facility on the subject site would be sustainable given the underlying retail demand, rather than a report on the "commercial viability" of an Applicant's development ambitions.

6.0 MINOR CHANGES PROPOSED TO EXHIBITED DOCUMENTS

6.1 Planning Proposal:

- 6.1.1 The exhibited Planning Proposal stated that Council would consult with the Department of Environment, Climate Change and Water (NSW Office of Water) in accordance with the Gateway Determination issued on 18 July 2010.

Following receipt of a submission from the NSW Office of Water, Section D2 of the Planning Proposal has been amended to incorporate their response. See Attachment 1 for the Planning Proposal.

6.2 Draft DCP amendment:

- 6.2.1 The exhibited draft amendment to control C6.15 of the Pittwater 21 DCP did not incorporate a specific requirement for 23B Macpherson Street, Warriewood to be the nominated site for the Focal Neighbourhood Centre in Warriewood Valley.

For consistency with the *Warriewood Valley Planning Framework 2010* (adopted by Council at its meeting of 3 May 2010), and certainty relevant to the anticipated Focal Neighbourhood Centre, it is recommended that control C6.15 of the Pittwater 21 DCP be amended to specify 23B Macpherson Street, Warriewood as the nominated site.

As the *Warriewood Valley Planning Framework 2010* (the relevant planning strategy for Warriewood Valley) currently specifies 23B Macpherson Street, Warriewood as the nominated site for the Focal Neighbourhood Centre, it is not considered necessary to re-exhibit the draft DCP amendment.

A copy of the draft DCP amendment is at Attachment 2 with the proposed amendment underlined.

7.0 LAND & ENVIRONMENT COURT DECISION REGARDING DA N0603/09

On 22 December 2009 a DA for a retail facility incorporating a 2,220m² supermarket, 142m² of specialty shops and a 80m² café was lodged. The new DA proposed a reduced floor space for the supermarket to that refused by the JRPP in November 2009.

On 21 June 2010 Council refused DA N0603/09, and was the subject of an appeal to the Land & Environment Court.

The hearing was held 3-6 August 2010 and a decision was handed down on 22 October 2010 (*Warriewood Properties Pty Ltd v Pittwater Council* [2010] NSWLEC 215).

Justice Sheehan's concluded that:

'...the proposed supermarket element of the development is not permissible. A supermarket of the size proposed should be located in the 3(a) or 3(c) business zones.

Accordingly, the orders of the Court are:

- 1. The appeal is dismissed.*
- 2. Development Application N0603/09 for the subdivision of 238 Macpherson Street, Warriewood into two lots and the construction of a retail facility is refused.*

3. The exhibits may be returned.'

Justice Sheehan stated that he was not satisfied that the proposed supermarket was a "neighbourhood shop", however he did not specify what exactly might constitute a "neighbourhood shop" in terms of floor space.

The judgement also made the following comments in relation to the subject site and the Focal Neighbourhood Centre:

'...the land within the 2(f) zone has been broadly identified for future residential development and associated physical and social infrastructure, but with the caveat that the form of development is to be further refined through future planning strategies.'

'...cl 30B(4) requires that, before granting any consent, consideration must be given to any DCP that applies to the land. This can be seen as imposing a more onerous obligation that the general requirement to consider a DCP under s79C(1)(a)(iii) of the EP&A Act...This effectively includes DCP 21 in any consideration of whether the proposed supermarket is properly characterised as "associated community and urban infrastructure".'

'...the imposition of a limit on the floor space (and the consequent reduction in the type and range of goods) is a practical means of ensuring compliance with the definition.'

These statements strengthen the intention to amend the Pittwater LEP and control C6.15 of the Pittwater 21 DCP for planning certainty to secure a limited scale Focal Neighbourhood Centre at 23B Macpherson Street, Warriewood.

8.0 WAY FORWARD

- 8.1 Following Council's resolution to progress the statutory process for the LEP amendment/Planning Proposal and to adopt the amended control C6.15 of the Pittwater 21 DCP, Council officers will forward the Planning Proposal (at Attachment 1) to the Department of Planning seeking that the LEP be made.
- 8.2 Once the LEP is published on the NSW Legislation website, the amendment to control C6.15 of Pittwater 21 DCP will become effective.

9.0 SUSTAINABILITY ASSESSMENT

9.1 Supporting and connecting our community (social)

- 9.1.1 Progressing the plan-making process to permit a limited scale retail facility on this site will bring to fruition development of the site as originally planned, which is supported by several studies undertaken for the Warriewood Valley Land Release and includes the relevant planning strategy for the area – the *Warriewood Valley Planning Framework 2010*.

This will not only enable the completion of Sector 8, it will also contribute to the provision for a retail facility limited to serving the daily shopping needs of, and providing a focal point/social hub for, the residents of Warriewood Valley.

9.2 Valuing and caring for our natural environment (environmental)

- 9.2.1 Progressing the plan-making process to permit a limited scale retail facility on this site will bring to fruition development of the site as originally planned, which is supported by several studies undertaken for the Warriewood Valley Release Area and includes the relevant planning strategy for the area – the *Warriewood Valley Planning Framework 2010*.

It will also contribute to limiting the size of any future development on this site, which will help to limit and understand the scale of likely impacts of such a development, including impacts on the natural environment, and economic and social impacts in the locality.

The development opportunities that will be made possible on the subject site will seek to introduce initiatives that aim to reduce our ecological footprint and protect our biodiversity.

9.3 Enhancing our working and learning (economic)

- 9.3.1 Progressing the plan-making process to permit a limited scale retail facility on this site will bring to fruition development of the site as originally planned, which is supported by several studies undertaken for the Warriewood Valley Release Area and includes the relevant planning strategy for the area – the *Warriewood Valley Planning Framework 2010*.

The development opportunities that will be made possible on the subject site will facilitate local business and employment opportunities.

9.4 Leading an effective and collaborative council (governance)

- 9.4.1 Progressing the plan-making process to permit a limited scale retail facility on this site will bring to fruition development of the site as originally planned, which is supported by several studies undertaken for the Warriewood Valley Release Area and includes the relevant planning strategy for the area – the *Warriewood Valley Planning Framework 2010*.

Community consultation has been undertaken as part of the process to date, and further participation will be undertaken at the development application stage to ensure that decision-making is collaborative, ethical, accountable, and transparent.

9.5 Integrating our built environment (infrastructure)

- 9.5.1 Progressing the plan-making process to permit a limited scale retail facility on this site will bring to fruition development of the site as originally planned, which is supported by several studies undertaken for the Warriewood Valley Release Area and includes the relevant planning strategy for the area – the *Warriewood Valley Planning Framework 2010*.

The development opportunity being provided on this site is an integral part of the Warriewood Valley Release Area as a site that is spatially central to the built form, open space areas, including the district park, and the Warriewood Valley community.

The subject site is also easily accessible by vehicles, being located on Macpherson Street, and is linked to the pedestrian and cyclist network established for the Valley. This will enhance the viability of any future retail facility on the site and will enhance the liveability and amenity of the residents in Warriewood Valley.

10.0 EXECUTIVE SUMMARY

- 10.1 The purpose of this report is to inform Council of the outcome of the public exhibition of the LEP amendment/Planning Proposal and the draft amendment to the Pittwater 21 Development Control Plan (DCP) relevant to the planned Focal Neighbourhood Centre for Warriewood Valley.

This report also outlines the outcome of the court hearing relevant to Development Application (DA) N0603/09 for a retail facility at 23B Macpherson Street, Warriewood.

- 10.2 During the public exhibition of the LEP amendment/Planning Proposal and the draft DCP amendment, a total of 12 submissions were received. Ten submissions were from landowners in Warriewood Valley including a submission from the landowner of 23B Macpherson Street, Warriewood, a submission from the landowner's Solicitor and a petition containing 77 signatures from residents of the Warriewood Brook Retirement Village.

Two responses were also received from the NSW Office of Water.

- 10.3 From the issues raised in submissions, it can be deduced that eight (including the landowner and the landowner's Solicitor) oppose the LEP amendment/Planning Proposal and draft DCP amendment to impose a floorspace limitation. Three submissions of support were received, and one submission is unclear.
- 10.4 The exhibited draft amendment to control C6.15 of the Pittwater 21 DCP did not incorporate a specific requirement for 23B Macpherson Street, Warriewood to be the nominated site for the Focal Neighbourhood Centre in Warriewood Valley.

For consistency with the *Warriewood Valley Planning Framework 2010* (adopted by Council at its meeting of 3 May 2010), and certainty relevant to the anticipated Focal Neighbourhood Centre, it is recommended that control C6.15 of the Pittwater 21 DCP be amended to specify 23B Macpherson Street, Warriewood as the nominated site.

- 10.5 With regard to the court hearing relevant to DA N0603/09, Justice Sheehan concluded that:

'...the proposed supermarket element of the development is not permissible. A supermarket of the size proposed should be located in the 3(a) or 3(c) business zones.

Accordingly, the orders of the Court are:

- 1. The appeal is dismissed.*
- 2. Development Application N0603/09 for the subdivision of 238 Macpherson Street, Warriewood into two lots and the construction of a retail facility is refused.*
- 3. The exhibits may be returned.'*

Justice Sheehan stated that he was not satisfied that the proposed supermarket was a "neighbourhood shop", however he did not specify what exactly might constitute a "neighbourhood shop" in terms of floor space.

The judgement strengthened the intention to amend the Pittwater LEP and control C6.15 of the Pittwater 21 DCP for planning certainty to secure a limited scale Focal Neighbourhood Centre at 23B Macpherson Street, Warriewood.

- 10.6 Following Council's resolution to progress the statutory process for the LEP amendment/Planning Proposal and to adopt the amended control C6.15 of the Pittwater 21 DCP, Council officers will forward the Planning Proposal (at Attachment 1) to the Department of Planning seeking that the LEP be made.

Once the LEP is published on the NSW Legislation website, the amendment to control C6.15 of Pittwater 21 DCP will become effective.

RECOMMENDATION

- 1 That Council endorse progression of the statutory rezoning process to limit the retail floor space of any future retail facility development on 23B Macpherson Street, Warriewood, as set out in Attachment 1, by forwarding the Planning Proposal to the Department of Planning for making.
- 2 That Council endorse the change made to the exhibited draft amendment to the Pittwater 21 Development Control Plan, as set out in Attachment 2, and adopt Attachment 2 as the amendment to the Pittwater 21 Development Control Plan.
- 3 That a public notice of the decision to approve the amendment to the Pittwater 21 Development Control Plan be placed in the Manly Daily in accordance to the *Environmental Planning & Assessment Regulation 2000*.
- 4 That a copy of the Pittwater 21 Development Control Plan, as amended, be forwarded to the Director-General of the Department of Planning, pursuant to Section 25AB of the *Environmental Planning & Assessment Regulation 2000*.
- 5 That the changes to the Pittwater 21 Development Control Plan be notified on the Pittwater website.
- 6 That all those who made a submission are advised of Council's decision.

Report prepared by

Kelly Wilkinson

PLANNER – LAND RELEASE

Lindsay Dyce

MANAGER, PLANNING AND ASSESSMENT



PLANNING PROPOSAL

Refine the Pittwater LEP to provide planning certainty and secure a limited scale focal neighbourhood centre at 23B Macpherson Street, Warriewood that is in keeping with the Planning Framework 2010 and Pittwater 21 DCP

PART 1 OBJECTIVES OR INTENDED OUTCOMES

Refine the Pittwater LEP 1993 to provide planning certainty and secure a limited scale Focal Neighbourhood Centre at 23B Macpherson Street, Warriewood (appendix A) that is in keeping with the *Warriewood Valley Planning Framework 2010* and Pittwater 21 DCP.

PART 2 EXPLANATION OF PROVISIONS

Amend the Pittwater LEP 1993 to provide planning certainty and secure a limited scale of the permissible built form that is in keeping with the planned Focal Neighbourhood Centre for the incoming population of Warriewood Valley that incorporates retailing for their daily local 'convenience' by including the following:

- b. amend Division 7A Warriewood Valley Urban Land Release, by inserting a new subclause after Clause 30B (4) as follows;
“(5) The Council must not grant consent for development on land within Warriewood Valley for the purposes of neighbourhood shops where the total combined retail floor space area is above 2,222m².”
- c. amend Schedule 11, Part 2 Zone objectives of the Warriewood Valley Urban Land Release, Zone 2(f) (Urban Purposes – Mixed Residential) to include additional objective as follows;
“(d) to provide opportunities for a focal neighbourhood centre with a limited overall retail floor space area of 2,222m² and that large individual premises exceeding 800m² (for example, large supermarkets) in Warriewood are generally not supported.”
- d. insert a new clause as follows:
“If a development application has been made before the commencement of this Plan in relation to land to which this Plan applies and the application has not been finally determined before that commencement, the application must be determined as if this Plan had been exhibited but had not commenced.”

PART 3 JUSTIFICATIONS

A Need for the Planning Proposal

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

On 19 April 2010, Pittwater Council resolved to pursue the options set out by Mallesons Stephen Jaques (Council's solicitors) to 'limit the footprint of any future retail area on 23B Macpherson Street, Warriewood.' (Appendix D). Council made the resolution to pursue the options to provide planning certainty and secure a scale of the permissible built form that is in keeping with the planned Focal Neighbourhood Centre for the incoming population of Warriewood Valley that incorporates retailing for daily local 'convenience'.

Community expectation is for a limited scale retail facility of up to 2,222m², which is floor space quantum that has been set out in the Warriewood Valley Planning Framework 2010 and previously the Warriewood Valley Urban Land Release Draft Planning Framework 1997. Implementing the objectives of this Planning Proposal will ensure those expectations are clear to all.

The Warriewood Valley Planning Framework 2010 is an update of the original planning strategy for the development of the Warriewood Valley Land Release Area, the Warriewood Valley Urban Land Release Draft Planning Framework 1997.

Pittwater's comprehensive Pittwater 21 DCP includes the quantum of retail floor space. The quantum was initially built into DCP no. 29 – Warriewood Valley Urban Land Release (now repealed).

The requirement for limited scale retailing facility to meet the needs of the incoming population of Warriewood Valley was first identified by The Ingleside/Warriewood Urban Land Release Area Demographic and Facility/Service Needs Studies 1994. This study was part of the suite of background environmental studies which informed the Warriewood Valley Urban Land Release Draft Planning Framework 1997.

The quantum of floor space to be included in the LEP was independently assessed by Hill PDA in 2006 (appendix E). The Hill PDA assessment concluded that there was a current demand for a supermarket in the vicinity of 800m² floor space and 371m² of floor space for specialty retailing, based on the 2001 Census, in the Release Area.

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

The subject site is part of Sector 8. The masterplan for that sector indicated the likely residential development form for that sector, including a retail development on this site. The sector masterplan was accepted by Council as part of the rezoning process and the sector was rezoned in 2004.

Like all the land in Sector 8, the subject site is zoned 2(f) (Urban Purposes – Mixed Residential) under Pittwater LEP. On 12 March 2010 Schedule 10 of Pittwater LEP 1993 was amended to permit additional uses of “neighbourhood shop” and “restaurant” on 23B Macpherson Street, Warriewood. These additional uses were defined in accordance with the relevant Standard Instrument definitions, as follows:

“neighbourhood shop means retail premises used for the purposes of selling small daily convenience goods such as foodstuffs, personal care products, newspapers and the like to provide for the day-to-day needs of people who live or work in the local area, and may include ancillary services such as a post office, bank or dry cleaning, but does not include restricted premises.

restaurant means a building or place the principal purpose of which is the provision of food or beverages to people for consumption on the premises and that may also provide takeaway meals and beverages.”

Applying a floor space quantum for neighbourhood shop will provide certainty for developers and the community alike regarding the appropriate size of individual premises and, that overall development of the Warriewood Valley Focal Neighbourhood Centre will not exceed 2,222 m².

The Planning Proposal is the best means of achieving the objectives, consistent with the *Warriewood Valley Planning Framework 2010* and Pittwater 21 DCP.

(A3) Is there a net community benefit?

The amendment to Pittwater LEP 1993 on 12 March 2010 permits neighbourhood shop and/or restaurant as the first step to achieving the Focal Neighbourhood Centre planned for the Warriewood Valley Release Area. As outlined in the current Pittwater 21 DCP control C6.15, the planned retail offering was always intended to be limited to serving the daily shopping needs of current residents and future population of the Release Area.

This proposal is a refinement of the Pittwater LEP to ensure planning consistency and certainty by applying the total combined retail floor space of 2,222m² into the LEP, clearly delineate a maximum amount of retail floor space for individual premises, maximum built form, bulk and scale that matches expectations of the local residents as well as the wider community. This planning certainty is a benefit to neighbours, developers and Council.

The Planning Proposal on the subject site is a refinement of the benefits to the current and future Warriewood Valley community. It still ensures sustainable travel and enables retail development to occur that provides/meets the daily shopping needs and convenience to residents of the Warriewood Valley Release Area as originally intended without disturbing the established retail hierarchy.

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)?

The Planning Proposal is more consistent with the objectives of the Sydney Metropolitan Strategy and the Draft North-East Sub-Regional Strategy where it promotes the location of a local centre within a residential area. The planning of the Warriewood Valley Release Area is based on the premise of a liveable and walkable community, with provision of a safe pedestrian and cycle network through the release area with connections to employment/recreation areas and the proposed Warriewood Valley Focal Neighbourhood Centre (the subject of this Planning Proposal).

Under the Centres' Hierarchy it is envisaged that the Planning Proposal may take the form of a "small village" or "neighbourhood centre" aimed at servicing the daily shopping needs and offers convenience to residents of the release area. The Planning Proposal is centrally located within the Release Area, and fronts Macpherson Street, which is the primary vehicular for and public transport route through the Release Area. A pedestrian/cycleway network exists and is able to connect to the subject site.

Under the centres' designation, the proposal should not impact on Warriewood Square and Mona Vale (identified as a "Stand Alone Shopping Centre" and "Town Centre" respectively in the Draft Sub-Regional Strategy). Limiting the size of individual premises and size of overall retail allowed will ensure that the established retail hierarchy is not disturbed.

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

As per responses to A(1) and A(2) above, the Planning Proposal is consistent with the foundations of the *Warriewood Valley Planning Framework 2010* being the underlying planning strategy for the development of the Warriewood Valley Urban Land Release Area.

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

The Planning Proposal is consistent with the State Environmental Planning Policies as set out in appendix B.

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

The Planning Proposal is inconsistent with some of the Section 117 Directions. Justification is set out in appendix C.

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 Planning Proposal relates to refining the development potential of a Focal Neighbourhood Centre at the subject land that respects the local retail hierarchy of Pittwater and is consistent with the 2010 Planning Framework and Pittwater 21 DCP by inserting the quantum of floor space into the LEP.

The subject property contains a section of Fern Creek, which links to Warriewood Wetlands providing a corridor link between the escarpment and the valley. Nonetheless, the site does not contain any critical habitat or threatened species, populations or ecological communities, or their habitats under the Threatened Species Conservation Act.

The property was the subject of studies in 2002 when it was rezoned Non-Urban to 2(f). The current Planning Proposal will rely on this study, in regard to impact on other ecological communities or their habitats, given that this Planning Proposal is requesting a refinement of a permitted use on this site.

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

The likely environmental effects resulting from the Planning Proposal relate to traffic management, water management and potential impact on the amenity of adjoining residents. There are specific controls applying to the subject property in relation to traffic management and water management which forms part of the sector development, of which this site forms part thereof, and are integral to any development proposal in the Warriewood Valley Release Area (some of which are part of the Section 94 Plan for Warriewood Valley).

The Planning Proposal will, when lodged as a DA, require assessment under Section 79C of the *Environmental Planning & Assessment Act 1979*.

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

As reiterated in A(1) above, a suite of studies undertaken in 1994 formed the basis of the Warriewood Valley Planning Framework 2010, upon which the Warriewood Valley Release Area was planned and developed:

- The supporting Ingleside/Warriewood Urban Land Release Area Demographic and Facility/ Service Needs Studies identified the potential need for retailing to be provided (at a limited scale) that provides retail convenience for the incoming population.

- The Warriewood Valley Planning Framework 2010 provided the foundations for the preferred location for a retail centre that caters for and meets the needs of the incoming residential population of the Warriewood Valley release area.
- A provision is in Pittwater 21 DCP, regarding the development of the Warriewood Valley Focal Neighbourhood Centre (control C6.15).

Given the period elapsed since the initial studies, Council commissioned Hill PDA in 2006 to provide an independent assessment to determine whether there is demand for a neighbourhood shopping centre in the release area, in particular locating it on the subject site. The 2006 Hill PDA assessment, based on the 2001 Census, indicated there is current demand for a supermarket of 800m² floor space and 371m² of floor space for specialty retailing. The specialty retailing cited includes a bakery, restaurant/café, delicatessen and possibly a clothing outlet that would appeal to the local market and be able to sustain a high level of turnover.

D State and Commonwealth interests

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

The Planning Proposal is for a refinement of a permitted development type on the site. This site is on Macpherson Street, which is the main vehicular and public transport route for Warriewood Valley.

Public infrastructure is provided as part of the development of the Warriewood Valley Release Area, of which this site is in.

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

The Department of Environment, Climate Change and Water (NSW Office of Water) was consulted in accordance with the Gateway Determination.

The submission response advised the NSW Office of Water had no objection to the Planning Proposal and draft DCP amendment as it appears there will be no adverse impact on Fern Creek:

'NOW's key issues in relation to the subject site are to ensure Fern Creek is adequately protected as a stable, natural functioning system and that a 25 metre wide riparian area (measured from centreline of creek) is rehabilitated and protected adjacent to the creek. NOW requires the riparian land remains, or becomes vegetated with fully structured local native vegetation (trees, shrubs and groundcover species) at a density that occurs naturally.'

Any new development associated with the site (eg carparks, pedestrian pathways, water quality treatment measures, detention basins) and any Asset Protection Zone requirements should be located outside the riparian land. It would appear the proposed amendments to the LEP and DCP will not adversely affect Fern Creek or the value and function of the riparian land. The NOW does not have an issue with the proposed amendments provided this is the case.'

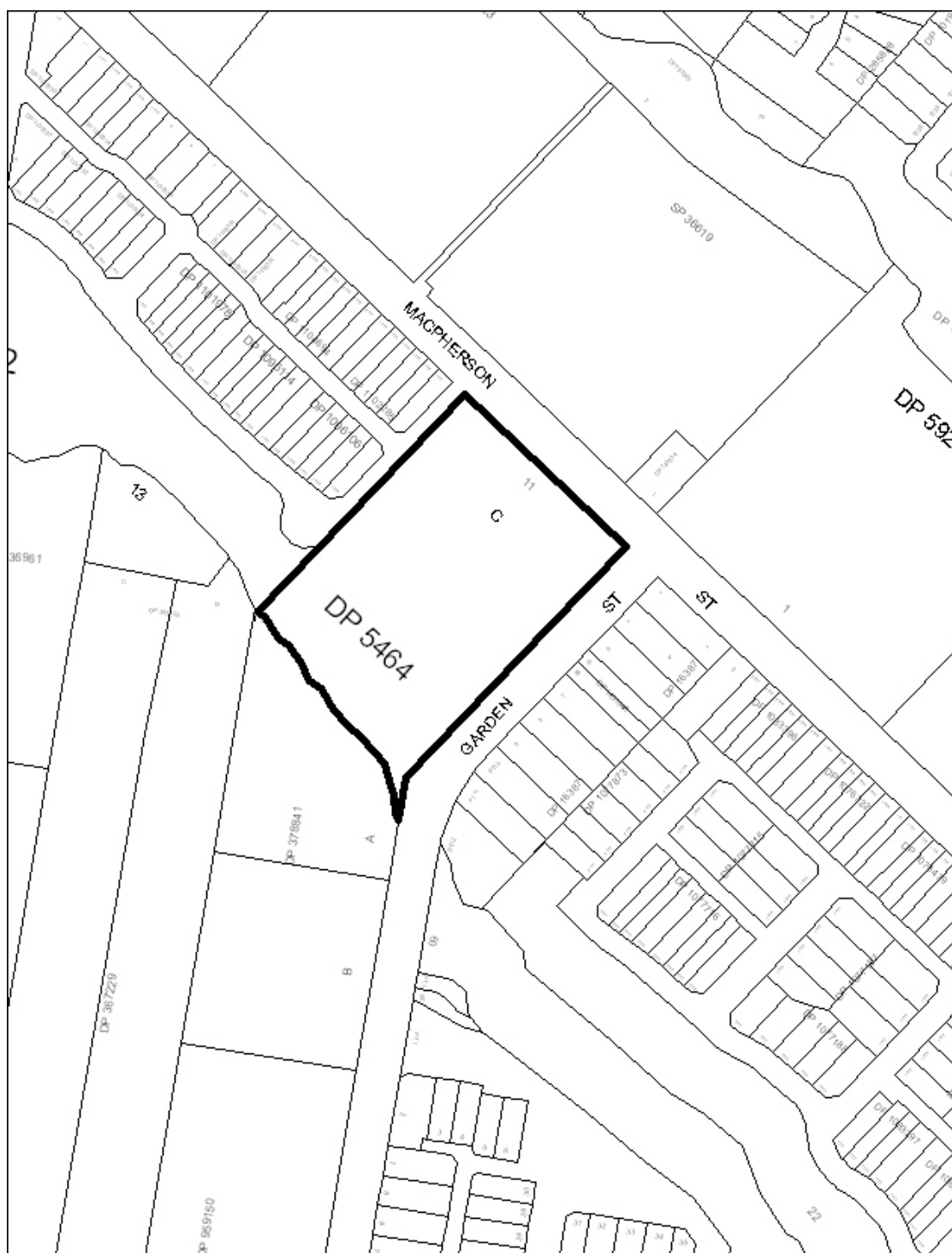
'Please note that within riparian corridors hard stand engineering works cannot be placed. For example, car parking areas cannot be placed within the riparian corridor...The NSW Office of Water requires that planning proposals, and amendments to planning mechanisms such as Development Control Plans (DCP) or Local Environmental Plans, do not result in negative impacts on watercourses and riparian land. The current planning proposal and the current amendment to the DCP do not appear to impact on Fern Creek or the associated riparian area.'

PART 4 COMMUNITY CONSULTATION

The Gateway Determination (issued on 18 July 2010) and the Department of Planning's *A guide to preparing local environmental plans* (2009) requires:

- The Gateway Determination, the Planning Proposal and any studies relied upon by the Planning Proposal to be made publicly available for a period of 14 days
- Written notification to adjoining property owners
- Notification in a newspaper that circulates in the area affected by the Planning Proposal
- Notification on the website of the Relevant Planning Authority (RPA)

At its meeting of 17 May 2010, Council resolved to amend Control C6.15 of the Pittwater 21 Development Control Plan concurrent to the Planning Proposal. Council resolved to exhibit the proposed amendment to the Pittwater 21 DCP for at least 28 days in accordance with the *Environmental Planning and Assessment Regulations 2000*. Accordingly the public exhibition of the Planning Proposal and the draft Pittwater 21 DCP will be exhibited for a period of 28 days.



Checklist - Consideration of State Environmental Planning Policies

The following SEPP's 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 | YES | YES | |
| SEPP No 21 – Caravan Parks | NO | NOT APPLICABLE | |
| SEPP No 22 – Shops and Commercial Premises | No | NOT APPLICABLE | |
| SEPP No 26 – Littoral Rainforests | NO | NOT APPLICABLE | |
| SEPP No 30 – Intensive Agriculture | NO | NOT APPLICABLE | |
| SEPP No 32 – Urban Consolidation | NO | NOT APPLICABLE | |
| SEPP No 33 – Hazardous and Offensive Development | NO | NOT APPLICABLE | |
| SEPP No 44 – Koala Habitat Protection | NO | NOT APPLICABLE | |
| SEPP No 50 – Canal Estate Development | NO | NOT APPLICABLE | |
| SEPP No 55 – Remediation of Land | NO | NOT APPLICABLE | |
| SEPP No 62 – Sustainable Aquaculture | NO | NOT APPLICABLE | |
| SEPP No 64 – Advertising and Signage | YES | YES | |
| SEPP No 65 – Design Quality of | YES | YES | |

| Title of State Environmental Planning Policy (SEPP) | Applicable | Consistent | Reason for inconsistency |
|---|-------------------|-------------------|---------------------------------|
| Residential Flat Development | | | |
| SEPP No 70 – Affordable Housing (Revised Schemes) | NO | NOT APPLICABLE | |
| SEPP (Affordable Rental Housing) 2009 | YES | YES | |
| SEPP (Building Sustainability Index: BASIX) 2004 | YES | YES | |
| SEPP (Exempt and Complying Development Codes) 2008 | YES | YES | |
| SEPP (Housing for Seniors or People with a Disability) 2004 | YES | YES | |
| SEPP (Infrastructure) 2007 | YES | YES | |
| SEPP (Major Development) 2005 | YES | YES | |
| SEPP (Mining, Petroleum Production and Extractive Industries) 2007 | YES | YES | |
| SEPP (Temporary Structures and Places of Public Entertainment) 2007 | YES | YES | |
| Exhibited Draft SEPP (Competition) 2010 | YES | YES | |

The following is a list of the deemed SEPP's (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 | NOT APPLICABLE | |

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 | No | n/a |
| 1.3 | Mining, Petroleum Production and Extractive Industries | No | n/a |
| 1.4 | Oyster Aquaculture | No | n/a |
| 1.5 | Rural Lands | No | n/a |

Justification - NIL

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 | Yes – No Change |
| 2.4 | Recreation Vehicle Areas | Yes | Yes |

Justification for inconsistency to 2.1 and 2.3

- 2.1 The draft LEP relates to a specific site identified in the Warriewood Valley Planning Framework 2010 as being the preferred site for a limited scale retail development in the Release Area. The Planning Framework is the background document upon which the Warriewood Valley Release Area has been developed. The zoning of the site is not being changed. The draft LEP is considered to be of minor significance.

3 Housing, Infrastructure and Urban Development

| | Direction | Applicable | Consistent |
|-----|---|------------|-----------------|
| 3.1 | Residential Zones | Yes | Yes – No Change |
| 3.2 | Caravan Parks and Manufactured Home Estates | Yes | No |
| 3.3 | Home Occupations | Yes | Yes – No Change |
| 3.4 | Integrating Land Use and Transport | Yes | Yes |
| 3.5 | Development near Licensed Aerodromes | Yes | Yes |

Justification for inconsistency to 3.2

- 3.2 The draft LEP for the subject land seeks to provide planning certainty and secure the original objective for a focal neighbourhood centre that is in keeping with the local retail hierarchy of Pittwater and is consistent with the Warriewood Valley Planning Framework 2010 and Pittwater 21 DCP. The subject site was identified in the Warriewood Valley Urban Land Release Area Planning Framework as the preferred site for a limited scale retail development in the Release Area.

The Planning Framework is the background document upon which the Warriewood Valley Release Area has been developed. The draft LEP is considered to be of minor significance.

4 Hazard and Risk

| | Direction | Applicable | Consistent |
|-----|-----------------------------------|------------|-----------------|
| 4.1 | Acid Sulphate Soils | Yes | Yes – No Change |
| 4.2 | Mine Subsidence and Unstable Land | No | n/a |
| 4.3 | Flood Prone Land | Yes | No |
| 4.4 | Planning For Bushfire Protection | No | n/a |

Justification for inconsistency to 4.3

- 4.3 The subject site is already zoned 2(f) (Urban Purposes – Mixed Residential) under Pittwater LEP. The draft LEP seeks to provide planning certainty and secure the original objective for a focal neighbourhood centre that is in keeping with the local retail hierarchy of Pittwater and is consistent with the Warriewood Valley Planning Framework 2010 (formerly Warriewood Valley Draft Planning Framework 1997) and Pittwater 21 DCP. The site was identified in the Warriewood Valley Planning Framework as the preferred site for a limited scale retail development in the Release Area. Additionally, the draft LEP is considered to be of minor significance.

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 - 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 – No Change |
| 6.3 | Site Specific Purposes | Yes | No |

Justification for inconsistency to 6.3

- 6.3 This proposal is a refinement of the Pittwater LEP to ensure planning consistency and certainty following the recent development applications and rezoning of the site. The amendments to the Pittwater LEP will apply a total combined retail floor space of 2,222m², clearly delineate a maximum amount retail floor space for individual premises not to exceed 800m², maximise built form, bulk and scale that will regularise community expectation and future development potential.

The amendment will ensure that future development is in keeping with the local established retail hierarchy of Pittwater and is consistent with suit of background environmental studies which informed the Warriewood Valley Planning Framework 2010 and Pittwater 21 DCP. This planning certainty is a benefit to the site neighbours, developers and Council.

7 Metropolitan Planning

| | Direction | Applicable | Consistent |
|-----|---|-------------------|-------------------|
| 7.1 | Implementation of the Metropolitan Strategy | Yes | Yes |

Justification - NIL

MALLESONS STEPHEN JAQUES

Attention Mr Steve Evans

25 March 2010

The General Manager
Pittwater Council
PO Box 882
MONA VALE NSW 1660

Dear Sir

Advice - 23B MacPherson Street, Warriewood

We refer to your letter of instruction dated 15 February 2010.

You have sought our advice on whether, having regard to Direction 6.3 'Site Specific Provisions' of the s117 Directions, Council can include a provision in the Draft Pittwater LEP Amendment adopted by Council in November 2009 ("**Amending LEP**") that has the effect of prohibiting retail development on the site that exceeds a floorspace of 2,222m².

We note that since we received instructions the Amending LEP came into force on 5 March 2010. Accordingly, for the purposes of this advice, we will refer to the Amending LEP as the "**Pittwater LEP (as amended)**".

SUMMARY

As the Amending LEP came into force on 5 March 2010, the capacity to include a development standard to limit retail floor space on the site as part of the Amending LEP (as contemplated in the Standard Instrument) is no longer an option and any amendment to the Pittwater LEP (as amended) will only be relevant for future development applications.

Therefore, the Council's options for the current proposed development for the site are limited as any amendments to either the Pittwater LEP (as amended) or the Pittwater 21 DCP are unlikely to be given much weight by the Court on appeal as they were not publicly exhibited before the current proposal was lodged with the Council. That being said, the best option for Council for the current application would be to amend the Pittwater 21 DCP to make it clear that only small shops and not large supermarkets are intended for the site.

ADVICE - Options to Reduce Retail Floorspace on the Site

Whilst the inclusion of a development standard in the Amending LEP would have provided some protection against a development on the site exceeding a specified retail floor space (subject to any SEPP 1 Objection that is considered well founded), the inclusion of such a clause in any future LEP depends on the consent of the Minister. Accordingly, even if the Amending LEP was still before the Minister for gazettal, the consent of the Minister appears unlikely to have been forthcoming given

MA

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the Minister's insistence on the adherence to the Standard Instrument and Section 117 Directions, particularly Direction 6.3 which discourages unnecessarily site specific planning controls.

Direction 6.3 applies "*when a Council prepares a draft LEP to allow a particular development to be carried out*". That is the case here. The relevant part of the Direction in the present case is paragraph 4(c) which deals with situations where development is made permissible by allowing "*that land use on the relevant land without imposing any development standards or requirements in addition to those already contained in the principal environmental planning instrument being amended*". Direction 6.3 allows a draft LEP to be inconsistent with the direction only if the Council can satisfy the Director-General of the Department of Planning ("DoP") that the inconsistent provisions are of "minor significance".

We note from the Council's Report that the Council submitted a formal request to the Department of Planning in respect of a floor space standard for the site and was advised by letter dated 19 January 2010 that as a consequence of direction 6.3 "*it is unlikely that the Department of Planning will support the inclusion of a floor space restriction for 23B Macpherson Street in the Pittwater LEP. It is appropriate to retain such a standard in a Development Control Plan.*" Given that response, the Council did not seek to persuade the Department that the departure from the direction was of "minor significance".

The Council should also consider amending the definition of "*neighbourhood shop*" in the Pittwater LEP (as amended) so that the quantum of retail floor space forms part of that definition. This will have the effect of prohibiting large scale supermarkets and will not be subject to a SEPP 1 Objection as it is an outright prohibition. However, this will again require the consent of the Minister who may be reluctant to allow this amendment as it will not comply with the definition in the Standard Instrument. Unless and until the Department can be persuaded to allow a further LEP amendment, there is no way that the Council can mandate an absolute limit.

Other options available to Council will not have the effect of prohibiting retail development that exceeds a particular floor space. At most, they will have the effect on determining whether a proposal is acceptable on the merits. Further, any amendments to either the Pittwater LEP (as amended) or the Pittwater 21 DCP are unlikely to be given much weight by the Court on appeal as they were not publicly exhibited before the current proposal was lodged with the Council. The other options include:

1. Amending Pittwater 21 DCP so that it is clear that only small shops and not large supermarkets are intended for the site. This is the best method for the purposes of the current application. However, having regard to the decision of *Stockland Development Pty Ltd v Manly Council* (2004) 136 LGERA 254, the Court (on appeal) is likely to give this document less or diminished weight as it would be placed on public exhibition after the current application has been lodged with the Council, and after the Pittwater LEP (as amended) came into force allowing "*neighbourhood shops*" on the site, a clause which could be interpreted as facilitating the development.
2. Further amending the Pittwater LEP (as amended) in the following manner:
 - (a) amending Clause 30B(2) so that it requires a development to be **consistent** with the objectives of the 2(f) zone (to control the exercise of the power conferred on the

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MALLESON'S STEPHEN JAQUES

Pittwater Council

25 March 2010

Council by the Pittwater LEP (as amended) and *Environmental Planning and Assessment Act, 1979* to grant development consent to a development application);

- (b) amending Clause 30B(4) so that it requires a development to be consistent with the provisions of the Pittwater 21 DCP - currently all that clause 30B(4) requires is a mandatory consideration of its terms; and
 - (c) amending the specific objectives of the 2(f) zone to include a reference to the acceptable proposed retail floor area and that large retail areas (for example, large supermarkets) in Warriewood are generally not supported.
- 3 Placing a public positive covenant on the title of the site. We note that the Council discounted this option because clause 39(1) of the Pittwater LEP (as amended) suspends any covenants that impose a restriction on the carrying out of development for the purpose of enabling development to be carried out in accordance with the LEP. However, clause 39(2) of the Pittwater LEP (as amended) provides that a positive covenant for the benefit of the Council is not affected by clause 39(1). We agree however that the owner of the land will need to consent to the imposition of this covenant on title and for that reason we do not consider this to be a realistic option.

Please contact us if you wish to discuss any aspect of this advice.

Yours sincerely



per Debra Townsend
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WARRIEWOOD SECTOR 8 – MASTERPLAN CNR GARDEN AND MACPHERSON STREET

Prepared for
Pittwater Council
DRAFT
September 2006

SYDNEY CANBERRA



WARRIEWOOD SECTOR 8 – MASTERPLAN CNR GARDEN AND MACPHERSON STREET

Prepared for
Pittwater Council
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September 2006

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QUALITY ASSURANCE

This document is for discussion purposes only unless signed and dated by a Principal of Hill PDA.

REVIEWED BY

.....
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REPORT DETAILS

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1. INTRODUCTION

Hill PDA were commissioned by Pittwater City Council to provide an independent economic and planning assessment of a proposal for a neighbourhood shopping centre located on the cnr of Garden and Macpherson Street, in Sector 8 as part of the Warriewood Valley Urban Release Area.

It is understood that Council planning strategy proposes that a portion of the site be retained for a retail use, however, the development control allows the submission of a development application for residential purposes and a retail centre to be developed in adjacent sectors within the Warriewood Valley. Our assessment will form part of Council's decision making process in order to determine the viability of the site as a neighbourhood shopping centre.

Under the directions of the Draft Warriewood Valley Urban Land Release Planning Framework Council are requesting that the subject site owned by Mirvac be developed as a neighbourhood shopping centre to provide a focal point for the local community. As part of Mirvac's economic feasibility of the site, they engaged Leyshon Consulting to undertake a demand assessment for a neighbourhood retail facility within the Warriewood Valley. The report concluded that there would be insufficient demand to warrant the development of a neighbourhood shopping centre on the site due to the existing level of retail offer at Warriewood Centro and Mona Vale. Hence Mirvac have objected to Council's directions and suggested that the more appropriate site would be the Flower Power site located in sector 3, which would enable the subject site to be developed purely for residential purposes.

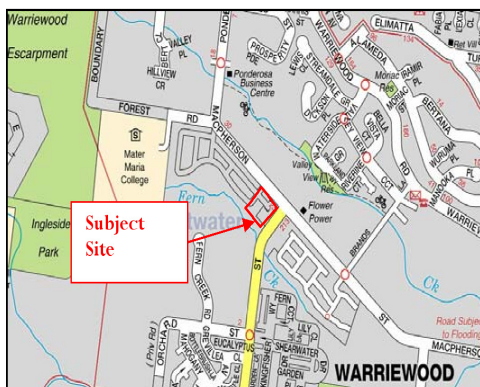
Our study endeavours to critique the Leyshon's economic assessment of the proposed centre and determine through our own expenditure modelling whether there is sufficient demand for a retail shopping centre in the Valley. In addition to our economic assessment we have also reviewed the existing planning strategy and development controls applicable to the site to ascertain the suitability of the site for a neighbourhood shopping centre. Research has also been undertaken into case examples of existing neighbourhood shopping centres that are trading successfully and are located within close proximity to the proposed site.

2. THE PROPOSAL

2.1 The Site

The Warriewood Valley Urban Release Land comprises a total of 1,100 hectares and is located with the western region of the Pittwater Local Government Area. The Release Land is surrounded by the urban areas of Mona Vale to the east, Elanora Heights to the south-east, Garigal National Park to the south-west and Ku-ring-gai Chase National Park to the west and north-west.

The site located within the north-east section of Sector 8 as designated by the Warriewood Valley Urban Release Land DCP No.29. Sector 8 comprises 13.1ha of land and is bound by Macpherson Street to the north, Garden Street to the east and Sector 26, known as the escarpment to the west (reserved for conservation purposes). To the south of the site is buffered by vegetation and Fern Creek. The site that is the subject of this report (hereafter referred to as 'the site') comprises the north-east portion of sector 8 and is bound by Macpherson Street to the north, Garden Street to the east, Fern Creek to the south and the remaining portion of Sector 8 to the west.



The site has an approximate area of 1.45ha cleared of vegetation and level. Surrounding development is predominately 2 storey attached terraced style residential dwellings with the majority having been added to the market over the past five years. The entire Warriewood Valley is a master plan precinct providing parks, playgrounds, cycleways/walkways, creekline restoration.

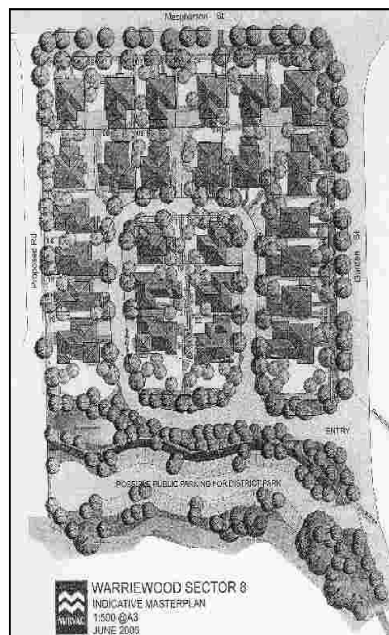
The site is served by the 185 and L85 buses that run along Garden Road and Macpherson Street with a bus stop directly outside the north-east corner of the site. The 185 bus route operates between Mona Vale Depot and Sydney City (Wynyard – York Street) generally on a half hour frequency.



2.2 Indicative Mirvac Masterplan

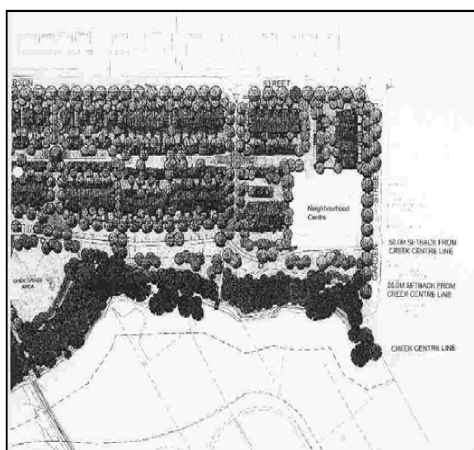
Mirvac as site owners have prepared an indicative Masterplan for the re-development of 1.45ha (14,500sqm) of the 13.1ha sector 8 precinct. The Mirvac Masterplan comprises 26 detached residential dwellings on plots ranging between approximately 260sqm and 470sqm. The masterplan does not include any non residential uses i.e. retail floorspace or community facilities.

The Mirvac Masterplan shows indicative landscaping and road layouts and includes an area of designated public parking along the creekline corridor. Vehicle access is proposed from Garden Street. Mirvac have rationalised the provision of the car parking area to facilitate the use of the adjacent district park.



2.3 Indicative Pittwater Council Masterplan

We have been provided with an indicative site plan by Pittwater Council showing the siting of the proposed Neighbourhood Centre. The centre is situated to the south-east of the subject site with a primary street frontage to Garden Street. We suggest that any future retail development that occurs on the site should be sited with maximum exposure to the Macpherson Street frontage to capture passing vehicular traffic through Warriewood Valley. Additionally, design elements may include shop-top housing to three storeys.



3. EXISTING CENTRES AND SUPPLY OF RETAIL SPACE

This section identifies the key competitive centres within the Northern Beaches Study Area, specifically detailing the provision of retail space within these centres.

3.1 Centro Warriewood – Town Centre

Warriewood is categorised as a town centre and is approximately 22km North East of Sydney CBD and 1.9km to the south-east of the Mirvac subject site, cnr of Macpherson and Garden street, Warriewood.

The centre was refurbished and extended in 1999. It is the only centre servicing the northern region of the Peninsula area with a strong local profile. It has experienced strong sales growth due to the strong retail mix.



Warriewood Shopping Centre is a single level centre with a high proportion of national retailers, including the only Kmart in the peninsula. Anchor tenants include:

| | |
|------------------------|----------|
| Kmart | 8,076sqm |
| Coles supermarket | 3,760sqm |
| Woolworths Supermarket | 2,155sqm |

Major tenants consume 13,991sqm of the total floor area of 22,091sqm. In addition there are 91 speciality shops (7,687sqm) a Child Care Centre (273sqm) and 3 office tenants on 1 level. The total centre area is 22,091sqm situated on a site area of 6.24ha. As at 2004 the centres turnover was approximately \$150 million (\$2004).

3.2 Mona Vale – Town Centre

Mona Vale is classified as a town centre under the Metropolitan Strategy and is located approximately 24km north east of Sydney CBD, 1.3km from the site. The established suburb comprises mixed uses such as residential and industrial areas, located between Pittwater Road and Barrenjoey Road. A commercial area exists at the junction of Pittwater Road, Barrenjoey Road and Mona Vale Road. The retail centre within Mona Vale comprises 2 enclosed shopping malls together with strip retail, including a stand alone Woolworths on the corner of Park and Keenan Streets.

Mona Vale includes 28,669sqm of retail space, with a vacancy of 1,353sqm of shop front premises. The total commercial space at the Mona vale shopping centre is approximately 7,368sqm.

Pittwater Place Shopping Centre

Park Street, Mona Vale

Pittwater Place Shopping Centre is located approximately 50 metres off the main district thoroughfare, Barrenjoey Road between Park and Darley Streets. It is the newest shopping centre on Sydney's Northern Beaches, opening in July 2004. It is located approximately 1.8km north-east of the subject site.

This village shopping centre incorporates a Coles and a Woolworth's supermarket, 40 speciality shops, a Fitness First gymnasium, first floor commercial accommodation and one level of under-cover car parking. The total shopping centre retail floorspace is 7,185sqm, and consists of another 3,500sqm of office space with 17 commercial suites being located on the first floor above the shopping centre.



Pittwater Place Shopping Centre

4. PROPOSED RETAIL SPACE

4.1 Pittwater LGA

Hill PDA has conducted research, in regards to the quantum of mooted retail projects in the pipeline. The following table summarises details relating to proposed retail floor space in the Pittwater LGA.

Table 1 - Mooted Retail Projects –Pittwater LGA

| Project Name | Project Address | Type | Floor Area of Retail (sqm) | Completion Date | Project Details | Status |
|--|---------------------------------------|---------------------|----------------------------|-----------------|--|-----------|
| Warriewood square shopping centre- centro Warriewood | 12 Jackson Road, Warriewood | Existing centro | 193 | 1/4/2006 | Alteration and additions to the existing centre and retail fit out. | Commenced |
| Barrenjoey Road shop top housing development | 313 Barrenjoey Road, Newport | | 235 | 30/12/2006 | Repair of existing ground floor retail space. | Possible |
| Barrenjoey Road Mixed Development | 377-383 Barrenjoey Rd, Newport | 4 shops | 1,292 | 1/3/2007 | 3 shops, 79.8 sq m, 80.3 sq m, 82.3 sq m and supermarket 1,050 sq m. Basement car park & associated landscaping. | Firm |
| Mona Vale Marketplace Dan Murphy's | 25 Park Street | 1 Shop + Car park | 1,444 | 1/3/2007 | Construction of a retail liquor store and a car park. | Deferred |
| Barrenjoey Road shop top housing development | 358 Barrenjoey Road, Newport | Ground floor retail | 180 | 30/3/2007 | Construction of ground floor retail with residential development above. | Possible |
| Newport Plaza | 343-345 Barrenjoey Road, Newport | | 1,343 | 1/5/2007 | Demolition of existing structure and construction of an retail area of approximately 1,348sqm. | Possible |
| Pittwater Road and Berry Ave mixed use development | 1442 Pittwater Road, Narrabeen | 10 shops | 1,400 | 30/1/2008 | Construction of a shop front development with residential above. Ten shops will be constructed | Deferred |
| Park Street retail development | 12-14 Park Street, Mona Vale | | 768 | 24/2/2008 | The refurbishment of existing retail spaces along Park street, and construction of a new retail tenancy. | Possible |
| Barrenjoey mixed development | 1112-1116 Barrenjoey Road, Palm Beach | 5 retail units | 377 | 25/2/2008 | Demolition of existing structure and construction of five retail tenancies | Possible |

Source: Reed construction.

- Firm - Project is going ahead, but hasn't not commencement development.
- Deferred - where a contact tells us that the project has stalled for an unusual amount of time. The period of time may vary and can include a couple of months at tender stage to years of planning stage. Can be deferred indefinitely, which is almost like abandoned but where the contact is not confident to say that the project will not reappear.
- Possible - The project may go ahead.

The table above demonstrates that there is a total of 7,232sqm of mooted retail developments from within the Pittwater LGA. Although these centres are located within the Pittwater LGA they do not directly compete with the site as they are all located outside of the trade area. A similar type of development that could be used as a model for development is the project located at Barrenjoey Road Newport, which comprises of a supermarket (1,050sqm) and 3 shops totalling 242sqm.

5. RELEVANT STATUTORY PLANNING POLICIES

Section 79c of the Environmental Planning and Assessment Act (as amended) sets out the relevant matters for consideration when assessing the acceptability of a planning proposal. In accordance with the act and for the purposes of this report, the following documents are considered material considerations when assessing development proposals for the site:

1. Pittwater Local Environment Plan (LEP) 1993 (as amended)
2. Warriewood Valley Urban Land Release Development Control Plan No.29 (WV DCP 29) July 2001
3. Warriewood Valley Section 94 Contributions Plan July 2006
4. Pittwater 21 draft LEP
5. Draft Warriewood Valley Land Release Planning Framework

5.1 Pittwater LEP 1993 (as amended)

Pittwater LEP 1993 outlines planning policy relevant to the site within Part 3 Special Provisions, Division 7A Warriewood Valley Urban Land Release. Clauses 30a and 30b of Division 7A identify three key objectives for the Warriewood Valley Urban Land Release area. In summary the three objectives seek development that:

- a. accords with the relevant planning strategy for the area;
- b. has regard for any applicable DCP; and
- c. that secures greater housing diversity and a wider housing choice in areas with adequate physical and social infrastructure as identified by relevant planning strategy's.

Clause 30c of Division 7A identifies the total number of dwellings to be erected in each sector of the Warriewood Valley Urban Release Land. A maximum of 159 dwellings has been identified as acceptable for Sector 8.

5.2 Warriewood Valley Urban Release Land DCP No. 29 (2001)

The policy objectives outlined in the Pittwater LEP 1993 for the site are discussed in greater detail within the Warriewood Valley DCP (WV DCP) 2001. The policies and objectives set out by the WV DCP have been based on ideas and concepts explored and developed through a series of planning strategies, frameworks and consultation exercises undertaken since the early 1990's and pursuant to the 1993 Pittwater LEP.

Particularly relevant to Hill PDA's brief is the Council's designation of the site, within the WV DCP and associated Planning Framework, as a site with high development capability. Sector 8 is considered suitable for medium density residential development with a maximum development yield of 263 dwellings. The landscaped buffer strip has been identified as necessary along Fern Creek to minimise any adverse environmental impact and to provide native flora and fauna habitat.

The WV DCP identifies either sector 3, 8 or 11 as ideally located to provide a Focal Neighbourhood Centre. The three sectors meet at the junction of Macpherson and Garden Streets and could individually or jointly provide between 855sqm to 2,222sqm retail floorspace to create a neighbourhood retail centre. The WV DCP recognises however that a centre of a greater scale would not be appropriate given the proximity of larger established centres in Mona Vale and Warriewood Square.

A Focal Neighbourhood Centre shared between the three sites has been identified as necessary in order to meet a number of the objectives of the WV DCP including:

- *To meet the local 'convenience' retail needs of the incoming population;*
- *To establish a focal point in the Valley Linking local services and facilities, including local retailing, public open space, public transport and community facilities;*
- *To reduce dependency on the car and encourage other modes of transport;*
- *To establish a sense of community and Place.*

WV DCP 2001 (Section 3.10, p.g28)

The WV DCP also recognises that to facilitate the neighbourhood retail objective, shop top housing may be an acceptable form of development on the applicable section of the site.

6. IMPLICATIONS OF THE MIRVAC MASTERPLAN TO PLANNING POLICY

As outlined in section 6 above the north-east corner of the site (where McPherson and Garden Street meet) has been identified by the Council as a potential location for a Focal Neighbourhood Centre (Section 3.10 of the WV DCP No.29). Three sectors meet at the junction (sector 3, 8 and 11) and as such the policy does not prescribe which of the three sectors is required to provide floorspace to facilitate a neighbourhood centre nor does it preclude the provision of the centre on any of the three sectors or in part across each of the three sectors.

Despite this policy objective the indicative Mirvac Masterplan comprises entirely low density residential development without scope for potential retail or community floorspace. Mirvac contend that a neighbourhood retail centre on the site would not be sustainable in commercial terms. Mirvac advises that a potential alternative location would be on the 'Flower Power Site' in sector 3.

In planning policy terms the entirely residential Mirvac Masterplan would not be contrary to policy should a neighbourhood centre be secured within one of the two alternative sectors (i.e. 3 or 11) at the junction of Macpherson and Garden Streets. As such Sector 11 has been subject to re-development and does not include any retail floorspace thereby setting a planning precedent. As a result, should retail not be provided on the Mirvac site, the onus would fall entirely on the re-development of Sector 3.

In saying this however the intention of the policy is to provide a sustainable, attractive and well serviced community focal point. The provision of an element of retail on the Mirvac site would have planning benefits whereby it would establish the concept of neighbourhood retailing and provide convenience for existing and future occupiers of Sector 8, 11 and in time Sector 3. What is more the provision of retail on the Mirvac site would help to meet the councils objectives in Section 3.10 of the WV DCP No.29 as outlined above.

7. DEMAND FOR RETAIL FLOOR SPACE

In order to measure need and undersupply of retail space we first have to define the trade area of the proposed development. This section of the report defines the trade areas likely to be served by the proposed neighbourhood shopping centre, details the existing and forecast trade area dwelling numbers and the demand generated by household expenditure.

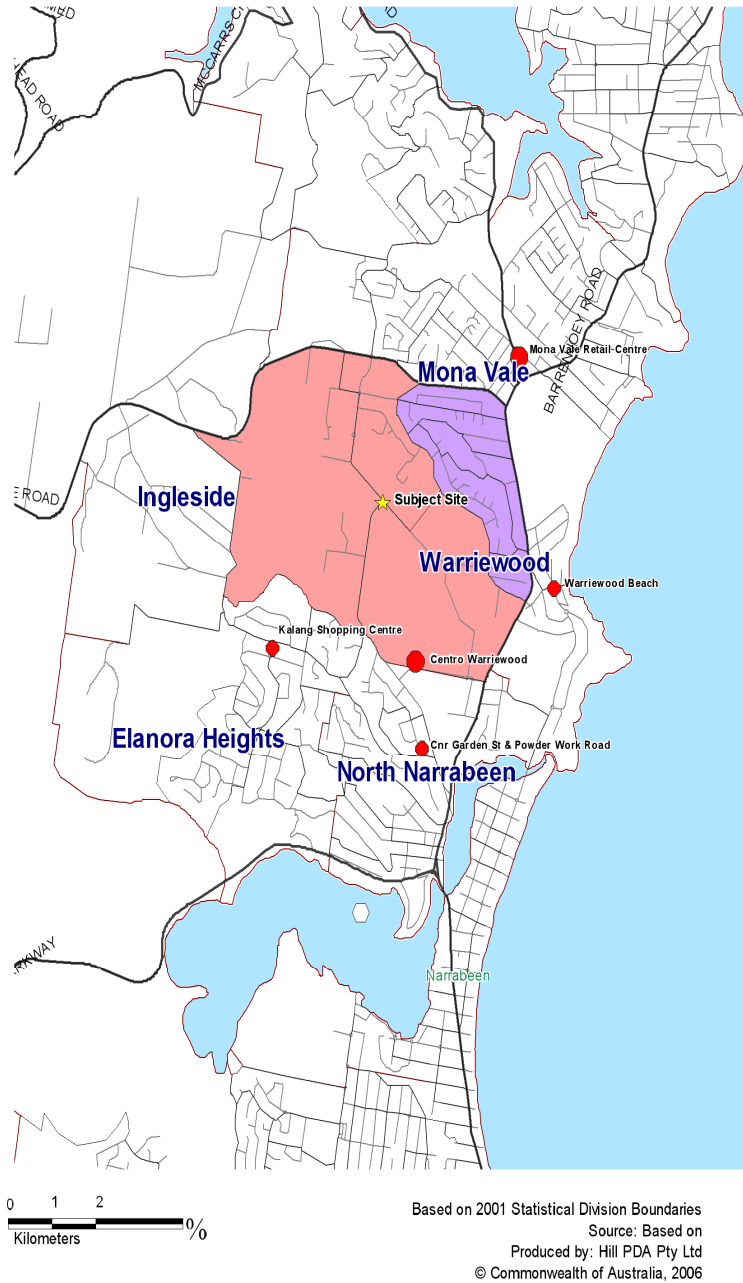
7.1 Trade Area Definition

The trade area served by any retail centre is determined by a number of factors including:

- The strength and attraction of the centre in question, determined by factors such as the composition, layout, ambience/atmosphere and car parking in the centre.
- Competitive retail centres, particularly their proximity to the subject centre and respective sizes, retail offer and attraction.
- The location and accessibility of the centre, including the available road and public transport network and travel times.
- The presence or absence of physical barriers, such as rivers, railways, national parks and freeways.

In order to test Leyschons demand estimates we have defined the same trade area used in their assessment, known as the primary trade area (PTA). The PTA encompasses an area bound by Warriewood and Mona Vale Rad to the north and north east and to the south Jacksons and Powder Works Road. Ingleside Road is used to define the western boundary. In addition to a primary trade area we have defined a secondary trade area (STA) which includes a triangular shaped area bordered by Pittwater Road to the east and Mona Vale Road to the north and Warriewood Road to the south-west. A map presenting both the primary (pink) and secondary (purple) trade areas is presented overleaf.

Warriewood Primary & Secondary Trade Area



7.2 Trade Area Demographic Characteristics

Household expenditure generated by a trade area is dependent not only on the number of households, but by the socio-demographic characteristics of the population. In particular, household income is a strong determining variable as higher income earners spend more on goods and services. The socio-demographic profile of the trade area is provided in the table below.

Table 2 – PTA & STA Household Characteristics

| Characteristics | Warriewood PTA | Warriewood STA | Sydney SD |
|--|----------------|----------------|---------------|
| Population and Dwellings | | | |
| <i>Total Population</i> | 1,533 | 2,823 | 3,948,015 |
| <i>Total Dwellings</i> | 640 | 1,037 | 1,546,691 |
| Occupied Private Dwellings | 612 | 994 | 1,438,394 |
| Occupied Private Dwellings (%) | 95.6% | 95.9% | 93.0% |
| <i>Average Household Size</i> | 2.5 | 2.8 | 2.7 |
| | 28 | 43 | |
| Age Distribution | | | |
| 0-14 | 17.8% | 18.1% | 20.2% |
| 15-29 | 18.2% | 19.6% | 21.9% |
| 30-44 | 26.2% | 20.4% | 23.8% |
| 45-59 | 18.6% | 20.3% | 18.4% |
| 60-74 | 9.7% | 10.9% | 10.1% |
| 75+ | 9.5% | 10.7% | 5.6% |
| Total | 100.0% | 100.0% | 100.0% |
| <i>Median Age</i> | 37.6 | 39.2 | 34.9 |
| Home Ownership | | | |
| Owned or Being Purchased | 65.0% | 75.4% | 62.7% |
| Rented | 26.3% | 16.5% | 29.0% |
| Other/Not Stated | 8.7% | 8.1% | 8.4% |
| Total | 100.0% | 100.0% | 100.0% |
| Household Structure | | | |
| Family Households | 69.8% | 76.0% | 73.3% |
| Lone Person Households | 25.3% | 19.9% | 22.4% |
| Group Households | 4.9% | 4.2% | 4.3% |
| Total | 100.0% | 100.0% | 100.0% |
| Dwelling Type | | | |
| Separate house | 31.9% | 77.6% | 63.1% |
| Townhouse | 57.3% | 6.5% | 11.3% |
| Flat-Unit-Apartment | 8.7% | 12.7% | 23.9% |
| Other dwelling | 1.6% | 0.0% | 0.8% |
| Not stated | 0.5% | 3.2% | 0.9% |
| Total | 100.0% | 100.0% | 100.0% |
| Labour Force | | | |
| Managers and Administrators | 13.0% | 10.3% | 8.4% |
| Professionals | 18.6% | 17.2% | 19.9% |
| Associate Professionals | 12.1% | 11.7% | 11.1% |
| Tradespersons & Related Wrks | 12.0% | 13.8% | 10.4% |
| Clerical, Sales and Service Wrks | 32.6% | 30.7% | 29.0% |
| Intermediate Production & Transport Wrks | 5.0% | 6.1% | 6.9% |
| Labourers & Related Wrks | 3.8% | 7.1% | 6.2% |
| Inadequately described or N.S. | 0.0% | 0.0% | 1.9% |
| Unemployed | 3.1% | 0.0% | 6.1% |
| Total | 100.0% | 97.0% | 100.0% |

7.3 Age Profile

The most significant statistic relating to age distribution is the high representation of persons aged over 65 a result of this housing cohort downsizing from their existing family house and moving to coastal regions. The remainder of the age distribution is representative of the typical households in the Sydney SD.

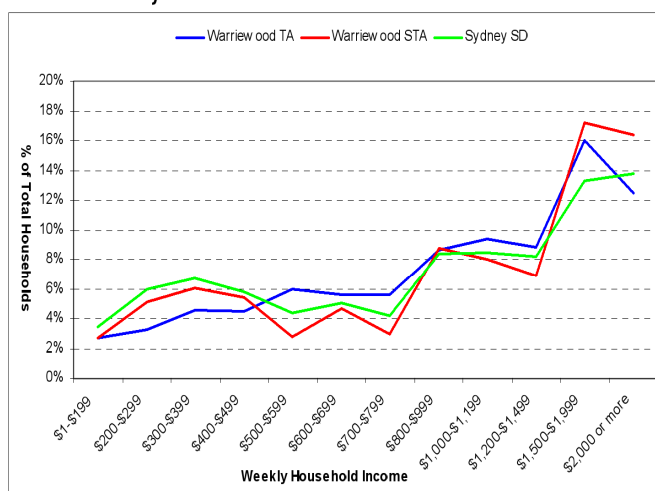
7.4 Dwelling Structure

Local agents report that a mix of people are moving into homes in the new estates located in the Warriewood Valley. Purchasers of new homes largely comprise of young families, retirees and couples without children. The type of housing product offered within the Warriewood Valley is highly influential in the dwelling structure of the trade area. The predominate type of housing are two storey attached houses which mostly appeal to young couples and retirees. Larger family homes are limited, however a small proportion of house and land packages offered within CPGs Shearwater estate cater for family households. As a result of developer targeting this market the trade area has a high representation of townhouses which will increase as the Valley gradually develops.

7.5 Household Income

Demand for retail floor space is measured by household expenditure using National turnover benchmarks. Total household expenditure within a defined trade area is dependent upon the number of households and household income levels. As evident by the ABS Household Expenditure Survey 1998-99 higher income households spend more on goods and services. The proportions of households by household income level are provided in the following chart:

Chart 1 - Weekly Household Income 2001



Source: CDATA, ABS 2001

Household income levels in both the Warriewood primary and secondary trade area show similarities, when compared to the Sydney SD as depicted in the chart above. Interestingly the chart has a higher representation than the Sydney SD of households earning an income of greater than \$1,200 per week. In the future weekly household incomes are expected to shift towards a greater number of higher income earners than existing households. This will have a positive flow on affect for total household expenditure in the Valley.

7.6 Household Growth

We have critiqued Leyshon's estimated resident population forecasts and analysed the estimates back to a sale rate per calendar month (pcm) for new residential product within the primary trade area. We have then compared this to actual sales rates that are being achieved within the valley to ascertain whether the Leyshon estimates can be supported through future demand for housing. The table below provides a comparison between the Leyshon and the HillPDA estimates based on a household occupancy rate of 2.6 persons:

Table 3 - Forecast Dwelling Increase for Primary Trade Area by Local Government Area

| | 2001 | 2006 | 2008 | 2010 | 2012 | 2014 |
|---------------------|-------|-------|-------|-------|-------|-------|
| Leyshon ERPs | | | | | | |
| Pop. | 1,670 | 2,984 | 3,384 | 4,100 | 4,764 | 5,428 |
| Pop. % var. pa. | | 15.7% | 6.7% | 10.6% | 8.1% | 7.0% |
| Dwelling No's | 668 | 1,194 | 1,354 | 1,640 | 1,906 | 2,171 |
| Dwelling No's pa. | | 105 | 80 | 143 | 133 | 133 |
| Sale rate pcm | | 9 | 7 | 12 | 11 | 11 |
| HillPDA ERPs | | | | | | |
| Sale rate pcm | | 10 | 10 | 10 | 10 | 10 |
| Dwelling No's pa. | | 120 | 120 | 120 | 120 | 120 |
| Dwelling No's | 668 | 1,148 | 1,388 | 1,628 | 1,868 | 2,108 |
| Pop. % var. pa. | | 14.4% | 10.5% | 8.6% | 7.4% | 6.4% |
| Hill PDA ERPs | 1,670 | 2,918 | 3,542 | 4,166 | 4,790 | 5,414 |

Source: ABS 2001 & HillPDAResearch

Actual sale rates for now housing product located within Warriewood valley between 2001 and 2006 equate to approximately 7.2 pcm for a house and land package. This sale rate is lower than what Leyshon has adopted but one explanation for this is that a wider market pool has been selected to determine the overall demand for housing and therefore a sale rate of 9 pcm is considered acceptable.

Unlike Leyshon, rather than predict market cycles we are of the opinion that a single average sale rate over the period 2006 to 2014 would result in a more accurate reflection in the demand for housing product within the valley. Therefore, for the purpose of our study we have adopted a constant sales rate of 10 house and land packages pcm over the next 8 years. After the 2012 target population is met we expect there to be additional capacity for approximately another 2,850 residents within the Valley.

Leyshons forecasts result in an overall sale rate of 10 sales pcm. Similarly, HillPDAs analysis confirms Leyshons estimated resident population forecasts which analyse back to an average of 10 sales pcm. Therefore, the growth estimates Leyshon has applied in determining the trade areas retail expenditure are achievable.

7.7 Household Expenditure

Household expenditure was sourced from:

- ABS Household Expenditure Survey 1998-99 which provides household expenditure by broad commodity type by household income quintile; and
- Marketinfo 2004 database which is generated by combining and updating data from the Population Census and the ABS Household Expenditure Survey (HES) using "microsimulation modelling techniques".

Marketinfo combines the data from the Census, HES and other sources to derive total HES by commodity type within a geographical area. This data, which was validated using taxation and national accounts figures, quantifies around 14% more expenditure than the HES.

The ABS household expenditure survey 1998-99 provides average household expenditure by commodity type by household income quintile. For comparative purposes we have presented Leyshon's forecast expenditure estimates against HillPDAs expenditure analysis for both the primary and secondary trade areas.

Table 4 - Household Expenditure Generated by the Trade Areas by Commodity Type (\$m)

| Total Expenditure | 2006 | 2010 | 2014 |
|-----------------------|--------|--------|---------|
| HillPDA (PTA) | \$34.6 | \$51.8 | \$77.7 |
| Leyshon (PTA) | \$30.2 | \$44.0 | \$61.9 |
| HillPDA (STA) | \$29.6 | \$30.8 | \$32.1 |
| HillPDA (PTA) & (STA) | \$64.2 | \$82.7 | \$109.8 |

Source: Hill PDA Estimate based on 2001 Census and ABS Household Expenditure Survey 1998-99

There has been considerable growth in expenditure over the past decade in the primary trade area largely due to population growth. The household expenditure generated in the PTA in 2006 according to HillPDAs analysis totalled \$34.6million. This is higher than Leyshon's estimate which could be attributable to different household growth rates in expenditure and income. HillPDA's expenditure estimates assuming that the valley captures 100% of possible retail spending equates to \$64.2million. A further \$29.6m of expenditure is generated from the existing residents from the STA, resulting in total retail spending of \$64.2m for the PTA and STA.

7.8 Supermarket Demand

The above expenditure levels produce the following amounts of supermarket expenditure and floor space demand from within the PTA. To compare the differences we have presented both HillPDAs and the estimates produced by Leyshon.

Table 5 - Supermarket Expenditure and Demand (PTA)

| Supermarket Demand (PTA) | 2006 | 2010 | 2014 |
|--|---------|---------|---------|
| Total Supermarket Expenditure (PTA) - HillPDA | \$12.7 | \$19.0 | \$28.5 |
| Total Supermarket Expenditure (PTA) - Leyshon | \$9.7 | \$14.1 | \$19.8 |
| Turnover Level | \$8,500 | \$8,500 | \$8,500 |
| Total Supermarket Floor space Demand (PTA) - HillPDA | 1,494 | 2,239 | 3,355 |
| Total Supermarket Floor space Demand (PTA) - Leyshon | 1,141 | 1,659 | 2,329 |

Source: Hill PDA Estimate based on 2001 Census and ABS Household Expenditure Survey 1998-99

According to HillPDA food, groceries and liquor expenditure generated by the primary trade area residents amount to \$12.7m at 2006 and is forecast to total around \$19.0m in 2010 and \$28.5m in 2014. Leyshon estimates indicate a lower apportionment of total retail expenditure for supermarket spending with \$9.7m for 2006 a further \$14.1m as at 2010, and \$19.8 during 2014.

The level of turnover adopted by Leyshon of \$8,500sqm is within market parameters for centres located in this area of Sydney. Our estimates show that there is a current demand based on our forecast expenditure level for 1,494m² of supermarket floor space as at 2006 compared to Leyshon's lower

estimate of 1,141m². As at 2014 we estimate that there will be a total demand for supermarket floor space of 3,355sqm

As commented on in section 8.1 of this report we have defined an additional secondary trade area which comprises of existing low density residential housing. Due to the proximity of the proposed shopping centre site to the households located within these five collector districts it is reasonable to assume that people living in this area would visit a neighbourhood shopping centre located in the Warriewood Valley. Leyshon assumes that approximately 30% of supermarket retail expenditure within the valley would be captured by the proposed centre. We however are of the opinion that a slightly lower rate of 20% for the PTA and 10% for the STA would be achievable given the proximity of the existing retail offer located at Warriewood and Mona Vale:

Table 6 - Supermarket Expenditure and Demand (PTA) & (STA)

| Supermarket Demand (PTA) & (STA) | 2006 | 2010 | 2014 |
|--|---------|---------|---------|
| Total Supermarket Expenditure (PTA) & (STA) - HillPDA | \$23.4 | \$30.2 | \$40.2 |
| Total Supermarket Floor space Demand - HillPDA @ 20% PTA & 10% STA capture | \$3.6 | \$4.9 | \$6.9 |
| Turnover Level | \$8,500 | \$8,500 | \$8,500 |
| Total Supermarket Floor space Demand (PTA) & (STA) - HillPDA @ 20% & 10% capture | 425 | 579 | 808 |

Source: Hill PDA Estimate based on 2001 Census and ABS Household Expenditure Survey 1998-99

Based on a target turnover level of \$8,500/sqm¹ and a market share 20% (PTA) & 10% (STA), the Valley will demand some 425sqm of supermarket floor space as at 2006 and approximately 808sqm by 2014. Consequently total demand of approximately 800m² would therefore facilitate the development of an anchor retail tenancy such as an IGA supermarket.

Despite Leyshon's comments that supermarket retailer such as IGA have failed to establish themselves in urban areas (like Warriewood) we have discovered that there are at least five successful examples of IGA supermarkets located in the Warringah and Manly council areas. The locations of these centres are tabulated below:

Table 7 - Nearest 5 IGA Supermarkets to Warriewood

| Store | Address | Suburb |
|--------------------------|------------------------------|------------------|
| Collaroy Plateau IGA | 2 Veterans Parade | Collaroy Plateau |
| IGA X-press Terrey Hills | 4 Booralie St | Terrey Hills |
| Allambie Heights IGA | 15 Grigor Place | Allambie Heights |
| Harbord IGA | Cnr Moore and Albert Streets | Harbord |
| Balgowlah Heights IGA | 113 Beatrice Street | Balgowlah |

These stores provide greater convenience to shoppers not wanting to visit a full line supermarket. Also, it is noted that Warriewood Centro parking has reached capacity and shoppers are now travelling to Woolworths at Narrabeen Lakes because of the convenience factor.

¹. National average turnover for supermarkets – Various Sources including: ABS Retail Survey 1998-99 and JHD Retail Averages. This indicative figure of \$8,500/sqm is still higher than a sustainable trading level.

7.9 Other Retail Demand

The expenditure levels displayed in section 8.7 produce the following amounts of other retail expenditure and floor space demand from within the PTA. For comparative purposes we have presented both HillPDAs and Leyshon's estimates.

Table 8 - Other Retail Expenditure and Demand (PTA)

| Other Retail Demand (PTA) | 2006 | 2010 | 2014 |
|--|---------|---------|---------|
| Total Other Retail Expenditure (PTA) - HillPDA | \$21.9 | \$32.8 | \$49.17 |
| Total Other Retail Expenditure (PTA) - Leyshon | \$20.5 | \$29.9 | \$42.1 |
| Turnover Level | \$5,500 | \$5,500 | \$5,500 |
| Total Other Retail Demand (PTA) - HillPDA @ 5% | \$1.1 | \$1.6 | \$2.5 |
| Total Other Retail Floor space Demand (PTA) - Leyshon @ 5% | \$1.0 | \$1.5 | \$2.1 |
| Total Other Retail Supportable Floor space Demand (PTA) - HillPDA @ 5% | 199 | 298 | 447 |
| Total Other Retail Supportable Floor space Demand (PTA) - Leyshon @ 5% | 187 | 272 | 383 |

Source: Hill PDA Estimate based on 2001 Census and ABS Household Expenditure Survey 1998-99

As the table above demonstrates HillPDA estimates that there is a total of \$21.9m of expenditure as at 2006 available from the primary trade area which is \$1.9m greater than Leyshon's forecasts for the same period. This results in a total demand for other retail floor space of 199sqm only marginally higher than Leyshon's 187sqm. Long term development capacity for the site would potentially facilitate 447sqm of supportable floor space.

The specialty stores will certainly compete with both Warriewood Centro, Mona Vale and to some extent Warringah Mall so a 5% market capture is reasonable to assume. However, the performance of the specialty stores turnover will depend on the type of tenancies that are likely to occupy the centre. From other case examples of surrounding neighbourhood centres tenancies such as bakeries, restaurants/cafes, delicatessens, fast food outlet and possibly a clothing outlet would potentially appeal to the local market and would be able to sustain a high level of turnover.

The table below presents analysis of the expenditure and the forecast demand levels from 2006 to 2014. The floor space demand estimates are based on a turnover level of \$5,500sqm.

Table 9 - Other Retail Expenditure and Demand (PTA) & (STA)

| Other Retail Demand (PTA) & (STA) | 2006 | 2010 | 2014 |
|--|---------|---------|---------|
| Total Other Retail Expenditure (PTA) & (STA) - HillPDA | \$40.8 | \$52.5 | \$69.6 |
| Turnover Level | \$5,500 | \$5,500 | \$5,500 |
| Total Other Retail Floor space Demand (PTA) & (STA) - HillPDA @ 5% capture | \$2.0 | \$2.6 | \$3.5 |
| Total Other retail Floor space Demand (PTA) & (STA) - HillPDA @ 5% capture | 371 | 477 | 633 |

Source: Hill PDA Estimate based on 2001 Census and ABS Household Expenditure Survey 1998-99

The table above indicates that there is a total development capacity for other retail development product of 633sqm. This is based on the assumption that the neighbourhood centre will receive 5% of household expenditure generated by the combined PTA and STA. Current requirements for specialty retailing within the Valley amount to 371sqm.

8. CASE EXAMPLES OF SMALL RETAIL CENTRES

Rather than cite local examples of where neighbourhood shopping centres have worked successfully the Leyshon report quotes examples from areas outside of the Northern Beaches of Sydney which have entirely different household characteristics and demand drivers to the Warriewood Valley trade area. Therefore, as part of this study we have surveyed local examples of existing neighbourhood shopping centres that are trading well and have the same demographic composition as the sites trade area. Examples of successful clusters of neighbourhood shops are tabulated below:

Table 10 - Characteristics of Small Retail Centres in Surrounding Suburbs 2006

| | Centre | Suburb | Approx. Size (sqm) @ 80% eff. | Tenant Types | Comments |
|---|-----------------------------|-----------------|-------------------------------|---|---|
|  | Kalang Road Shopping Centre | Elanora Heights | 2,720 | Health & Fitness Centres & Services, Medical Practitioners, Squash Courts, Take Away Food, Ladies' Wear-Retail, Butchers-Retail, Video Libraries, Real Estate Agents, Real Estate Agents, Promotional Products, Delicatessens, Bakers, Australia Post, Hairdressers, Dentists, Pharmacies | The centre is a strip retail complex located on both the eastern and western side of Kalang Road. The centre has good exposure to passing traffic along Powder Works Road. The surrounding development comprises of low density single detached residential dwellings. However, in recent years new two storey attached housing development has occurred along Powder Works Road. |
|  | | | | | |

Table 10 (cont.) - Characteristics of Small Retail Centres in Surrounding Suburbs 2006

| | Centre | Suburb | Approx. Size (sqm) @ 80% eff. | Tenant Types | Comments |
|---|---|------------------|-------------------------------|--|--|
|  | Warriewood Beach Shopping Centre | Warriewood Beach | 826 | Restaurants, Cafes, Beauty Salons, Hairdressers, Art Galleries | A neighbourhood centre which is part of a mixed use residential project. The tenancy benefit from its proximity to the beach which generates both passing vehicular and pedestrian traffic. The Restaurants and Cafes are also enhanced with ocean vistas. Apart from the medium density building in which the retail tenancies are located, surrounding development generally comprises of low density residential development. |
|  | | | | | |
|  | Cnr Powder Works Road and Garden Street | North Narrabeen | 431 | Antique Dealers, Printers-General, Trophies, Bicycle Store | Located on the corner of Powder Works Road and Garden Streets, these high street shops have excellent exposure to passing vehicular traffic and cater to specialty type retailing. |
|  | | | | | |

Source: Hill PDA Research, RPData

The table above illustrates small neighbourhood shopping centres that have proved successful and are located within close proximity to the proposed site. Unlike the proposal for the subject site these centres have proved to trade well despite not having an anchor tenant such as a supermarket. Therefore, these case examples provide some actual evidence that small neighbourhood shopping centres can survive in suburbs with similar household characteristics to Warriewood Valley.

9. CONCLUSION

Our report investigates the sustainability of a neighbourhood shopping centre in the Warriewood Valley, with our analysis supporting the development of an independent supermarket at either of the proposed sites suggested under the Development Control Plan. However, we recognise that the development of a neighbourhood shopping centre in the valley will be affected by the retail hierarchy and therefore we cannot assume a 100% market capture which is reflected in our low market share rate of 20% and 10% for the PTA and STA respectively.

A supermarket in the vicinity of 800sqm will trade sustainably over time. The success of a supermarket would be the result of greater convenience being created by the development of the shopping centre in the Valley and the existing strength of retail spending in the catchment demonstrated by the strong trade at Warriewood Centro.

Whilst the proposed site for the neighbourhood shopping centre is located near to both Centro Warriewood and Mona Vale Town Centre, the growth in the trade area catchment over time is sufficient to warrant a small neighbourhood centre.

Leyshon concludes that any proposed centre would have to compete with more comprehensive, highly accessible and well-established retail centres. We disagree with these comments as the centre would appeal to a different market to Centro or Mona Vale and would appeal to convenience shoppers. We also note that Centro Warriewood is suffering from traffic congestions and that shoppers are now travelling a greater distance to Narrabeen to do their supermarket shopping. Therefore, greater and easier accessibility to retail facilities would improve the sustainability of the Pittwater LGA through the reduction in vehicle kilometres travelled. The additional cost of travel has a negative environmental impact which is carried by the greater community and a cost that could be put back into the local community through greater expenditure on retail.

DISCLAIMER

This report is for the confidential use only of the party to whom it is addressed (the client) for the specific purposes to which it refers. We disclaim any responsibility to any third party acting upon or using the whole or part of its contents or reference thereto that may be published in any document, statement or circular or in any communication with third parties without prior written approval of the form and content in which it will appear.

This report and its attached appendices are based on estimates, assumptions and information sourced and referenced by Hill PDA. We present these estimates and assumptions as a basis for the reader's interpretation and analysis. With respect to forecasts we do not present them as results that will actually be achieved. We rely upon the interpretation of the reader to judge for themselves the likelihood of whether these projections can be achieved or not.

DRAFT Pittwater 21 DCP**C6.15 Warriewood Valley Land Release Area Focal Neighbourhood Centre****Land to which this control applies**

- Land identified as being within the Warriewood Valley Land Release Area – P21 DCP-BCMDCP055

Uses to which this control applies

- Warriewood Valley Sector Development/Subdivision

Outcomes

The local convenience retail needs of the incoming population are met without disturbing the established retail hierarchy. (S)

A focal point in the Valley that links local services and facilities, including local retailing, public open space, public transport, and community facilities. (S)

Car dependency is reduced and other modes of transport encouraged. (En)

A sense of community and place. (S)

Controls

A focal neighbourhood centre is to be established on 23B Macpherson Street, Warriewood. This location is spatially central to the incoming residential population, industrial/commercial areas and school located in the Valley, and is within reasonable walking and cycling distance of most residents and employees in Warriewood Valley. Macpherson Street is also the primary vehicular and public transport route through the Valley along which medium density residential development is concentrated.

The focal neighbourhood centre is to incorporate an overall retail floor space area between 855m² and 2,222m² comprising a number of small shops or restaurants, each with an area of no greater than 800m² to meet the retail convenience needs of the incoming population (such as a small general store, post office shop, ATM, internet coffee shop etc. but not a large supermarket). The retail potential in Warriewood Valley is limited to this size to maintain the established retail hierarchy given nearby established retail/commercial centres at Mona Vale and Warriewood Square.

The focal neighbourhood centre must be linked to public transport nodes and the pedestrian and cyclist network, and if possible, to the district park and/or community facilities. This will enable the majority of residents and people employed in Warriewood Valley to walk or cycle to the local shops, public transport and services. This will also enhance the viability of the neighbourhood centre as a focal point in the Valley. Reduced dependence on the car is encouraged.

The opportunity exists for shop-top housing to be incorporated with the retail facilities within the neighbourhood centre.

Safety and security are to be considered in the design of the centre.

Carparking for the centre is to be in accordance with this DCP.

Requirements under the *Disability Discrimination Act 1992* and this DCP must also be considered in the design of the centre.

Variations

Nil.

Advisory Notes

For background information refer to

Warriewood Valley Planning Framework 2010

Hill PDA 2006 peer review assessment of Leyshon Retail Demand Assessment of Warriewood Valley (2006) Warriewood Sector 8 Masterplan Cnr Garden and Macpherson Street, prepared for Pittwater Council