

This form must be completed and attached to your submission

+

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

(Fax no 9970 7150)

DA No R0001/10

Name PAUL ALLINSON

Address WARRIEWOOD PROPERTIES PTY LTD
L1, 4 PONDEROSA PARADE, WARRIEWOOD 216

Phone 0411 874 319

Date 25-08-10

EXHIBITION OF A PLANNING PROPOSAL AND AN AMENDMENT TO THE PITTWATER 21 DEVELOPMENT CONTROL PLAN

I have inspected the DA plans, I have considered them in the context of the relevant Locality Plans and Development Control Plans Yes No

I am willing to provide expert reports to supplement my comments should a conflict in opinion arise Yes No

I am willing to provide evidence to the Land and Environment Court if the application is appealed Yes No

In the interests of public transparency please note that your submission in its entirety will be available to the applicant or other interested persons on request and will also be made available on Council's Internet site through Council's transparent Development Application tracking process. You are encouraged, as is the applicant, to discuss with each other any matters that may be of concern

COMMENTS

(You may use the space provided or attach a separate document)

SEE ATTACHED SUBMISSIONS OPPOSING THE PROPOSAL.
2 LETTERS - ONE IN RESPECT OF THE LEP RELATING
- ONE IN RESPECT OF PROPOSED CHANGES TO THE DCP

YOU MUST COMPLETE THE INFORMATION BELOW AND SIGN THIS FORM FOR YOUR SUBMISSION TO BE CONSIDERED IN THE ASSESSMENT OF THIS APPLICATION

Political Donations and Gifts Disclosure Statement (Section 147 of the EP&A Act 1979)

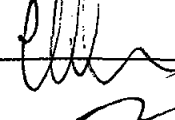
Note For more information see www.planning.nsw.gov.au/planning_reforms/donations as

Please read the information enclosed concerning political donations and gifts disclosure, and tick the appropriate box below

I have made a political gift or donation

(Please complete details of your political donations or gifts on the form enclosed)

I have NOT made a political gift or donation

Name PAUL ALLINSON Signature  Date 25-08-10.

RECEIVED MONA VALE
25 AUG 2010
CUSTOMER SERVICE

WP Warriewood Properties Pty Ltd

ABN 22 092 156 499

Level 1 4 Ponderosa Parade
Warriewood NSW 2102

e paulall123@gmail.com

24th August 2010

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

cc The Mayor and all Councillors
Ms Faye Roberts, Regional Director, Sydney Region East, Department of Planning

Dear Sir,

RE Gateway Planning Proposal to Limit the Retail Floor Space at 23B Macpherson Street, Warriewood – Rezoning No R0001/10

We wish to strenuously object to the proposal to limit retail floor space on the site of 23B Macpherson Street, Warriewood for the reasons outlined in this letter

Incomplete information provided to Department of Planning

The planning proposal submitted by Council to the Department of Planning for the purposes of seeking approval to pursue a Gateway determination to amend Pittwater LEP 1993 was flawed and incomplete. Documents that are critical to a proper understanding of whether Council's decision to seek approval to amend Pittwater LEP 1993 is soundly based were not provided to the Department by Council.

The decision of Council to omit critical planning documents from its planning proposal gives rise to the very serious question of whether Council intended to mislead the Department and the public at large.

Council had provided out of date documents to the Department and has omitted from its planning proposal more relevant current information prepared by recognised experts that is directly relevant to a proper consideration of the issues. The proposal submitted by Council to the Department of Planning has not been presented in a manner which is fair and true and which properly represents all of the objective facts.

As a consequence, the planning proposal which is now on exhibition to the public is fundamentally flawed. It presents a biased view and one that represents subjective opinion rather than a balanced analysis of the relevant issues.

Errors and Omissions in Council's Planning Proposal

Council's justification for pursuing its proposal to amend Pittwater LEP 1993 is purportedly 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 Land Release that incorporates retailing for daily local 'convenience'"

The planning proposal identifies that the requirement of a retailing facility to meet the needs of the incoming population of Warriewood Valley was first set out in The Ingleside/Warriewood Urban Land Release Area Demographic and Facility/Service Needs Studies 1994

Council has claimed at page 8 of the planning proposal that "*the quantum of floor space to be included in the LEP was independently assessed by Hill PDA in 2006*" That statement is inconsistent with information provided to Council by Hill PDA in a letter dated 2 September 2009 Council has failed to identify this inconsistency or otherwise draw the Department's attention to the matters disclosed by Hill PDA in the letter referred to

Hill PDA is an independent property consultancy that specialises in retail supply and demand analysis Hill PDA first prepared a report in response to a DA by Mirvac for the site in 2006 at the request of Council A second study was undertaken in 2009 on behalf of Warriewood Properties Pty Limited, the owner of the site and the proponent of the development of the site as a neighbourhood retail centre

In its letter to Council dated 2 September 2009 Hill PDA pointed out that both the 2006 and 2009 studies found that there was demand for retail on the site but that the quantum of demand for that retail differed significantly because of the "*different scope, data inputs and purposes*" of each of the studies

Hill PDA also stated in its September 2009 letter to Council that the 2006 study was undertaken to test whether the development of a small retail centre on the site would be sustainable given the underlying retail demand Most importantly, Hill PDA informed Council in that letter that it was beyond the scope of the 2006 study to assess whether a small 1,200m² centre which included a 600m² supermarket was commercially viable or whether a large centre on the site would also be sustainable and commercially viable

The 2009 Hill PDA study was commissioned to provide an independent assessment of the total level of retail expenditure and the associated demand for retail floorspace generated within the Warriewood Valley Hill PDA concluded that a greater share of the supermarket, specialty retail and restaurant related trade could be captured to support a larger centre

Importantly, the 2009 Hill PDA study also factored in demand generated by non residential uses in the Warriewood Valley such as employment generating uses located within the Valley, this is a requirement of the current DCP Cl 6.15 and was not factored into the 2006 Hill PDA report Furthermore, the 2009 study was based on more recent residential projections having regard to developments that had been approved in the Warriewood Valley

Notwithstanding this, Council has used the 2006 Hill PDA study as the basis for arguing for a cap to the allowable retail size on the site and particularly the cap on any single shop size within the development

The Hill PDA Retail Demand Study prepared in March 2009 found that retail demand for the site was in excess of 6,500m² and that a single user supermarket of 3,200m² was justified A subsequent Economic Impact Study by Hill PDA in May 2009 found that nearby retail centres would not be adversely impacted by a retail development of 3,950m²

Hill PDA also lodged a submission to Council in March 2010 on the retail component of the Draft Warriewood Valley Planning Framework 2010 Hill PDA concluded

“that this is an ideal opportunity to revise the retail floor space controls for Warneewood Valley so that they meet its objectives to ensure that the future residents and occupiers of the Valley are provided with an appropriate level of community facilities and services and an amenable and safe neighbourhood We maintain that to achieve this objective a suitable level of retail floor space should be provided within Warneewood Valley and that recommendations for a 855 sqm-2,222 sqm centre are now well outdated [This outdated figure was determined in 1994 based on residential numbers at that time] Our analysis of retail demand found that there is sufficient demand for a centre over 6,000 sqm in Warneewood Valley Our economic impact testing of a 4,000 sqm centre found that it would have an acceptable impact to the operation and economic viability of surrounding centres Accordingly, we are confident in suggesting that a centre of this scale would be acceptable from an economic perspective and there is ample local demand from a social perspective”

The Hill PDA Retail Demand Study of March 2009 was accepted by Council and was used as the basis of Council’s 21st July 2009 Gateway planning proposal to justify amending the LEP to permit the development of neighbourhood shops and restaurants on the site That amendment was gazetted in March 2010

The July 2009 Gateway planning proposal (which is still published on the Department’s website) refers at paragraph C3 on page 15 to a report for a meeting of Council’s Planning and Integrated Built Environment Committee The following statement is extracted from that report -

“A retail demand analysis accompanies the planning proposal, based on the 2006 Census as Appendix 4 (i e Hill PDA’s Retail Demand Study – March 2009) The Analysis concluded there is sufficient demand for retail floor space generated in Warneewood Valley Release Area, with the floor space significantly higher than previously advised in the Hill PDA assessment (2006)”

A report prepared for Council’s meeting held on 9 November 2009 to inform Council of the outcomes of the public exhibition of the July 2009 proposed amendments to the Pittwater LEP, incorporated further relevant information that was not provided by Council to the Department of Planning The report at section 2.3.2 on page 6 states -

“The Hill PDA 2009 Study for the applicant provides an assessment of the total level of retail expenditure and associated demand for retail floor space generated within the Valley Hill PDA differentiated between the two studies by letter 9 September 2009, in which they state (inter alia) -“Rather than assess the viability of a small centre (which the proponent [Mirvac] had found to be non viable in commercial terms), the Study sought to determine whether there would be sufficient demand for a commercially viable larger centre (3,950 sqm centre) and whether this would have an adverse economic impact to the function of surrounding centres””

The question needs to be asked - Why would Council revert back to an older, out of date 2006 study which was undertaken for an entirely different purpose and include this in its submission to the Department of Planning as the basis upon which retail demand should be assessed for the current Gateway application?

It appears that Council is pursuing this LEP/DCP amendment in order to attempt to circumvent the current development application for the site which is the subject of a reserved judgment in the Land and Environment Court (or any similar future development application) which has 10% more area than the DCP limit of 2,222m² (a limit that was established back in 1994) or any proposal with a single shop (i e supermarket) larger than

800m² However, making these amendments will only ensure that retail development on the site will not be commercially viable

The inevitable outcome of the amendment to the LEP proposed by Council being made is that a viable retail development for the site cannot succeed and will not be built. As a consequence, the retail convenience needs of the Warriewood Valley residents and workers will not be met – an outcome that is contrary to relevant objectives stated in the DCP

It is notable that Peter Leyshon, Council's consultant in the Land and Environment Court proceedings referred to, considered the viability of a supermarket of 699m² for the site in 2006 – a supermarket that is only 101m² smaller than the currently proposed 800m² maximum size limit. In his report, Mr Leyshon stated that *"development of such a store would be a completely inappropriate outcome for the Warriewood Valley and that it could not be expected to survive long-term"* and that *"theoretically, development of a small retail centre with six or eight tenancies in the Warriewood Valley may appear possible. The reality is that such centres are prone to high rates of failure"*

The fact also remains that a retail centre of a size up to 2,222m² as per the DCP could never be realistically anchored by a supermarket of only 800m² as the ratio of the size of the supermarket anchor to the number of specialty shops is unrealistic. Again, this was acknowledged by Peter Leyshon in the Land & Environment Court proceedings. A supermarket operator would simply have no interest in such a site.

Why then would a responsible council attempt to impose 800m² as a maximum size on any one shop, knowing full well that such a control would not be able to serve the retail needs of the incoming population and would result in a failed retail centre. Such an outcome defeats the intention of Council's own planning strategy which since 1997 has envisaged a neighbourhood centre on or near the site for residents and those working in the Valley.

The proposal to limit floor space is also at odds with Council's strategy of increasing residential density in the Valley implemented earlier this year. How is the growing residential and working population in the Valley possibly going to be properly catered for when Council's own current planning policies state that the focal neighbourhood centre on this site must *'meet the needs of the incoming population'* and for those who work in the local area? Placing further limits on the size of the centre and supermarket is completely contrary to Council's own stated objectives and more importantly, the demonstrated needs of the community that Council is required to serve.

We are very concerned that the Department of Planning may have assessed Council's proposal based on flawed information. The public also only have access to the incomplete information and so proper public consultation cannot proceed. Therefore, the only appropriate course of action is for the Council to withdraw the proposal.

Yours faithfully



Paul Allinson

WP Warriewood Properties Pty Ltd

ABN 22 092 158 499

Level 1 4 Ponderosa Parade
Warriewood NSW 2102

e paulall123@gmail.com

24th August 2010

The General Manager

Pittwater Council

PO Box 882

MONA VALE NSW 1660

cc The Mayor and all Councillors
Ms Faye Roberts, Regional Director, Sydney Region East, Department of Planning

Dear Sir

RE DCP Proposal to Limit the Retail Floor Space at 23B Macpherson Street, Warriewood – Rezoning No R0001/10

We wish to strenuously object to the proposal to amend DCP C6 15 to limit retail floor space on the site of 23B Macpherson Street, Warriewood for the reasons outlined in this letter

Incomplete information provided to the Public

Documents that are critical to a proper understanding of this issue have not been provided to the public. The decision of Council to omit critical planning documents from its proposal gives rise to the very serious question of whether Council intended to mislead the public at large.

Council has provided out of date documents to the public and has omitted from its proposal more relevant current information prepared by recognised experts that is directly relevant to a proper consideration of the issues. The proposal submitted by Council to the public has not been presented in a manner which is fair and true and which properly represents all of the objective facts. It presents a biased view and one that represents subjective opinion rather than a balanced analysis of the relevant issues.

As a consequence, the proposal which is now on exhibition to the public is fundamentally flawed.

Errors and Omissions in Council's Proposal

Council has claimed in its proposal that "the quantum of floor space to be included in the LEP was independently assessed by Hill PDA in 2006. The Hill PDA assessment concluded that there was a current demand for a supermarket in the vicinity of 800 m² floor space and 371 m² of floor space for specialty retailing, based on the 2001 Census, in the Release Area". That statement is inconsistent with information provided to Council by Hill PDA in a letter dated 2 September 2009. Council has failed to identify this

inconsistency or otherwise draw the public's attention to the matters disclosed by Hill PDA in the letter referred to

Hill PDA is an independent property consultancy that specialises in retail supply and demand analysis. Hill PDA first prepared a report in response to a DA by Mirvac for the site in 2006 at the request of Council. A second study was undertaken in 2009 on behalf of Warriewood Properties Pty Limited, the owner of the site and the proponent of the development of the site as a neighbourhood retail centre.

In its letter to Council dated 2 September 2009 Hill PDA pointed out that both the 2006 and 2009 studies found that there was demand for retail on the site but that the quantum of demand for that retail differed significantly because of the "*different scope, data inputs and purposes*" of each of the studies.

Hill PDA also stated in its September 2009 letter to Council that the 2006 study was undertaken to test whether the development of a small retail centre on the site would be sustainable given the underlying retail demand. Most importantly, Hill PDA informed Council in that letter "*that it was beyond the scope of the 2006 study to assess whether a small 1 200m² centre, which included a 600m² supermarket, was commercially viable or whether a large centre on the site would also be sustainable and commercially viable*"

The 2009 Hill PDA study was commissioned to provide an independent assessment of the total level of retail expenditure and the associated demand for retail floor space generated within the Warriewood Valley. Hill PDA concluded that a greater share of the supermarket, specialty retail and restaurant related trade could be captured to support a larger centre.

Importantly, the 2009 Hill PDA study also factored in demand generated by non residential uses in the Warriewood Valley such as employment generating uses located within the Valley, this is a requirement of the current DCP C6 15 and was not factored into the 2006 Hill PDA report. Furthermore, the 2009 study was based on more recent residential projections having regard to developments that had been approved in the Warriewood Valley.

Notwithstanding this, Council has used the 2006 Hill PDA study as the basis for arguing for a cap to the allowable retail size on the site and particularly the cap of 800 m² on any single shop size within the development.

The Hill PDA Retail Demand Study prepared in March 2009 found that retail demand for the site was in excess of 6 500m² and that a single user supermarket of 3 200m² was justified. A subsequent Economic Impact Study by Hill PDA in May 2009 found that nearby retail centres would not be adversely impacted by a retail development of 3,950m². Therefore, this or any smaller retail centre will not disturb the established retail hierarchy which is a desired outcome of the draft DCP on exhibition.

Hill PDA also lodged a submission to Council in March 2010 on the retail component of the Draft Warriewood Valley Planning Framework 2010. Hill PDA concluded

"that this is an ideal opportunity to revise the retail floor space controls for Warriewood Valley so that they meet its objectives to ensure that the future residents and occupiers of the Valley are provided with an appropriate level of community facilities and services and an amenable and safe neighbourhood. We maintain that to achieve this objective a suitable level of retail floor space should be provided within Warriewood Valley and that recommendations for a 855 sqm-2,222 sqm centre are

now well outdated [This outdated figure was determined in 1994 based on residential numbers at that time] Our analysis of retail demand found that there is sufficient demand for a centre over 6,000 sqm in Warneewood Valley Our economic impact testing of a 4,000 sqm centre found that it would have an acceptable impact to the operation and economic viability of surrounding centres Accordingly, we are confident in suggesting that a centre of this scale would be acceptable from an economic perspective and there is ample local demand from a social perspective'

The Hill PDA Retail Demand Study of March 2009 was accepted by Council and was used as the basis of Council's 21st July 2009 Gateway planning proposal to justify amending the LEP to permit the development of neighbourhood shops and restaurants on the site That amendment was gazetted in March 2010

The July 2009 Gateway planning proposal (which is still published on the Department's website) refers at paragraph C3 on page 15 to a report for a meeting of Council's Planning and Integrated Built Environment Committee The following statement is extracted from that report -

"A retail demand analysis accompanies the planning proposal, based on the 2006 Census as Appendix 4 (i e Hill PDA's Retail Demand Study – March 2009) The Analysis concluded there is sufficient demand for retail floor space generated in Warneewood Valley Release Area, with the floor space significantly higher than previously advised in the Hill PDA assessment (2006)"

A report prepared for Council's meeting held on 9 November 2009 to inform Council of the outcomes of the public exhibition of the July 2009 proposed amendments to the Pittwater LEP, incorporated further relevant information that has not been exhibited or made available to the public in the current Council proposal to limit retail floor space The report at section 2.3.2 on page 6 states -

"The Hill PDA 2009 Study for the applicant provides an assessment of the total level of retail expenditure and associated demand for retail floor space generated within the Valley Hill PDA differentiated between the two studies by letter 9 September 2009, in which they state (inter alia) -"Rather than assess the viability of a small centre (which the proponent [Mirvac] had found to be non viable in commercial terms), the Study sought to determine whether there would be sufficient demand for a commercially viable larger centre (3,950 sqm centre) and whether this would have an adverse economic impact to the function of surrounding centres""

The question needs to be asked - Why would Council revert back to an older, out of date 2006 study which was undertaken for an entirely different purpose and include this in its proposal as the basis upon which retail demand should be assessed for the current DCP amendment on exhibition ?

It appears that Council is pursuing this DCP amendment in order to attempt to circumvent the current development application for the site which is the subject of a reserved judgment in the Land and Environment Court (or any similar future development application) which has 10% more area than the DCP limit of 2,222m² (a limit that was established back in 1994) or any proposal with a single shop (i e supermarket) larger than 800m² However making this amendment will only ensure that retail development on the site will not be commercially viable

The inevitable outcome of the amendment to the DCP proposed by Council being made is that a viable retail development for the site cannot succeed and will not be built As a

consequence, the retail convenience needs of the Warriewood Valley residents and workers will not be met – an outcome that is contrary to relevant objectives stated in the current DCP

It is notable that Peter Leyshon, Council's consultant in the Land and Environment Court proceedings referred to, considered the viability of a supermarket of 699m² for the site in 2006 – a supermarket that is only 101m² smaller than the currently proposed 800m² maximum size limit. In his report, Mr Leyshon stated that *"development of such a store would be a completely inappropriate outcome for the Warriewood Valley and that it could not be expected to survive long-term"* and that *"theoretically, development of a small retail centre with six or eight tenancies in the Warriewood Valley may appear possible. The reality is that such centres are prone to high rates of failure"*

The fact also remains that a retail centre of a size up to 2 222m² as per the DCP could never be realistically anchored by a supermarket of only 800m² as the ratio of the size of the supermarket anchor to the number of specialty shops is unrealistic. Again, this was acknowledged by Peter Leyshon in the Land & Environment Court proceedings. A supermarket operator would simply have no interest in such a site.

Why then would a responsible council attempt to impose 800m² as a maximum size on any one shop knowing full well that such a DCP control would not be able to serve the retail needs of the incoming population and would result in a failed retail centre? Such an outcome defeats the intention of Council's own planning strategy, which since 1997 has envisaged a neighbourhood centre on or near the site for residents and those working in the Valley.

The proposal to limit floor space is also at odds with Council's strategy of increasing residential density in the Valley implemented earlier this year. How is the growing residential and working population in the Valley possibly going to be properly catered for when Council's own current planning policies state that the focal neighbourhood centre on this site must *'meet the needs of the incoming population'* and for those who work in the local area? Placing further limits on the size of the centre and supermarket is completely contrary to Council's own stated objectives and more importantly, the demonstrated needs of the community that Council is required to serve.

We are very concerned that Council has provided out of date documents to the public and has omitted from its proposal more relevant current information prepared by recognised experts that is directly relevant to a proper consideration of the issues. The proposal submitted by Council to the public has not been presented in a manner which is fair and true and which properly represents all of the objective facts.

As a consequence, the proposal which is now on exhibition to the public is fundamentally flawed. Therefore, the only appropriate course of action is for the Council to withdraw the proposed DCP amendment.

Yours faithfully



Paul Allinson