

17 January 2017
Our Ref: GLN10524_Response to RFI.docx

The General Manager
Northern Beaches Council
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By Email: sylvania.mok@northernbeaches.nsw.gov.au

Dear Sylvania

RE: Planning Proposal PP0002/16

As discussed at our meeting, please find attached the following responses to the request for additional information to the above Planning Proposal (PP) as set out in Council's letter of 20 September 2016.

1(a) Objectives or intended outcome

The PP primarily seeks to enable the creation of the southern portion of the planned Central Local Park and secondly to facilitate the orderly and economic development of the land in accordance with the planned intentions for the Warriewood Release Area. Any other effects are not objectives of the PP. The PP has been amended to avoid any confusion as to the objectives.

1(b) Proposed Amendments

The Planning Proposal does not intend to seek amendments to vary the status of the land under the Local Government Act 1993. The land was purchased in 2008 as operational land. The site is listed within Council's Operational Land Register. The RE1 portion of the site once rezoned will become community land without any requirement to undertake additional procedures within this Planning Proposal. As a result the Planning Proposal is silent as to the community/operational status of the land as it is not a matter that requires amendment.

Unfortunately, Council has so far been unable to find evidence of the public notice under s.34 of the Local Government Act 1993 for the proposed resolution to classify 9 Fern Creek Road as 'operational'.

Even if no such public notice was given, s.729 of the Act provides protection for certain Council decisions. In particular, it relevantly provides that the validity or effectiveness of a decision of a council may not be questioned in any legal proceedings on the ground that, in making or purporting to make the decision, the council failed to comply with a procedural requirement of the Act (including a requirement as to the giving of notice) unless the proceedings are commenced within 3 months after the date of the decision. Section 729 was considered by the Land and Environment Court of NSW in Save Little Manly Beach Foreshore Incorporated v Manly Council (No 2) [2013] NSWLEC 156, and its application to notices under s.34 is addressed in paragraph 90 of the judgment. This confirms that s.729 can protect resolutions where their validity or effectiveness is challenged on the basis of a failure to give advance public notice as required by s.34.

In the case of 9 Fern Creek Road, the Council resolution was made on 21 April 2008 and the three month time frame has long since expired. Accordingly, the position is that the resolution regarding 9 Fern Creek Road is protected by s.729.

1(c) Strategic justification for the Planning Proposal

The background reports have been compiled into Annexures to the Planning Proposal report. The PP otherwise provides a brief explanation as to why the site was not historically allocated a dwelling yield.

1 (d) Responding to the question “Is the planning proposal the best means of achieving the outcomes, or is there a better way?”

Planning Proposal has been amended to indicate there is no other means to provide for Central Local Park without rezoning the land RE1, primarily because parks are not permissible in the residential zones under Pittwater LEP.

1(e) Environmental, social and economic impacts

The Planning Proposal is for an effective back zoning of part of the site from Residential to RE1, having previously been rezoned from Non-Urban to Residential. The Environmental Planning and Assessment Act provides sufficient means of protection to ensure future development is adequately assessed. Further the Gateway process was designed and provides opportunity for additional information to be sought should that information be required. We are of the opinion that the requirement for additional information is contrary to The Department of Planning and Environment’s “Planning Proposals: A Guide to Preparing Planning Proposals” (August 2016) and is excessive and unnecessary at this point. This information will unnecessarily add to the costs of enabling the provision of Central Local Park as has been anticipated in the development of Warriewood Valley, but, if required by the Gateway determination, it can be provided later consistent with the DPE Guidelines.

This Planning Proposal relies on the previous studies undertaken as part of the *Warriewood Valley Strategic Review* report and the *Warriewood Valley Strategic Review Addendum* report. The two Warriewood Valley Strategic Review Reports, determine the capacity of the land for residential development for which a residential zoning was put in place. This Planning Proposal will not result in additional dwellings beyond that originally anticipated and the zoning will reallocate land currently zoned for medium density residential development to Central Local Park for passive open space. This explained further in the amended Planning Proposal.

1(f) Dwelling density allocations

An additional Table 4 has been provided explaining proposed allocation of dwelling yields and why this is appropriate and will not adversely impact the overall planned capacity of the release area.

2) Justification in support for the proposed rezoning that addresses the Department of Planning’s *Guidance for merged councils on planning functions* (May 2016), in particular page 20 of that Guide where it reads as follows –

“Until elected councils are in place the Department won’t be authorising council delegations unless the planning proposal is for:

- Minor mapping alterations, errors or anomalies;***
- Changes to heritage sites already supported by Office of Environment and Heritage;***
- Rezoning consistent with an endorsed strategy of the (pre-merger) council; or***
- Other matters of local significance as identified by the Department of Planning and Environment.”***

As stated within the Planning Proposal, the proposed rezoning is consistent with an endorsed strategy of the (pre-merger) council. The annexure of Council reports supports this strategy of the Pittwater Council, in buying the land in 2008 and entering into the land swap agreement with Frasers.

Additional matters identified in the Table (appended to the additional information request letter), have been responded to and a table with comments is attached to this letter.

Draft Voluntary Planning Agreement (VPA)

Attached is a draft copy of the Voluntary Planning Agreement (VPA) which is intended to facilitate the provision of the southern Central Park in its preferred configuration. We understand that the draft VPA will need to be reviewed and agreed by Council and will be publicly advertised in accordance with the provisions of the *Environmental Planning & Assessment Act 1979* during the statutory exhibition of the Planning Proposal (noting that this will be once the Planning Proposal has been endorsed by Council and has been sent to the Department of Planning and Environment for Gateway Approval). However, we are lodging a draft version at this non-statutory stage of the Planning Proposal in the interest of clarity and transparency.

If you wish to discuss the matter further or require further clarification on any of the above matters, please contact Jillian Sneyd or Paul Grech.

Yours faithfully
GLN PLANNING PTY LTD

A handwritten signature in black ink, appearing to read 'Paul Grech', written in a cursive style.

Paul Grech
DIRECTOR

Encls.

1. Table of issues for review – PP002/2016 – with Comments
2. Amended Planning Proposal
3. Draft VPA

Table of issues for review – PP002/2016 – with Comments

Document or Issue	Matter	Description	Comment	Response
Planning Proposal	Increase in 3-5 dwellings resulting from the planning proposal (PP)	<ul style="list-style-type: none"> - No justification within the PP - Does it exceed the 2544 cap that RMS stipulated when responding to the WV Addendum exhibition? - Section 94 implications – need to address 	<p>The 3 – 5 dwelling increase is based on the increase in Sectors 901C and 901G and 9 Fern Creek from 28 dwellings or less than 23 dwellings under existing PLEP 2014 to 33 dwellings to less than 26 dwellings.</p> <p>And the reducing Sector 901A from 192 dwellings or less than 156 dwellings to not more than 190 dwellings or less than 156 (is 156 Correct?)</p>	Further description and explanation is added.
	Is the objective solely to 'enable the creation of the southern portion of the planned Central Local Park'	<p>Or are there further objectives of:</p> <ul style="list-style-type: none"> - unlocking development opportunities for the northern half of Sector 9 - stormwater infrastructure - the capacity to underground overhead power lines 	Need to decide on an exact description of what the PP will achieve	Objectives amended for clarity.
	Within Background	<p>Need to provide more background on the history of the application. More specifically:</p> <ul style="list-style-type: none"> - history of site including purchase - decision to zone R3 - why no dwelling yield allocated at the time - s.94 history 		Report expanded and background reports and strategies are annexed.

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	9 Fern Creek	Incorrect DP on Page 2 (and then throughout document)	Amend in planning proposal report	Typographical error corrected.
	Page 3 Table Proposed Amendments – Pittwater 2014	<ul style="list-style-type: none"> - Proposed Amendment 3 - Add to Table 901A 'Not more than 190 or less than 156' 	Removing 901G dwelling yield	<p>No need to amend table. The portion of the site within 901A will be entirely zoned RE1, where dwellings will not be permissible.</p> <p>The compilation of the remaining sectors will enable the development of dwellings where a residential zone remains. This is consistent with the northern portion of Central Local Park which is contained in Sector 8.</p>
	Add an amendment to table	Amendments to Urban Release Area Map – Sheet URA_012 – Amend boundary		This issue was discussed prior to submission and determined that there was no need to amend the Urban Release Map. The Urban Release Map serves to identify land to which a dwelling yield is associated. The existing map will allocate the dwelling yield and the zoning will operate to determine upon which portion of the site, dwellings may be developed.
	Add an amendment to table	Reclassify part of Lot 5 DP 736961		Not required. See earlier comments in letter in relation to reclassification.
	Add an amendment to table	Amend Land Reclassification (Part Lots) Map	The PP is silent on the reclassification issue. This needs to be addressed in the report	Not required. See earlier comments in relation to reclassification. There are options to classify land under the Local Government Act 1993 or alternatively using an LEP where the LGA provisions cannot be applied.

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				<p>The process of the LEP Practice note PN 09–003 notes that “Councils are encouraged to classify or reclassify land through the LG Act wherever circumstances conform to sections 31, 32 or 33 of the LG Act.” The provisions of the LG Act provide appropriate provisions and the LEP process is not necessary. in this instance.</p>
	<p>Add an amendment to table</p>	<p>- Amend Table(s) for reclassification in Schedule 4</p>	<p>Applicant to determine which part(s) of Schedule 4 apply</p> <p>Schedule 4 Part 2 releases Council’s interest and allows sale of the lot</p>	<p>See comment above</p>
	<p>P4 para 3</p>	<p>Is relying on the opportunities and constraints analysis and updated flooding and bushfire then there needs to be more discussion to specific sites (in Section C No 7)</p>	<p>Planning Proposals require a number of environmental studies.</p> <p>If the PP is relying on the WV Strategic Review Report and/or Addendum report environmental studies, then there needs to be more discussion</p> <p>The following studies are not covered within the WV Strategic Review Report and/or Addendum report:</p> <ul style="list-style-type: none"> - Land Contamination; - Aboriginal Heritage; and 	<p>All the noted reports were prepared and submitted with the WV Strategic Review Report and/or Addendum report and PP to rezone the land from Non-Urban to Residential under the relevant Amending LEP.</p> <p>This PP seeks to down zone a portion of the site from R3 Medium Density Residential to RE1.</p> <p>The Gateway Determination process enables an opportunity for additional environmental studies to be obtained if deemed necessary as a condition of Gateway. It being noted that it is considered that sufficient protection</p>

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			- Traffic.	is afforded at the development application stage.
	P5 – Is the PP the best means of achieving the objectives or intended outcomes, or is there a better way?	More discussion on the alternatives to the land locked issue and access if the proponent is arguing that this an objective.		The PP has been amended to make it clear that the primary intention is to facilitate the park and secondly to provide for the orderly development of land for housing and why there are no feasible alternatives worth considering.
	P7 Section B	The current Metropolitan Strategy is <i>A Plan for Growing Sydney</i>		Corrected, with additional commentary regarding the recently released Sydney City Commission draft amendment to the Metropolitan Strategy and the draft District Plan.
	Page 8-9	More specific information from the WV Addendum Report targeted at the 4 subject properties	If the PP is relying on this report then more detailed discussion is required	Not considered necessary. The PP is an effective down zoning to primarily enable delivery of Southern portion of Central Local Park. The dwelling yields are materially consistent with the adopted WV Addendum Report and there is no increase in overall dwelling numbers beyond the planned capacity of the release area.
	Page 9 – dwelling yield history	More specific info behind the history of Council not allocating a dwelling yield to 9 Fern Creek		A definitive history as to why a dwelling yield was not allocated to 9 Fern Creek is not available, other than to indicate that delivery of Central Local Park was to be provided. The absence of a dwelling yield is inconsistent with its R3 zoning. An analysis of the planning implications is provided but if further history is uncovered this is a matter

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				that can be addressed by Council in reporting on the PP.
	Page 9 – Table 3 heading incorrect	Raised in a submission.		Amended
	Page 9 – Table 3	<ul style="list-style-type: none"> - Are the developable areas listed in Table 3 correct in terms of actual size? - Taken from MOU? 		Table added to provide comparison against existing yields achievable.
	Page 9 Para 2 typo 'should read '901A' not '901G'			Corrected
	p.11 No 5 Consistency with SEPPs Attachment 1	In a number of cases a SEPP has been classified 'consistent' with no commentary on how it is consistent.		Amended. Despite this we note that it is common practice and Council procedure to provide discussion only where the PP is considered to be inconsistent.
		SEPP 55 – require a preliminary contamination report	There is a need for a preliminary land contamination report	It is considered unnecessary. The land was previously rezoned from Non-urban to residential. The current PP is for a change in zoning to RE1 to facilitate a passive recreation area. There is suitable protection available at DA stage. However, if necessary a preliminary land contamination report could be a Gateway condition.
		SREP 20 – expand to discuss why it is consistent	Need justification as to why it is consistent	Amended
	p.11 s.117 Directions	In a number of cases a s.117 Direction has been classified 'consistent' with no commentary on how it is consistent.		Amended. Despite this we note that it is common practice and Council procedure to provide discussion only

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				where the PP is considered to be inconsistent. Further updated to include all current s.117 directions, since original drafting.
		2.3 Heritage Conservation – this Direction is applicable. Consistent? not consistent? need to discuss	No discussion either way as to consistency	Amended
		4.1 Acid Sulphate Soil – even without a change to the mapping discuss what Class and any implications		Site is Classified Class 5 there is no change proposed to any of the mapping and Clause 7.1 of PLEP relates to proposed works. This is a PP for which no works are proposed. It is considered unnecessary to discuss where Pittwater LEP is not proposed to be amended. This is a matter that could be addressed within Council officers’ report on the PP if considered necessary.
		7.1 Implementation of the Metro Plan	No longer relevant. Legislated under <i>Environmental Planning and Assessment Act 1979</i> Clause 53A and Direction 5.10	At the time of drafting this PP – “A Plan for Growing Sydney” was the only published document and remains the current plan. While not a requirement of the legislation (only the DPE Guideline) we have amended the PP to address the more recently released Greater Sydney Commission draft documents.
	P11 No 7 critical habitats	Minimal discussion on flora and fauna issue	If relying on the WV Addendum report then detail the relevant findings and discuss.	The extent of development that would be envisaged under a RE1 zoning provides for far less potential

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			Otherwise a flora and fauna/biodiversity study is required	impacts to flora and fauna biodiversity than as residential zoned land. Sufficient protection is available, through the DA process or alternatively additional supporting reports could be required as a condition of Gateway.
	p.11 – <i>Largely an administrative amendment</i>	Disagree and should be amended accordingly		Amended
	p. 12 No 8 Environmental effects	Specific discussion on the part lots to be rezoned using information from the mapping layers		The mapping layers supported the rezoning of the land from Non-urban to Residential. This PP provides additional protection to the riparian zone and increases the amount of RE1 zoned land in accordance with Council's adopted and stated policy for the Warriewood Valley.
		Land contamination report required		Discussed above – sufficient protection is available through DA Process but if an additional report is deemed necessary it could be required at Gateway.
		Traffic report?? Increase in 3-5 dwellings (minimal); open space attraction; parking.		The intent is to use the space as passive open space. Similarly, sufficient protection is available through DA Process or an additional report could be required at Gateway.
Aboriginal Heritage?			Sufficient protection available through DA Process or an additional report could be required at Gateway.	

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	P.12 Again, need to decide on what the main objective of the planning proposal	New objectives introduced late in the report		Reviewed to ensure consistency and additional discussion as to overall effects of the land swap and background is provided.
	13 No 9 – second last para irrelevant	Strategic land management program – question relevance		Amended.
		<ul style="list-style-type: none"> - Dwelling increase of between 3-5 dwellings - - Therefore, this is an incorrect statement - S.94 CP plan discussion 		Clarified in report.
	Mapping p14 – 17 – need to include the survey plan to show measurements.	<ul style="list-style-type: none"> - Include the survey report within the PP - (History behind the WV Resident group’s involvement in the design process and therefore whether they gave tacit approval to the concept) 	I understand that the survey will have no statutory weight but may remove concerns regarding the size of the proposed open space	Included as Attachment 10
Reclassification	No discussion in the planning proposal	Need to determine what the planning proposal proposes in terms of the reclassification or classification of land		See earlier comments in letter. Reclassification not required – accordingly PP is silent on this matter.