



PITTWATER COUNCIL

C7.1 N0052/11 - 4 Boundary Street & 10 Jubilee Avenue, Warriewood - Construction of a new private road to access 120 Mona Vale Road

Meeting: Council

Date: 4 July 2011

STRATEGY: LAND USE & DEVELOPMENT

ACTION: Provide an effective development assessment and determination process

PURPOSE OF REPORT

To inform the Committee of the Development Unit's recommendation following consideration of Development Application N0052/11 - 4 BOUNDARY STREET, WARRIEWOOD (Lot 2 DP 816070), 10 JUBILEE AVENUE, WARRIEWOOD (Lot 10 DP 5055) Construction of a new private road to access 120 Mona Vale Road.

1.0 BACKGROUND

- 1.1 This matter was considered at the Council Meeting held on Monday, 20 June, 2011, and Council resolved to defer consideration of this matter to this Council Meeting. Cr Grace had expressed interest in this matter but was unable to attend the Meeting. He had requested deferral until such time as he could be present to take part in discussions.
- 1.2 The Development Unit, at its meeting held on Thursday, 9 June 2011 considered the Development Officer's report (**Attachment 1**) for determination of Development Application N0052/11 for the Construction of a new private road to access 120 Mona Vale Road.

2.0 REASON FOR REFERRAL TO COUNCIL

- 2.1 This item was called by Cr Grace.

3.0 DEVELOPMENT UNIT DELIBERATIONS

- 3.1 The owners, the applicants and their consultants addressed the Development Unit on the application and suggested that the road and roundabout could be provided to conform with Council's engineering and traffic requirements. The owner also raised issues concerning past decisions of the Council and financial concerns and sought at least "In-principle" support of the proposed road.
- 3.2 Development Unit members advised those present that it was not in the Development Unit's Charter to provide an in-principle support of any proposal, but could only determine the application that was before it based on the planning and engineering merits of the proposal.
- 3.3 Development Unit members suggested that the application was premature given that there was no overall strategy for the land proposed to be serviced by this road and that there were significant engineering and environmental issues relating to the construction of the road.

- 3.4 The Development Unit also advised that it considered the proposed road was prohibited under the PLEP 1993 as it was an ancillary component of a prohibited use of the land to which it was to service.
- 3.5 The owner and applicant were suggested to consider their options in light of comments made at the meeting and in particular the option of withdrawing the application at this time.

4.0 ISSUES

- Transport and traffic issues
- Environmental issues
- Scenic protection
- Prohibited development

5.0 SUSTAINABILITY ASSESSMENT

- 5.1 The relevant Environmental, Social and Economic issues have been addressed within the attached report.

6.0 EXECUTIVE SUMMARY

- 6.1 The application was considered by the Development Unit at its meeting held on 9 June 2011 and after hearing from the owners, applicants and their consultants and noting that there were no objectors present, endorsed the Assessing Officer's recommendation for refusal for the reason contained in the draft determination.

RECOMMENDATION

That the recommendation in the Development Officers Report be endorsed and Application N0052/11 - 4 Boundary Street, Warriewood (Lot 2 DP816070), 10 Jubilee Avenue, Warriewood (Lot 10 DP5055) for the construction of a new private road to access 120 Mona Vale Road, Warriewood be refused subject to the reasons for refusal contained in the Draft Determination.

Report prepared by

Warwick Lawrence
MANAGER ADMINISTRATION AND GOVERNANCE
and **DEVELOPMENT UNIT CHAIRMAN**

**SUBJECT: N0052/11 - 4 BOUNDARY STREET, WARRIEWOOD (Lot 2 DP 816070),
10 JUBILEE AVENUE, WARRIEWOOD (Lot 10 DP 5055) Construction of
a new private road to access 120 Mona Vale Rd.**

Determination Level: Development Unit

Date: 9 June 2011

SUMMARY OF RECOMMENDATION**REFUSAL**

REPORT PREPARED BY: Sophie Garland
APPLICATION SUBMITTED ON: 28/02/2011
APPLICATION SUBMITTED BY: OPERA PROPERTIES PTY LTD
7 GRAYLIND CLOSE
COLLAROY 2097
OWNER(S): PLANET WARRIEWOOD PTY LTD (Own)
UNITING CHURCH AUSTRALIA PROPERTY TRUST (Own)

1.0 DEVELOPMENT CONTROLS

The subject sites are zoned 1(b) Non-Urban pursuant to Pittwater Local Environmental Plan (PLEP) 1993. In terms of statutory permissibility, a private road can in various circumstances be considered a separate land use and therefore, not prohibited development under Clause 9 of PLEP 1993 within the 1(B) Non-Urban "B" zone.

In this instance, the primary purpose of the proposed private road is to support the future residential development of 120 Mona Vale Rd for urban land release purposes. Under the current zoning, this is neither permitted nor consistent with PLEP 1993.

In these circumstances, the road is considered to be a necessary and ancillary component of a prohibited use and is therefore prohibited under PLEP 1993.

2.0 NOTIFICATIONS

43 property owners notified

1 submission in support of the application

3.0 ISSUES

- B5.7 Stormwater Management - On-Site Stormwater Detention
- B5.9 Stormwater Management - Water Quality - Other than Dwelling House, Dual Occupancy and Secondary Dwellings
- B5.10 Stormwater Discharge into Public Drainage System
- B6.4 Internal Driveways - All Development other than Dwelling Houses, Secondary Dwelling and Dual Occupancy
- B6.10 Transport and Traffic Management - All Development other than Dwelling Houses, Secondary Dwelling and Dual Occupancy
- B4.18 Heathland/Woodland Vegetation
- B8.1 Construction and Demolition - Excavation and Landfill
- D16.12 Landscaping
- D14.1 Character as viewed from a public place
- D14.2 Scenic protection - General

4.0 COMPLIANCE TABLE

T - Can the proposal satisfy the technical requirements of the control?

O - Can the proposal achieve the control outcomes?

N - Is the control free from objection?

Control	Standard	Proposal	T	O	N
REF - Development Engineer					
B3.1 Landslip Hazard			Y	Y	Y
B3.22 Flood Hazard - Flood Category 3 - All Development			-	-	-
B5.4 Stormwater Harvesting			-	-	-
B5.5 Rainwater Tanks - Business, Light Industrial and Other Development			-	-	-
B5.6 Rainwater Tanks - Water Supply			-	-	-
B5.7 Stormwater Management - On-Site Stormwater Detention			N	N	Y
B5.9 Stormwater Management - Water Quality - Other than Dwelling House, Dual Occupancy and Secondary Dwellings			N	N	Y
B5.10 Stormwater Discharge into Public Drainage System			N	N	Y
B5.12 Stormwater Drainage Systems and Natural Watercourses			-	-	-
B5.14 Stormwater Drainage Easements (Public Stormwater Drainage System)			-	-	-
B6.2 Access Driveways and Works on the Public Road Reserve- All Development other than Dwelling Houses, Secondary Dwelling and Dual Occupancy			N	N	Y
B6.4 Internal Driveways - All Development other than Dwelling Houses, Secondary Dwelling and Dual Occupancy			N	N	Y
B6.6 Off-Street Vehicle Parking Requirements - All Development other than Dwelling Houses, Secondary Dwelling and Dual Occupancy			-	-	-
B6.9 On-Street Parking Facilities - All Development other than Dwelling Houses, Secondary Dwellings and Dual Occupancy			-	-	-
B6.10 Transport and Traffic Management - All Development other than Dwelling Houses, Secondary Dwelling and Dual Occupancy			N	N	Y
B8.1 Construction and Demolition - Excavation and Landfill		The amount of the excavation to accommodate the proposed road construction is considered to result in unacceptable environmental impacts.	N	N	Y
B8.2 Construction and Demolition - Erosion and Sediment Management			Y	Y	Y
B8.3 Construction and Demolition - Waste Minimisation			Y	Y	Y
B8.4 Construction and Demolition - Site Fencing and Security			Y	Y	Y

Control	Standard	Proposal	T	O	N
B8.5 Construction and Demolition - Works in the Public Domain			Y	Y	Y
C6.4 Flood - Warriewood Valley Land Release Area Residential Sectors			Y	Y	Y
C6.18 Utilities and services - Warriewood Valley Land Release Area			Y	Y	Y
REF - Bushfire					
B3.2 Bushfire Hazard		The application was not referred to the NSW RFS. It has been confirmed with the RFS that a referral is not required as no additional dwellings are proposed. It was noted that the proposed road would inevitably improve access to the sites in Boundary St and Mona Vale Rd.	Y	Y	Y
REF - Natural Resources					
B1.4 Aboriginal Heritage Significance			Y	Y	Y
B3.5 Acid Sulphate Soils			Y	Y	Y
B4.18 Heathland/Woodland Vegetation		Proposed road will result in the removal of significant canopy trees and native vegetation.	N	N	Y
D16.12 Landscaping			N	N	Y
REF - Planner					
EPA Act Section 147 Disclosure of political donations and gifts			Y	Y	Y
3.1 Submission of a Development Application and payment of appropriate fee		Owners consent has been provide from the owners of both 4 Boundary St and 10 Jubilee Ave.	Y	Y	Y
3.2 Submission of a Statement of Environmental Effects			Y	Y	Y
3.3 Submission of supporting documentation - Site Plan / Survey Plan / Development Drawings			Y	Y	Y
3.4 Notification		14 day notification	Y	Y	Y
3.5 Building Code of Australia			Y	Y	Y
3.7 Designated Development			-	-	-
4.1 Integrated Development: Water Supply, Water Management and Water Activity			-	-	-
4.4 Integrated Development: Bushfire			-	-	-
4.5 Integrated Development: Aboriginal Objects and Places			-	-	-
4.6 Integrated Development - Protection of the Environment			-	-	-
4.7 Integrated Development - Roads			-	-	-
5.1 Referral to the Roads and Traffic Authority under SEPP (Infrastructure) 2007			-	-	-
5.2 Referral to the NSW Police Service			-	-	-
5.3 Referral to NSW Department of Environment and Climate Change (DECC)			-	-	-

Control	Standard	Proposal	T	O	N
A1.7 Considerations before consent is granted		The proposal includes provision of access to future lots at 120 Mona Vale Rd currently zoned 1(A) Non-Urban 'A'. No formal application has been received by Council to rezone this land and the proposal to therefore, proposing to provide a road to service a development, which is currently prohibited under the zoning.	N	N	Y
B1.3 Heritage Conservation - General			-	-	-
B3.2 Bushfire Hazard		The application was not referred to the NSW RFS. It has been confirmed with the RFS that a referral is not required as no additional dwellings are proposed. It was noted that the proposed road would inevitably improve access to the sites in Boundary St and Mona Vale Rd.	Y	Y	Y
B3.6 Contaminated Land and Potentially Contaminated Land			Y	Y	Y
B5.1 Water Management Plan		Comments provided regarding water management. Urban Infrastructure has advised that there is lack of evidence provided that demonstrates adequate drainage of the road.	N	N	Y
B5.2 Wastewater Disposal			Y	Y	Y
B5.3 Greywater Reuse			-	-	-
B5.12 Stormwater Drainage Systems and Natural Watercourses			-	-	-
C1.14 Separately Accessible Structures			-	-	-
C2.14 Commercial Swimming Pools			-	-	-
C5.1 Landscaping			-	-	-
C5.2 Safety and Security			-	-	-
C5.4 View Sharing			-	-	-
C5.5 Accessibility			-	-	-
C5.7 Energy and Water Conservation			-	-	-
C5.8 Waste and Recycling Facilities			-	-	-
C5.9 Business Identification Signs			-	-	-
C5.10 Protection of Residential Amenity			-	-	-
C5.11 Advertisements			-	-	-
C5.14 Car/Vehicle/Boat Wash Bays			-	-	-
C5.15 Undergrounding of Utility Services			-	-	-
C5.16 Building Facades			-	-	-
C5.18 Public Road Reserve - Landscaping and Infrastructure			-	-	-
C5.19 Food Premises Design Standards			-	-	-
C5.20 Liquor Licensing Applications			-	-	-
C5.21 Plant, Equipment Boxes and Lift Over-Run			-	-	-
D14.1 Character as viewed from a public place		The proposal is expected to result in detrimental visual impact with the significant removal of existing trees and vegetation.	N	N	Y
D14.2 Scenic protection - General		The proposal will result in unacceptable visual impact to the Escarpment when viewed from the surrounding area due to the significant removal of native vegetation and canopy trees.	N	N	Y

Control	Standard	Proposal	T	O	N
D14.3 Building colours and materials			-	-	-
D14.4 Height - General			-	-	-
D14.7 Front building line			-	-	-
D14.8 Side and rear building line			-	-	-
D14.14 Site coverage - Non Urban					
D14.16 Fences - Flora and Fauna Conservation Areas			-	-	-
D14.17 Construction, Retaining walls, terracing and undercroft areas			Y	Y	Y
Other State Environmental Planning Policies (SEPPs)			Y	Y	Y

*Issues marked with an x are discussed later in the report.
Issues marked with a - are not applicable to this Application.

5.0 SITE DETAILS

The sites subject to the proposed application are known as 4 Boundary St, Warriewood (Lot 2 DP 816070) and 10 Jubilee Ave, Warriewood (Lot 10 DP 5055). The site at 10 Jubilee Ave is currently occupied by the Uniting Church and contains a number of buildings including the Church, a recreation complex and childcare as well as associated car parks. Access to this site is currently provided via a private access driveway from Jubilee Ave with a right of carriageway by the terms of a Section 88B Instrument benefiting Council in away that allow it to provide for access to existing properties in Boundary St. The site 4 Boundary St is a clear area with a horse exercise area as well as a dwelling house and ancillary structure located in the southeastern corner. The areas of the site proposed for the road construction contain significant vegetation and canopy trees with sections of the sites sloping steeply. The sites are identified as being bushfire prone and subject to land slip.

6.0 PROPOSAL IN DETAIL

The proposal seeks approval for the construction of a new private road to be created on two adjoining lots: 4 Boundary St and 10 Jubilee Rd. The proposed road will provide vehicular access from Jubilee Ave to Boundary St as well as access to the allotment at 120 Mona Vale Rd. The proposal will involve the construction of retaining walls to accommodate the road construction located within the fringe of the right of carriage way once created required. The proposed road is 227m in length with a gradient as steep as 20% for approximately 100 metres.

7.0 BACKGROUND

The application was lodged on 28th February 2011 and notified for 14 days in accordance with Council's Notification policy. During this time, one submission was received in support of the proposal. The application was referred to the Warriewood Valley Strategic Land Release Team who made comments regarding roads and traffic, drainage, natural resources as well as the strategic framework of the Warriewood Valley land release area.

8.0 STATE ENVIRONMENTAL PLANNING POLICY NO. 1 - DEVELOPMENT STANDARDS (SEPP No. 1)

The application of SEPP NO. 1 is not required.

9.0 EXISTING USE RIGHTS

Does the proposal rely on Existing Use Rights? No

10.0 DISCUSSION OF ISSUES

- **B5.7 Stormwater Management - On-Site Stormwater Detention, B5.9 Stormwater Management - Water Quality - Other than Dwelling House, Dual Occupancy and Secondary Dwellings & B5.10 Stormwater Discharge into Public Drainage System**

The following comments have been provided by Council's Urban Infrastructure Department:

The proposal has submitted does not address/satisfy the following matters as required by the Pittwater 21 DCP:

1. *Demonstration of an adequate 20 year (Average Recurrence Interval) ARI road drainage system to control and drain the proposed road;*
2. *The lack of any proposed inter-allotment drainage systems to legally drain storm water across neighbouring properties;*
3. *The lack of any proposed on-site detention systems to control flows off the proposed road to achieve pre-development discharges up to the 100 year ARI event;*
4. *The lack of any proposed water quality facilities to control and to clean up poor quality stormwater runoff from road generated runoff.*

- **B6.10 Transport and Traffic Management - All Development other than Dwelling Houses, Secondary Dwelling and Dual Occupancy & B6.4 Internal Driveways - All Development other than Dwelling Houses, Secondary Dwelling and Dual Occupancy**

The proposed road is intended to service a large number of new private properties to the west and as such it intended to fulfill the purpose of a public road. Therefore, it should be assessed under the criteria relating to a public road not the criteria relating to a private access way servicing a small number of properties. In the absence of the application including any meaningful information as to how the proposed private road would legally provide access to fulfill a range of functions otherwise provided by a public road as well as services (water, sewer and emergency access), the application should not be approved.

The following critique has been provided by Council's Urban Infrastructure Department:

1. *The Traffic Impact Report is deficient in that it does not consider the future traffic volumes of Jubilee Avenue and Ponderosa Parade that will exist when all development in the Valley is complete;*
2. *The width of the proposed road does not comply with the width of a local road as defined in the Warriewood Valley Roads Master Plan (WVRMP) and as such is not acceptable;*
3. *The maximum longitudinal grade of proposed roads exceeds the 15% maximum specified in the Austroad Standard to roads having the function of a Local Road and as such is not acceptable;*
4. *The proposed road does not achieve the minimum traffic sight distances on the crest as specified in the Austroad Standard for roads having the function of a Local Road and as such is not acceptable;*
5. *The proposed intersection design of the proposed road and Boundary Street is not acceptable;*
6. *The proposed intersection design of the proposed road and Jubilee Avenue is not acceptable and does not reflect the design in the WVRMP;*
7. *There is no provision of Street Lighting to Standard required by WVRMP and as such is not acceptable;*
8. *The proposed intersection of the proposed road with the existing ROW to the Uniting Church needs to be designed in accordance with Pittwater 21 DCP, B6.2.*

The list above highlights a number of deficiencies with the proposal compared to relevant standards. This would result in a less safe outcome for road users. The standards need to be adhered to to achieve the required road outcomes.

Adjusting the road design to meet the required standards will result in deeper and wider cuts and hence further hillside disturbance that will also exacerbate other concerns.

Given the above comments, the proposed construction of a private road does not provide for a satisfactory outcome in terms of safety and is deficient in information. Therefore, the application is recommended for refusal.

- **B1.4 Aboriginal Heritage Significance**

Council's Natural Resources officer provided the following comments:

A shelter has been recorded in the adjacent No. 3 Boundary Road, however this property is largely undisturbed with different topography and vegetation type. The subject site had no apparent signs of any heritage objects however, subsurface articles cannot be ruled out.

- **B4.18 Heathland/Woodland Vegetation & D16.12 Landscaping**

Council Natural Resource officer provided the following comments:

The properties contain areas of natural bushland and modified paddocks in a rural landscape.

The proposed works involve the construction of a new private road through properties known as 4 Boundary Street and 10 Jubilee Avenue. The proposed road is presumably to enable access to an area for which an application to subdivide and provide new dwellings will be lodged in the future. As the proposed road will be located in an area containing open forest and indigenous vegetation (mainly on 10 Jubilee Avenue), a Flora and Fauna Assessment (Footprint Green Pty Ltd 29th January 2011) has been provided. A total of 63 native and indigenous flora species were observed in the flora survey, as well as a number of exotic and weed species. 33 fauna species were observed, with a further 17 recorded within the DECCW Wildlife Atlas as being probable in the locality, some of which are listed as endangered or vulnerable under the Threatened Species Conservation Act 1995. Due to this, 7-part tests of significance were undertaken for two threatened flora species, eight threatened fauna species and one threatened fauna population.

Based upon the assessment criteria, it was considered that the proposed development would not have a significant impact on threatened species, subject to the adoption of several recommendations listed on Page 60 of the report. All discussion and recommendations within the report are supported. However, the report makes no mention of the potential impact of road kill caused by the expected increase in traffic on the proposed road which will bisect the forested area. The report has determined that 1670m² of Sydney Sandstone Gully Forest/Ridgetop Woodland will require removal as well as 2265m² of modified (exotic grass with scattered indigenous trees) habitat.

A separate Arboricultural Impact Assessment (Footprint Green Pty Ltd 21st January 2011) has also been provided. This report assessed a total of 114 trees that were deemed to be potentially impacted by the proposed roadway.

The majority of these trees are located on the subject sites of 2-4 Boundary Road and 10 Jubilee Avenue, however a small number of trees assessed (9) are located within the Boundary Road reserve. Trees were assessed on the basis of their significance in the landscape, as well as the impact of the proposed roadway and whether they could be retained or require removal. A total of 88 trees were determined to require removal to accommodate the proposed road. Of these, only three (3) are species exempt from Council's Tree Preservation Order. Of the trees requiring removal, 17 are considered to have significant landscape significance, and 19 to have High landscape significance, with the remainder having Moderate or Low landscape significance. However, six (6) trees in total are deemed unstable and therefore do not have any safe useful life expectancy (SULE). The remaining 26 trees assessed can be safely retained if tree protection measures are adopted as specified.

The assessment and determinations of the arborist report are supported, however there are a number of issues. The loss of 85 protected trees from the area is considered to be a significant impact, particularly with the high proportion of trees of either Significant or High landscape significance.

Seven (7) trees are recommended for removal from the Council road reserve on Boundary Street which are located south and west of the proposed new road where it meets the existing Boundary Street, and it is unclear as to why this is necessary. Discussions with Council's Road and Traffic Engineer have come to the same conclusion that this small section of road heading south from the intersection is unnecessary and unjustified at this point in time, therefore the removal of the seven trees in this area is unnecessary.

The Council engineers have also indicated the proposed road should be required to be designed to the local road specifications of the WVRMP and adjust the levels of the intersection. The cuts will therefore be around 5.5 m deep and overall width of area directly impacted by construction works (not including significant trees outside this area whose roots would be affected and maybe necessitate their removal , maybe another 6 m either side of the road) would be approximately 25 m . They would not be able to narrow down the WVRMP dimensions to stay within the 20m road reserve as currently proposed. Therefore the overall impact on canopy trees is unknown however is highly likely to be greater than that currently indicated by the arborist report which bases its assessment on the 20m road width.

In terms of visual impact, the proposal is considered to cause a highly detrimental visual impact with a long straight swathe of vegetation and tall canopy trees removed. This combined with the required cut to attain the necessary road gradient will leave a massive empty corridor with high steep embankments which cannot be effectively screened and this will be prominent from a landscape perspective particularly when viewed from Jubilee Avenue.

Due to the significant impact on canopy trees and 1670 square metres of open forest habitat, and potential disturbance to local wildlife, as well as detrimental visual impact for a proposed road that does not appear to be totally justified, the recommendation from a natural resource and landscape perspective is that the proposed works in the current form should be refused.

- **A1.7 Considerations before consent is granted**

The following comments have been provided by Council's Principal Planner- Land Release:

The subject DA is for the construction of a private road that traverses 10 Jubilee Avenue and 4 Boundary Street, Warriewood. The proposed road is for the purpose of providing '...adequate access to the site known as 120 Mona Vale Road, Warriewood.' (as stated in the submitted Statement of Environmental Effects prepared by Glendinning Minto & Associates Pty Ltd 2011 for this DA).

Neither of the properties that are the subject of the current DA are within the Warriewood Valley Urban Land Release area. Additionally, 120 Mona Vale Road, Warriewood (for which the proposed road intends to provide future access) is not formally within the Warriewood Valley Urban Land Release area (as identified in the NSW Government's Metropolitan Development Program).

Nonetheless, a number of Council decisions made in relation to 120 Mona Vale Road, Warriewood are currently outstanding and have not been rescinded. It is in this context that the following comments, limited to a land release/strategic perspective, are provided.

At its meeting of 7 April 2008, Council resolved inter alia:

- '3. That Council encourage the applicant, the Uniting Church, the RTA and owners of the sites fronting Boundary Street including 120 Mona Vale Road to further discuss possible alternate access from 120 Mona Vale Road to Daydream Street for the purposes of a potential future subdivision of 120 Mona Vale Road'*

The current DA is for the purpose of accommodating vehicular access to 120 Mona Vale Road, Warriewood.

That 2008 resolution reiterates Council's decision of 18 April 2006 where Council resolved:

- 'A. 1) That 120 Mona Vale Road, Warriewood, be included in the Warriewood Land Release for the purpose of residential development.*
- 2) That the applicant his advisors and Council staff consult as to the land capability, the potential yield and the securing of adequate access for the site.*
- 3) That following 2 above that the applicant be invited to submit a formal Masterplan application*
- B. That in accordance with Clause 16 of the Council's adopted Code of Meeting Practice the reasons for the deviation from the staff recommendation in relation to this application are as follows:-*

To facilitate a development scenario for the site given the present constraints of the property, including aspects of land capability.'

To date, no formal application for rezoning 120 Mona Vale Road, Warriewood has been lodged/considered by Council. No development consent has been issued by Council regarding the Council's resolutions for 120 Mona Vale Road, Warriewood.

The Traffic Management Report (however provides an indicative concept plan of the intended land use and future density for 120 Mona Vale Road, Warriewood, which has not been subject to any formal application to, or considered/determined by, Council.

The two subject properties are zoned 1(b) Non-urban "B" and the adjoining 120 Mona Vale Rd, Warriewood is zoned 1(a) Non-urban "A". Any intensification of development, including the road (the subject of this DA) would, on the basis of the concept plan, need to be assessed in terms of permissibility or otherwise against the zone.

The indicative future detail of the development proposed at 120 Mona Vale Rd, as discussed within the submitted Traffic Report (TAR Technologies February 2011) is an intensification of development on a site not described on the DA form. The road, as proposed, is contemplating to service a future development opportunity that is currently prohibited under the zone.

The proposal to construct a road to service a development, which at current only exists in concept and is prohibited under the zoning of 120 Mona Vale Rd, is unreasonable, especially given the significant environmental impacts. As discussed above, the site 120 Mona Vale Rd has not been included, as part of this development application and no formal rezoning application has been made to develop the land which the proposed road is intended to service.

Under Section 5 (ii) of the Environmental Planning and Assessment Act 1979, development is to facilitate an orderly planning process in the developing land which allows for a coordinated approach to development of land. The application is a departure from an orderly planning process which has been established in Warriewood Valley Land Release Area in that the construction of the road as it stands is to service a development which has not been applied for nor is it permissible under the current 1(a) Non- Urban "A" zoning of 120 Mona Vale Rd and is recommended for refusal.

- **D14.1 Character as viewed from a public place & D14.2 Scenic protection - General**
- The proposed construction of a private road is considered to result in an unacceptable visual impact when view from the lower areas of Warriewood Valley particularly Jubilee Avenue. Control D14.2 makes particular reference to minimizing visual impact on the natural environment when view from public areas such as road, waterways and public reserves. The proposed road will result in the removal of significant native vegetation and canopy trees, which currently line the escarpment and can be viewed as travelling along Mona Vale Rd. The proposed road construction is adjacent to a large area of bushland, will result in the character of the rural escarpment area being compromised by the road, and associated construction.

The site was included in the Ingleside and Warriewood Valley visual impact study, which classified the proposed area of development in the highest level of visual significance, being part of the Warriewood Escarpment. Under the study, the area is considered to be essential for retention to conserve or enhance the visual characteristics and landscape values of the area unless a further specific study indicates that retention and conservation is not warranted. The visual impact of the proposal would be entirely inconsistent with the classification and recommendations of this study.

The proposal is considered to be inconsistent with the character of the Locality and does not respond to the surrounding features of the natural environment. In particular, the tree canopy area around the escarpment is noted as being protected as an area of environmental significance to the Warriewood Locality and has not been protected under the proposed development. The application is deficient in providing a development which complements the natural bushland environment and is significantly out of character for the Locality. It is therefore recommended that the application be refused.

11.0 CONCLUSION

The Development Application has been assessed in accordance with the provisions of Section 79C of the Environmental Planning and Assessment Act 1979, Pittwater Local Environmental Plan 1993, draft Pittwater 21 LEP and Pittwater 21 DCP and other relevant Council policies.

The proposed construction of a private road is considered to be an unreasonable proposal which will have significant impacts on the surrounding natural environment. The proposal is intended to service a site, which has not been included within the subject application, and no formal application has been made to rezone the site at 120 Mona Vale Rd as required for such an intensification of development. Insufficient information has been provided as to the construction of the proposed road and compliance with relevant standards and traffic management. As detailed in the draft determination, the proposal is not supported and is recommended for refusal.

RECOMMENDATION OF DEVELOPMENT OFFICER / PLANNER

That Council as the consent authority pursuant to Section 80 of the Environmental Planning and Assessment Act 1979 refuse development application N0052/11 for the proposed construction of a private road at 4 Boundary Street and 10 Jubilee Avenue subject to the reasons outlined within the draft refusal.

Report prepared by

Sophie Garland
SENIOR PLANNER

DRAFT DETERMINATION
REFUSAL
ENVIRONMENTAL PLANNING & ASSESSMENT ACT, 1979 (AS AMENDED)
NOTICE TO APPLICANT OF DETERMINATION OF A DEVELOPMENT APPLICATION

Applicants Name and Address:
OPERA PROPERTIES PTY LTD
7 GRAYLIND CLOSE
COLLAROY 2097

Being the applicant in respect of Development Application No **N0052/11**

Pursuant to section 80(1) of the Act, notice is hereby given of the determination by Pittwater Council, as the consent authority, of the Development Application for:

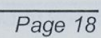
Construction of a new private road

At: 4 BOUNDARY STREET, WARRIEWOOD (Lot 2 DP 816070), 10 JUBILEE AVENUE, WARRIEWOOD (Lot 10 DP 5055)

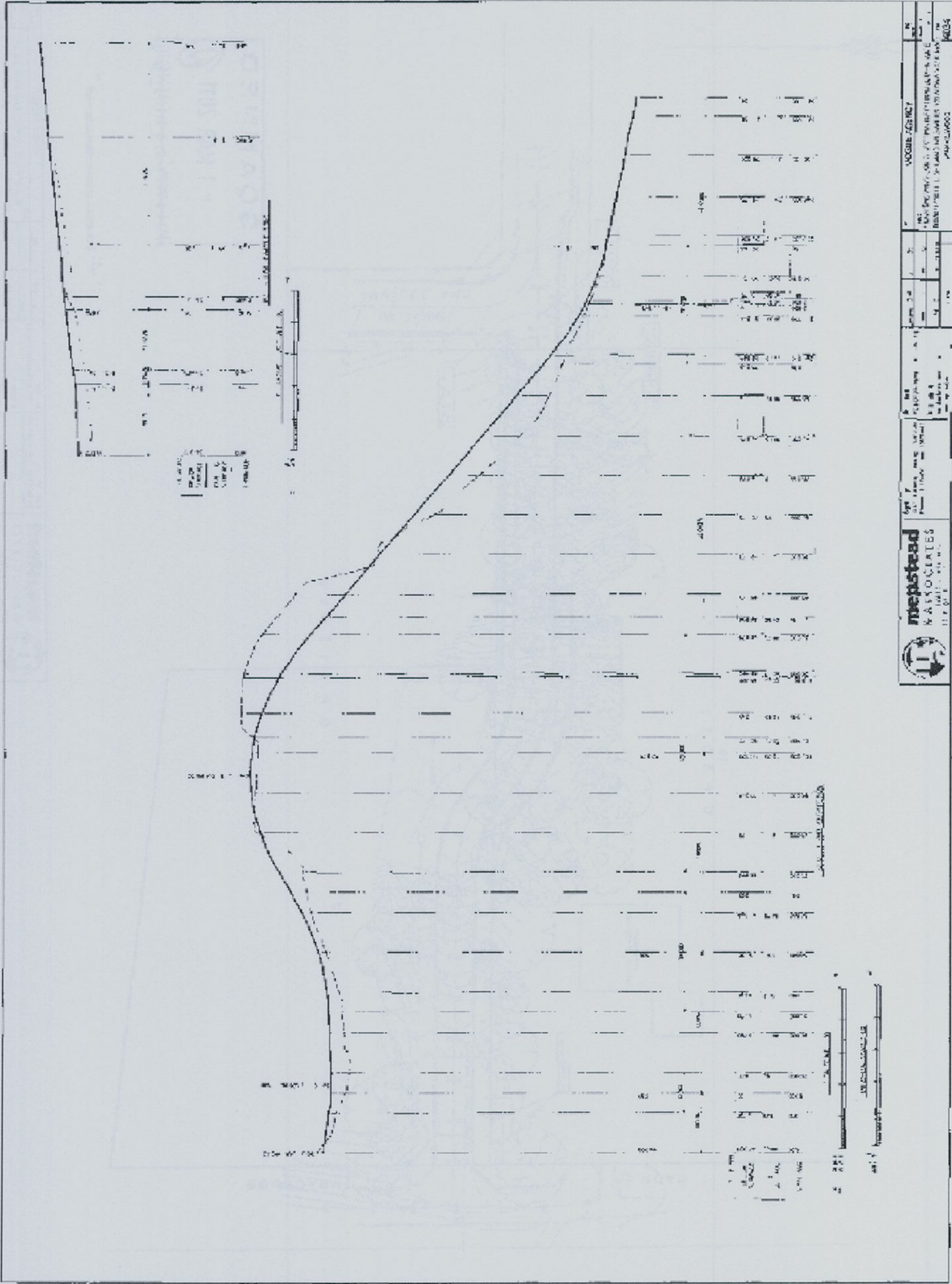
Decision:

The Development Application has been refused for the following reasons:

1. The proposed private road is prohibited under PLEP 1993 as it is a necessary and ancillary component of a prohibited use (being the future development of presently non-urban zoned land for urban purposes at 120 Mona Vale Rd)
2. The application is premature and not consistent with the objections of the Environmental Planning and Assessment Act 1979 for orderly development. The application is a departure from an orderly planning process which has been established in the Warriewood Valley Land Release Area in that the construction of the road is to service a development which has not been applied for nor is it permissible under the current 1(a) Non- Urban "A" zoning of 120 Mona Vale Rd.
3. Inadequate information as to how the proposed private road would legally provide access for the full range of functions otherwise provided by a public road (water, sewer and emergency services).
4. The design of this road results in a significant loss of open forest habitat and likely to adversely impact on local wildlife these impacts are unreasonable in circumstances of existing access arrangements and the premature nature of the application and the prohibited nature of the proposal.
5. The resultant adverse visual impact on the Escarpment due to the significant extent of cut required for the road combined with the significant amount of vegetation and tall canopy trees required to be removed in the present circumstance of availability of access and prohibited nature of the development.
6. The design and location of the road does not comply with the relevant Australian Standards WVRMP in the following area:
 - i. The maximum longitudinal grade of proposed roads exceeds the 15% maximum specified in the Austroad Standard to roads having the function of a Local Road and as such is not acceptable;



NOTIFICATION PLANS



LOCALITY MAP



- ii. The proposed road does not achieve the minimum traffic sight distances on the crest as specified in the Austroad Standard for roads having the function of a Local Road and as such is not acceptable;
 - iii. The proposed intersection design of the proposed road and Boundary Street is not acceptable;
 - iv. The proposed intersection design of the proposed road and Jubilee Avenue is not acceptable and does not reflect the design in the WVRMP;
 - v. There is no provision of Street Lighting to Standard required by WVRMP and as such is not acceptable;
 - vi. The proposed intersection of the proposed road with the existing ROW to the Uniting Church needs to be designed in accordance with Pittwater 21 DCP, B6.2.
7. The information submitted is deficient to enable a proper assessment of likely impacts on:
- i. The future traffic volumes on Jubilee Avenue and Ponderosa Parade that will exist when the Warriewood Valley Urban Land Release project is complete; and
 - ii. How water will be managed to achieve pre-development discharges up to the 100-year ARI event, how impact on adjoining properties will be minimised, and how pollution will be minimised as a result of the proposed road.
8. The proposed Road and its intended provision of alternative access to existing development upon 120 Mona Vale Road, is not sufficiently justified given:
- the cost of development given the scope of works; and,
 - the resultant environmental impact; and,
 - the adequacy of the existing legal and physical access arrangements to both Jubilee Avenue and Mona Vale Road; and,
 - the proposed width of carriageway which is excessive

NOTES:

1. This determination was taken under delegated authority on behalf of the elected Council pursuant to Section 377 of the Local Government Act 1993.
2. An applicant may under Section 82A of the Act, apply to council to review this determination.
3. Section 97 of the Act confers on the applicant who is dissatisfied with the determination of a consent authority a right of appeal to the Land & Environment Court exercisable within 12 months after receipt of this notice.
4. Any person who contravenes this notice of determination of the abovementioned development application shall be guilty of a breach of the Environmental Planning & Assessment Act, 1979, and shall be liable to a monetary penalty and for a restraining order which may be imposed by the Land and Environment Court.

Mark Ferguson
GENERAL MANAGER

Per:
 Date -