



**SUBJECT: R0001/05 - Application to rezone Sector 3 - Warriewood Valley Urban Land Release, 14-20 MacPherson Street, Warriewood**

**Meeting:** Environment and Planning Committee **Date:** 2 July 2007

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## EXECUTIVE SUMMARY

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### PURPOSE OF REPORT

To advise Council on the further statutory process for this draft LEP following its public exhibition.

### BACKGROUND

Council at its meeting of 3 July 2006, resolved to prepare and exhibit a draft LEP to rezone 14-20 MacPherson Street, Warriewood, from 1(b) (Non-Urban "B") and part 5(a) (Special Uses "A" – Drainage) to 2(f) (Urban Purposes – Mixed Residential), under Pittwater Local Environmental Plan 1993.

### ISSUES

Public Exhibition and Section 62 Consultation  
Statutory Issues  
Objections

### FINANCIAL IMPLICATIONS

The proposed rezoning has implications for Council's Warriewood Valley Section 94 Contributions Plan and will increase Council's rate base.

### POLICY IMPLICATIONS

The rezoning proposal is consistent with the Warriewood Valley Urban Land Release Draft Planning Framework.

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## SUMMARY OF RECOMMENDATION

That the Draft LEP be adopted and referred to the Minister with a request that the plan be made.

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## 1.0 BACKGROUND

Sector 3 of the Warriewood Valley Urban Land Release has been identified in the 1997 Warriewood Valley Urban Land Release Draft Planning Framework as being suitable for medium density residential development.

The 1997 Warriewood Valley Urban Land Release Draft Planning Framework is Council's adopted planning strategy for the release of non-urban land in Warriewood Valley for urban purposes in accordance with the State Government's Metropolitan Development Strategy.

The rezoning application submitted by Mirvac relates to land in part of Sector 3 at 16-20 MacPherson Street, Warriewood in which Mirvac has an interest. Adjoining land on the eastern side of Brands Lane (14 MacPherson Street) owned by Anglican Retirement Villages is also within Sector 3 and forms part of the ARV Seniors Living SEPP development application approved by Council on 3 April 2006 subject to conditions. As the Masterplan for the ARV proposal is distinct from the Masterplan for the Mirvac application, with the exclusion of the Brands Lane interface, it is considered appropriate to omit the ARV part of Sector 3 in the current rezoning proposal. With the exception of the ARV part of sector 3, the ARV site has recently been zoned 2(f) (Urban Purposes – Mixed Residential).

The application with supporting documentation was lodged on 5 September 2005 and underwent preliminary non statutory notification and exhibition from 12 December 2005 to 30 January 2006.

Council considered a report on this matter at its Environment and Planning Committee Meeting on 3 July 2006, and resolved as follows:

1. *That Council resolve to commence the statutory process under the Environmental Planning and Assessment Act 1979 to make a draft Local Environmental Plan to amend the zoning of land within Sector 3 of the Warriewood Valley Urban Land Release at Lot A DP 358785, Lot 4 DP 553816, Lot 1 DP 604035 and Lot 1 DP 592091, 14-20 MacPherson Street, Warriewood from 1(b) (Non-Urban "B") and 5(a) (Special Uses "A") to 2(f) (Urban Purposes – Mixed Residential) as set out in Attachment 1 to this report.*
2. *That Council resolve to advise the Secretary of the Department of Planning of its resolution to prepare the draft LEP in respect of the subject land.*
3. *That Council resolve to apply to the Department of Planning LEP Review Panel for a Written Authorisation to Exercise Delegation signed by the Director-General with respect to sections 65 and 69 of the EP&A Act to enable the draft LEP to be certified for public exhibition and a report to be prepared after public exhibition and the consideration of submissions requesting the Minister to make the plan.*
4. *That Council resolve that the preparation of a Local Environmental Study is not required in this instance.*
5. *That Council resolve to place the certified draft Local Environmental Plan on public exhibition to enable any person to make a written submission to Council.*

The Department of Infrastructure Planning and Natural Resources (Department of Planning) was advised of Council's decision on 23 September 2006.

The draft LEP was certified under delegation on 29 September 2006, and was exhibited from 25 November 2006 to 3 January 2007. This report advises Council of the outcomes of the statutory notification of the rezoning under the EPA Act 1979 and the next steps to pursue the proposed rezoning.

## 2.0 ISSUES

### Public Exhibition

The draft LEP was certified under delegation on 29 September 2006, and was exhibited from 25 November 2006 to 3 January 2007.

Two written submissions were received as a result of the exhibition.

The points raised were as follows:

- Contours not shown on plan
- Lack of useable open space (for children to play)
- Lack of parking
- Shared driveways prevent visitor/other parking
- Creek line corridor landscape buffer used for continuous road and bioswale
- Fencing between allotments to be provided
- Displacement of “Flower Power café and garden centre” – community centre

Comments and discussion of the points raised above are detailed following.

#### Contours not shown on plan

Concerns that contour lines have not been shown on the Masterplan have been raised in a submission received by Council. It is acknowledged that the Masterplan does not show contours, however the rezoning application information comprised plans and details of the site levels and contours, including the stormwater catchment studies. The topography of the subject site has been considered in the layout and design of the Masterplan, and in this regard, the overlay of contours upon the Masterplan is not required. The submission indicated concern that the “*outcomes are impossible to predict*” without the contour information. The previous report to Council (3 July 2006) in relation to this rezoning application identified that the design outcomes had been satisfactorily achieved and this comment is still applicable. Additionally, the site will be subject to varying degrees of landfill that is required to address the potential impacts of flood waters and in this regard the existing contours of the site will be altered as a result of the Masterplan to achieve the required necessary outcomes for the subdivision proposal. The submission issue is not supported.

#### Lack of useable open space (for children to play)

Concerns of inadequate “*useable open space*” have been raised in a submission received by Council. The provision of public recreation and open space areas has been addressed within Council’s Warriewood Valley Section 94 contributions Plan (Plan No.15 – amendment No. 13). The Masterplan has identified areas of the subject site that will contribute to the amenity of the future residents of the site (and locality in general) and the infrastructure provision of public recreation and open space areas is appropriately addressed through the imposition of Section 94 contributions. The Warriewood Valley Landscape Masterplan provides adequate integration of open space and recreational areas within the Warriewood Valley locality and Sector 3 contributes through the abovementioned Section 94 contributions to the achievement of this strategy. The submission issue is not supported.

#### Lack of parking & Shared driveways prevent visitor/other parking

Concerns of inadequate car parking have been raised in a submission received by Council, with additional comment that “*experience in Warriewood shows that garages are used for*

*other purposes, with vehicles parked on the driveway, reducing available visitor and other parking".* The Masterplan has satisfactorily addressed the car parking controls outlined in Development Control Plan No. 29 – Warriewood Valley Urban Land Release through the design and layout of the subdivision plan. DCP 29, Section 3.8 The Road System, identifies accessways, shareways and access places as beneficial design solutions for allotment layouts that contribute to the amenity of the street and subdivision layout. DCP 29 actively seeks to encourage non-motorised means of transport and a requirement for a surplus provision of car parking spaces within the Masterplan would not be defensible. Additionally, the inclusion of accessways, shareways and access places promotes reduced traffic speeds and improved pedestrian safety generally. The submission issues are not supported.

#### Creek line corridor landscape buffer used for continuous road and bioswale

Both Council's Landscape Architect and Natural Resources Officer have reviewed the Masterplan documentation and are satisfied with the setback and landscaping provisions for the creek line corridor. The road and bioswale referred to within the submission to Council are both sited outside of the 25m buffer zone (for the creek line) and also assist in contributing to the spatial context and separation of the residential development and creek line. The creekline corridor landscape buffer is consistent with the requirements of Development Control Plan No. 29 - Warriewood Valley Urban Land Release.

#### Fencing between allotments to be provided

The issue of providing fencing between allotments has been raised within a submission to Council and this issue is able to be appropriately addressed through the subsequent development applications for the individual dwelling proposals that would be considered pending endorsement of the rezoning application. It should be noted that once the allotments were formally created there will be two avenues by which an allotment owner may fence their property being the provisions of the Dividing Fences Act 1991 and the fencing controls of Development Control Plan No. 29 - Warriewood Valley Urban Land Release.

#### Displacement of "Flower Power café and garden centre" – community centre

Concerns previously relayed to Council following the preliminary non-statutory exhibition period have been maintained through a submission received by Council. This issue had been addressed within the report to Council on 3 July 2006, however the author of the submission has stated that the previous Council comment and response to this issue was "*most unsatisfactory*". In review of this issue, this report concurs with the previous Council comment within the report to Council on 3 July 2006. For reference the earlier comment is repeated following.

*The approved Masterplan for Sector 8 includes an area within Lot 11, Section C, DP 5464, 23B MacPherson Street (owned by Mirvac) allocated for a future Focal Neighbourhood Centre. This site adjoins the south west intersection of MacPherson Street and Garden Street and is diagonally opposite the Flower Power site. The provision of such a facility in this general location is a requirement of Part 3.10 (Focal Neighbourhood Centre) of DCP No 29 – Warriewood Valley Urban Land Release. If such a facility is provided within Sector 8, it will contain local shops such as a small general store, post office, ATM, internet coffee shop etc for the benefit the local community. The requirement for such a facility will be reviewed when the existing Flower Power premises are replaced by residential development.*

It is further confirmed that there are current discussions with the stakeholders for Sector 8 and the Focal Neighbourhood Centre is intended to be provided within the Sector 8 masterplan. The submission issue is not supported.

As the abovementioned submissions are not supported, it is recommended that the draft plan is satisfactory and does not require amendment.

## **Section 62 Consultation**

As required by S62 of the EPA Act 1979 the proposed rezoning was referred to relevant authorities with a request to provide comment or input into the draft LEP.

The authorities (and corporations) consulted in this instance were:

Warringah Council  
Sydney Water  
NSW Rural Fire Service  
Energy Australia  
Department of Environment and Conservation  
Roads & Traffic Authority  
Department of Land and Water Conservation  
Department of Infrastructure, Planning and Natural Resources (Dept. of Planning)  
Telstra  
Department of Housing  
Office of the Valuer General  
Landcom

### *Warringah Council*

Warringah Council stated that no objections were held regarding the proposal.

### *Sydney Water*

Sydney Water provided the following comments "After examining our maps we realised that 14-20 Macpherson Street does not fall within the Warriewood STP buffer area. Therefore, Sydney Water has no 'in principle' objection to the proposed rezoning of this site."

### *Roads & Traffic Authority*

The RTA response stated that they have no objection in principle to the rezoning, subject to the development being required to contribute towards regional road improvements in the area. This issue is discussed further in the following section(s) of this report.

### *Department of Planning (DIPNR)*

The RTA have held discussions regarding infrastructure contributions with the Department of Planning (previously DIPNR), and this has resulted in the current advice from the Department of Planning stating that a \$17,000 contribution per allotment for all rezoning sector land releases (not yet gazetted) is to be applied. The Department of Planning have been contacted regarding the imposition of the infrastructure contributions (RTA derived) and a case has been made for the exemption of said contributions given the preceding agreements and basis upon which the Warriewood Valley Land Release area was drafted and envisaged. The Department of Planning has, at the time of the preparation of this report, maintained the direction for the imposition of the transport infrastructure contributions. The achievement of this outcome and the mechanism for the implementation is currently under discussion with the Department of Planning. In order to avoid any unnecessary delay in the progression of this rezoning application it is recommended that the LEP be forwarded to the Department seeking their input for the clause/mechanism of the transport infrastructure contribution 'levy'.

Additional confirmation was sought by the Department of Planning relating to the dwelling yield for Sector 3 to ensure the achievement of the forecast yield identified for the sector. The Department was advised of the identified yield and the Sector satisfactorily achieves the prescribed outcome for dwelling through the Masterplan (131 dwellings).

#### *Department of Environment and Conservation*

The Department of Environment and Conservation advised that they would not be commenting on the DRAFT rezoning LEP.

#### *Other Authorities*

It is noted that no formal response following the Section 62 consultation has been received from the following statutory authorities (NSW Rural Fire Service, Energy Australia, Department of Land and Water Conservation, Telstra, Department of Housing, Office of the Valuer General, Landcom).

### **Statutory Issues**

The draft LEP is not inconsistent with a State Environmental Planning Policy, Regional Environmental Plan or direction from the Minister under Section 117 of the Environmental Planning and Assessment Act 1979. The form, content and subject matter of the draft Plan are consistent with the Minister's determinations under Section 71 of the Act regarding the preparation of draft Local Environmental Plans.

Parliamentary Counsel will be requested to provide an opinion in accordance with the directions from the Department of Planning prior to the Section 69 report being forwarded to the Minister to make the Plan.

Additionally, the Department of Planning will be requested to provide the appropriate wording (clause inclusion) to facilitate the transport infrastructure contribution mechanism.

### **Conclusion**

The rezoning of 16-20 MacPherson Street, Warriewood, from 1(b) (Non-Urban "B") and part 5(a) (Special Uses "A" – Drainage) to 2(f) (Urban Purposes – Mixed Residential), under Pittwater Local Environmental Plan 1993, has received submissions which have resulted in the plan being changed as discussed above.

It is recommended that the Council proceed to seek to request the Minister of Planning to make the Plan, and rezone the land identified as 16-20 MacPherson Street, Warriewood, from 1(b) (Non-Urban "B") and part 5(a) (Special Uses "A" – Drainage) to 2(f) (Urban Purposes – Mixed Residential), under Pittwater Local Environmental Plan 1993.

## **3.0 FINANCIAL IMPLICATIONS**

The proposed rezoning has implications for Council's Warriewood Valley Section 94 Contributions Plan and will increase Council's rate base.

## **4.0 POLICY IMPLICATIONS**

The draft LEP is a minor spot rezoning under Pittwater LEP 1993. Sector 3 of the Warriewood Valley Urban Land Release was identified in the 1997 Warriewood Valley Urban Land Release Draft Planning Framework as being suitable for medium density residential development.

## **RECOMMENDATION**

1. That the Draft LEP attached at Appendix 1 be adopted.
2. That the plan be referred to Parliamentary Counsel for their opinion if the plan can legally be made.
3. That the Department of Planning be requested to provide the appropriate wording (clause inclusion) to facilitate the transport infrastructure contribution requirements.
3. That the plan be referred to the Minister for Planning for endorsement and gazettal.

Report prepared by Trevor Dunbar, Senior Planner

Lindsay Dyce

**MANAGER, PLANNING AND ASSESSMENT**

## **Pittwater Local Environmental Plan 1993 (Amendment No ...)**

under the

Environmental Planning and Assessment Act 1979

I, the Minister for Planning, make the following local environmental plan under the  
*Environmental Planning and Assessment Act 1979*. (.....)

Minister for Planning



## **Pittwater Local Environmental Plan 1993 (Amendment No ...)**

under the

Environmental Planning and Assessment Act 1979

### **1      Name of plan**

This plan is *Pittwater Local Environmental Plan 1993 (Amendment No ...)*

### **2      Aims of plan**

This plan aims:

- (a) to permit the development of the land for urban purposes in accordance with the State Government's Urban Development Program, and
- (b) to enable the Warriewood Valley Urban Land Release to be implemented in stages in accordance with a planned strategy to provide adequate physical and social infrastructure, and
- (c) to provide opportunities for a range of housing types and wider housing choice, and
- (d) to enable development to be carried out in accordance with a Planning Strategy prepared for the area.

### **3      Land to which plan applies**

This plan applies to land within the area of Pittwater shown edged heavy black on the map marked "Pittwater Local Environmental Plan 1993 (Amendment No ...) – Sheet 1" deposited in the office of Pittwater Council.

### **4      Amendment of Pittwater Local Environmental Plan 1993**

*Pittwater Local Environmental Plan 1993* is amended as set out in Schedule 1

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**Schedule 1                      Amendments**

(Clause 4)

**[1]      Clause 5 interpretation**

Insert at the end of the definition of *the Zoning Map* in clause 5(1):

Pittwater Local Environmental Plan 1993 (Amendment No ...-  
Sheet 2.

**[2]      Clause 30B Development of UDP land in Warriewood Valley**

Insert at the end of clause 30B(1):

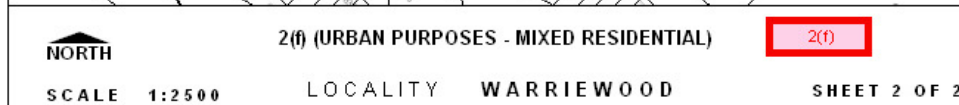
Land at Warriewood within Sector 3 of the Warriewood Valley Urban Land Release  
shown edged heavy black on Sheet 1 of the map marked "Pittwater Local  
Environmental Plan 1993 (Amendment No ...)"

**[3]      Clause 30C Dwelling Yield**

Insert in appropriate order:

Sector 3 - not more than 165 dwellings.





DRAWN BY <b>M TURNBULL</b> DATE: <b>3.07.2006</b>	<b>STATEMENT OF RELATIONSHIP WITH OTHER PLANS</b>  <b>AMENDS PITTWATER LOCAL ENVIRONMENTAL PLAN 1993</b>	
PLANNING OFFICER <b>T DUHBAR</b>		
CERTIFICATE PLAN NO. <b>2006/09</b>		
COUNCIL FILE NO.		
DEPT. FILE NO.	CERTIFIED IN ACCORDANCE WITH THE ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979 AND REGULATION	<b>GENERAL MANAGER</b>  <b>DATE:</b>
CERTIFICATE ISSUED UNDER SEC.65 E.P.A. ACT      DATE		
GOV. GAZETTE NO. <b>68</b> DATE		

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