

STATEMENT OF ENVIRONMENTAL EFFECTS

PROPOSED CHANGE OF USE TO RETAIL (TOBACCONIST STORE)

**SHOP 2/315 BARRENJOEY ROAD
NEWPORT**

APRIL 2025



statement of environmental effects

Submission to

NORTHERN BEACHES COUNCIL

PROPOSED CHANGE OF USE TO A TOBACCONIST STORE

SHOP 2/315 BARRENJOEY ROAD NEWPORT

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This statement has been prepared in consideration of the Expert Witness Code of Conduct in the Uniform Civil Procedure Rules and the provisions relating to expert evidence. The opinions in the statement represent the professional opinions of the authors, based on an assessment of the facts and circumstances as have been cited in the document

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1.0 INTRODUCTION

This document has been prepared in order to provide information and an assessment in respect of a Development Application which proposes a change of use for Shop 2, 315 Barrenjoey Road Newport to a 'tobacconist store'.

The proposed change of use does not involve any physical work.

Our instructions in this matter are provided by our client and his representatives including the managing agent. Details of our client are as follows:

Name	Address for Service of Notices
MR JACK WILSON (LESSEE)	Shop 2/315 Barrenjoey Rd Newport

Consideration has been given to the environmental merit of the proposal as well as in relation to the following legislature, statutory planning instruments and subordinate policies:

- *Environmental Planning and Assessment Act 1979 (EPAA);*
- *Environmental Planning and Assessment Regulation 2021 (EPAR);*
- *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (SEPP ECDC);*
- *Pittwater Local Environmental Plan 2014 (PLEP);*
- *Pittwater 21 Development Control Plan 2012 (PDCP).*

In our opinion, the development application succeeds on the merits and pursuant to the relevant legislation and is therefore suitable for the grant of development consent by Council.

2.0 SITE LOCATION AND DESCRIPTION

2.1 Location

The site that is the subject of the development application is situated on the west side of Barrenjoey Road in Newport, towards the southern part of this strip shopping centre.

This location lies within the Commercial Centre, providing convenient access to major arterial roads leading to Mona Vale, Bilgola Plateau, and Sydney CBD.

A locality plan is provided at **Annexure 1**.

A subject site plan is provided at **Annexure 2**.

2.2 The Site

The site is legally described as Lot 48, Section 5, DP 6248, and known as No 315 Barrenjoey Road, Newport.

It is currently occupied by 1 and 2 storey rendered and brick commercial/residential building, and 1 storey rendered building at the rear of the site.

The total of the site is around 556.34 sqm, with no carparking on the site. Street parking is available.

Vehicular and pedestrian access is provided via an existing driveway leading from Barrenjoey Road and adjacent to Shop 2.

The Shop is located on the ground level and has direct frontage to Barrenjoey Road. The gross floor area used for tobacco store is 43 sqm.

An aerial photograph is provided at **Annexure 3**.

Photographs of the site and the surrounding streetscape are provided at **Annexure 4**.

3.0 DEVELOPMENT PROPOSAL

The details of the proposal are discussed in the below section.

3.1 General & Definitional

To use the existing shop (ground level) as a tobacconists store to service the local community. The shop has previously been used for the purpose of refreshment room/cafe.

3.2 Staff

There are three (3) staff working at the store.

3.3 Operating Hours

The business will be open to the public from 07:00 AM to 09:00 PM, Monday through Sunday.

Day	Start Time	Finish Time
Monday	07:00am	09:00pm
Tuesday	07:00am	09:00pm
Wednesday	07:00am	09:00pm
Thursday	07:00am	09:00pm
Friday	07:00am	09:00pm
Saturday	07:00am	09:00pm
Sunday	07:00am	09:00pm

Table showing proposed Business Hours

3.4 No Fit Out

The occupation involves **no physical works** to the structure and is **a change of use application** only.

Plans depicting the access and existing ground floor layout, accompany the application.

4.0 STATUTORY PLANNING FRAMEWORK

4.1 SEPP (E. and C. Dev. Codes) 2008

This Policy aims to provide a streamlined assessment process for development that complies with specified development standards.

Exempt Development may be carried out under the Exempt Development Codes for purposes referred to in Clause 2.20A of the SEPP (Exempt and Complying Development Codes) 2008 or Codes SEPP, for purposes referred to in the Table in the Clause. The specific purpose herein referred to (refreshment room), is not a purpose enshrined in Clause 2.20A notwithstanding that the use is a change of use of premises under the General Exempt Development Code.

In this case the Council has requested a development application be lodged, although the reasons for the request are somewhat unclear. Given the

circumstances where a development application for the use has been requested by Council, the Complying Development pathway under the Codes SEPP has not been further explored.

4.2 Pittwater Local Environmental Plan 2014

The Pittwater Local Environmental Plan (PLEP) applies to development on the subject site.

4.2.1 Zoning and Permissibility

The subject property is zoned *E1 Local Centre* pursuant to the provisions of the Pittwater Local Environmental Plan 2014 (PLEP).

Commercial premises is a purpose permissible with consent in the E1 zone. Retail premises are permissible as a sub type of commercial premises. Shops are a type of retail premises. Thus, the proposed use of the land as shop (per the Dictionary in the PLEP), in the E1 zone is permitted with consent.

The relevant definitions (Dictionary PLEP) are as follows:

commercial premises means any of the following—

- (a) *business premises,*
- (b) *office premises,*
- (c) **retail premises.**

retail premises means a building or place used for the purpose of selling items by retail, or hiring or displaying items for the purpose of selling them or hiring them out, whether the items are goods or materials (or whether also sold by wholesale), and includes any of the following—

- (a), (b) *(Repealed)*
- (c) *food and drink premises,*
- (d) *garden centres,*
- (e) *hardware and building supplies,*
- (f) *kiosks,*

- (g) landscaping material supplies,*
- (h) markets,*
- (i) plant nurseries,*
- (j) roadside stalls,*
- (k) rural supplies,*
- (l) **shops,***
- (la) specialised retail premises,*
- (m) timber yards,*
- (n) vehicle sales or hire premises,*

but does not include farm gate premises, highway service centres, service stations, industrial retail outlets or restricted premises.

Note - Retail premises are a type of commercial premises -see the definition of that term in this Dictionary.

shop means premises that sell merchandise such as groceries, personal care products, clothing, music, homewares, stationery, electrical goods or the like or that hire any such merchandise, and includes a neighbourhood shop and neighbourhood supermarket, but does not include food and drink premises or restricted premises.

Note - Shops are a type of retail premises - see the definition of that term in this Dictionary.

The proposed land use is appropriately described per the above definitions and matches precisely with the proposed use.

A land zoning map extract from PLEP depicting the site is provided at **Annexure 5**.

4.2.2 Zone Objectives

The relevantly applicable E1 zone objectives under PLEP (refer land use table, item 1, E1 zone) are as follows:

- To provide a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area.

- To encourage investment in local commercial development that generates employment opportunities and economic growth.
- To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area.
- To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.
- To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse, and functional streets and public spaces.
- To create urban form that relates favourably in scale and in architectural and landscape treatment to neighbouring land uses and to the natural environment.

In our opinion, the proposed development is entirely consistent with the zone objectives referred to above, as are relevant.

4.2.3 Height of Building

The proposal does not change the height of the existing building.

A height of building map extract from PLEP depicting the site is provided at **Annexure 6**.

4.2.4 Floor Space Ratio

There is no floor space ratio control for the site.

4.2.5 Miscellaneous

The site does not contain a heritage item, is not in the immediate view line of a heritage item, and is not within a heritage conservation area.

A heritage map extract from PLEP depicting the site, is provided at **Annexure 7**.

A bushfire prone land map extract from Pittwater bush fire prone land map and depicting the site, is provided at **Annexure 8**.

A flood hazard map extract from NBC flood hazard map depicting the site, is provided at **Annexure 9**. We note that the site is flood prone.

4.2.6 Acid Sulfate Soils

The site is within a *Class 5 and Class 3* area as shown on the Acid Sulfate Soils Map. No excavation is proposed and the proposal will not result in acid sulfate pollution.

An acid sulfate soils map extract from PLEP depicting the site, is provided at **Annexure 10**.

4.2.7 Biodiversity

The site is not located within an area mapped on the Biodiversity Map.

No physical works are proposed. Consequently, there is no adverse impact on flora and fauna or such habitat on the land or in the area.

4.2.8 Geotechnical Hazards

The site is not included as a hazard location in the geotechnical hazards map.

4.3 Pittwater 21 Development Control Plan 2012

Pittwater 21 Development Control Plan 2014 (PDCP) applies to all land to which PLEP applies and provides more detailed provisions than PLEP for development in so much of the Northern Beaches local government area as previously comprised in the former local government area of Pittwater.

PDCP applies to the carrying out of development on the site.

The purpose of PDCP is to provide best practice standards for developments.

At the outset, it must be stressed that development control plans contain **guideline** controls at best: see *Zhang v Canterbury City Council* (1999) 105 LGERA 18. This is enshrined in sections 3.42 and 4.15(3A) of the

Environmental Planning and Assessment Act 1979 (NSW), which are as follows:

3.42 Purpose and status of development control plans

(cf previous s 74BA)

(1) The principal purpose of a development control plan is **to provide guidance** on the following matters to the persons proposing to carry out development to which this Part applies and to the consent authority for any such development:

- (a) giving effect to the aims of any environmental planning instrument that applies to the development,
- (b) facilitating development that is permissible under any such instrument,
- (c) achieving the objectives of land zones under any such instrument.

The provisions of a development control plan made for that purpose are not statutory requirements.

(2) The other purpose of a development control plan is to make provisions of the kind referred to in section 3.43 (1) (b)–(e).

(3) Subsection (1) does not affect any requirement under Division 4.5 in relation to complying development. *[Our emphasis]*

4.15 Evaluation

(cf previous s 79C)

... ..

(3A) **Development control plans** If a development control plan contains provisions that relate to the development that is the subject of a development application, the consent authority:

- (d) if those provisions set standards with respect to an aspect of the development and the development application complies with those standards—is not to require more onerous standards with respect to that aspect of the development, and
- (e) if those provisions set standards with respect to an aspect of the development and the development application does not comply with those standards—is to be ***flexible in applying those provisions and allow reasonable alternative solutions that achieve the***

objects of those standards for dealing with that aspect of the development, and

- (f) may consider those provisions only in connection with the assessment of that development application.

In this subsection, **standards** include performance criteria. *[Our emphasis]*

Thus, any and all purported 'requirements' in PDCP are only guidelines. They are not statutory requirements.

4.3.1 Objectives

The key aims of PDCP include aims relating to ecologically sustainable development as well as environmental, social and economic objectives.

The principal controls in PDCP relating to the development proposal are referred to and discussed below, to the extent to which they are relevant to the proposed development.

4.3.2 Locality

The site is located in the Newport Locality – Newport Commercial Centre.

The desired character of Newport Locality as follows (clause A4.10 of PDCP):

The Newport locality will remain primarily a low-density residential area with dwelling houses a maximum of two storeys in any one place in a natural landscaped setting, integrated with the landform and landscape. Secondary Dwellings can be established in conjunction with another dwelling to encourage additional opportunities for more compact and affordable housing with minimal environmental impact in appropriate locations. Any dual occupancy dwellings will be located on the valley floor and lower slopes that have less tree canopy coverage, species and habitat diversity and fewer other constraints to development. Any medium density housing will be located within and around commercial centres, public transport and community facilities. Retail, community and recreational facilities will serve the community.

Future development is to be located so as to be supported by adequate infrastructure, including roads, water and sewerage facilities, and public transport.

Future development will maintain a building height limit below the tree canopy and minimise bulk and scale. Existing and new native vegetation, including canopy trees, will be integrated with the development. Contemporary buildings will utilise facade modulation and/or incorporate shade elements, such as pergolas, verandahs and the like. Building colours and materials will harmonise with the natural environment. Development on slopes will be stepped down or along the slope to integrate with the landform and landscape, and minimise site disturbance. Development will be designed to be safe from hazards.

A balance will be achieved between maintaining the landforms, landscapes and other features of the natural environment, and the development of land. As far as possible, the locally native tree canopy and vegetation will be retained and enhanced to assist development blending into the natural environment, to provide feed trees and undergrowth for koalas and other animals, and to enhance wildlife corridors.

Heritage items and conservation areas indicative of the Guringai Aboriginal people and of early settlement in the locality will be conserved.

Vehicular, pedestrian and cycle access within and through the locality will be maintained and upgraded. The design and construction of roads will manage local traffic needs, minimise harm to people and fauna, and facilitate co-location of services and utilities.

Newport's coastal setting is what contributes most to the distinctive character of the commercial centre. Responsive, energy efficient buildings will support and enhance this relaxed, beachfront character and its outdoor lifestyle, contributing to a unique sense of place. Contemporary design solutions within the commercial centre will respond to Newport's climate and setting, including providing shade and shelter to streets and entries, generous private outdoor spaces, openings that capture ocean breezes, and shade elements

In our opinion, the proposed development is generally consistent with the outcomes of clause A4.10 of PDCP.

A locality map from PDCP depicting the site, is provided at **Annexure 11**.

4.3.3 Off-Street Vehicle Parking Requirements

Section B6.3 is providing some guidelines related to the off-street vehicle parking requirements.

The guidelines are as following:

Retail Premises

(Not including Shopping Centre Developments):

- *1 per 30m² GLA*
- *Parking spaces are to be accessible to the public.*
- *Adequate space for delivery vehicles is to be provided.*
- *Provision of accessible parking spaces for people with disabilities must be at the rate of 3% of the required car parking spaces or part thereof, or 1 space, whichever is greater.*

The site contains no formal parking although a driveway exists parallel with Shop 2. The new use is noted to be a lesser traffic generator than the previous refreshment room use.

5.0 KEY ISSUES

5.1 Car Parking

Off street parking provision at zero spaces is adequate to cater for this proposed, very low scale and low impact use. Street parking is available.

5.2 The Public Interest

The development will be consistent with the local planning regime and as such, is of course, consistent with the public interest.

5.3 Environmental Impact

The use will have minimal environmental impact. The use/purpose will not generate excessive traffic nor will it of itself introduce harmful emissions or chemicals into the natural environment.



5.4 Compliant Use

The use is permissible in the E1 Zone and will be wholly compliant with the relevant regime of planning controls.

6.0 CONCLUSION

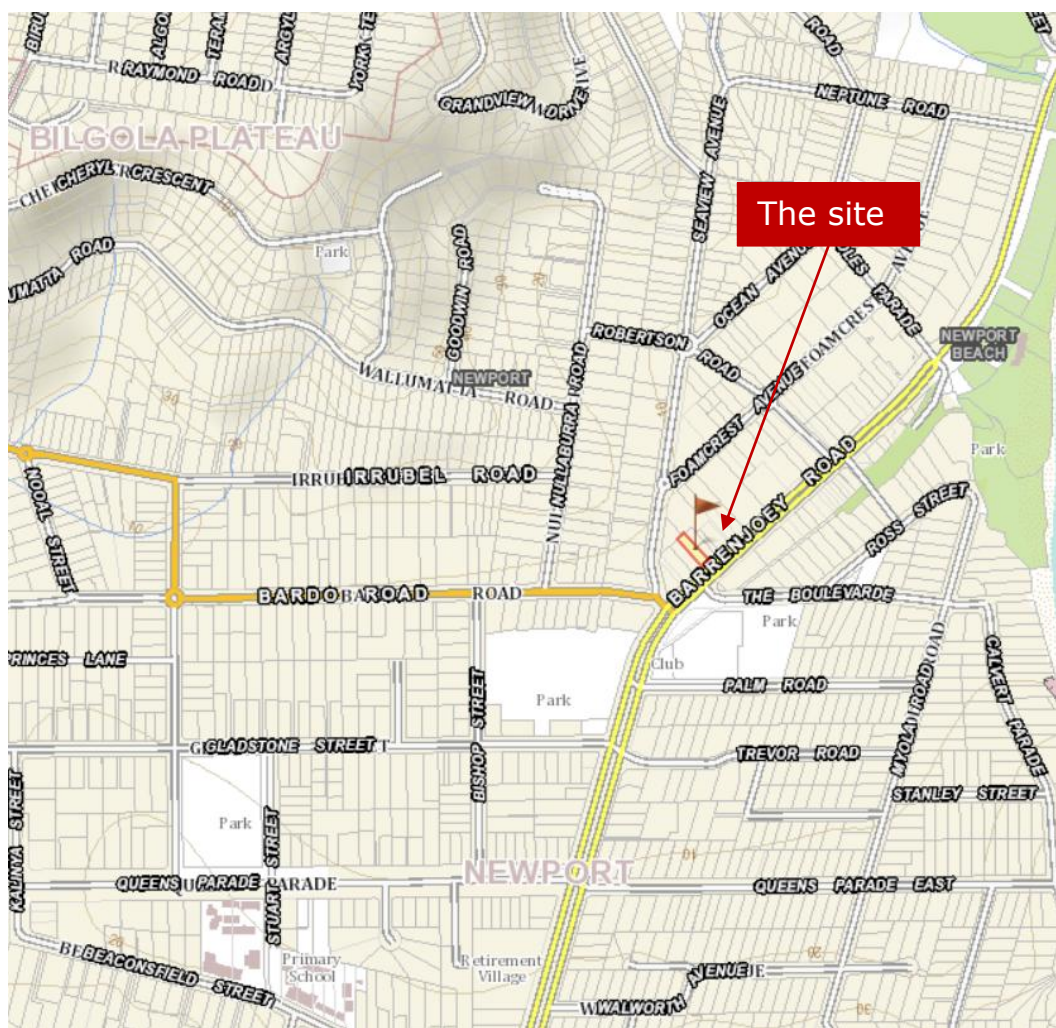
This document addresses the statutory regime applicable to the application and demonstrates that the proposed use as a tobacconist is acceptable, and will complement the site and the existing locale.

The heads of consideration pursuant to Section 4.15 of the Environmental Planning and Assessment Act, 1979 have been considered and there are no matters which would prevent Council from granting consent to the proposal in this instance.

In our opinion the proposal merits support by the consent authority.

ANNEXURE 1

LOCALITY PLAN



LOCALITY PLAN

EXTRACT FROM SIX MAPS



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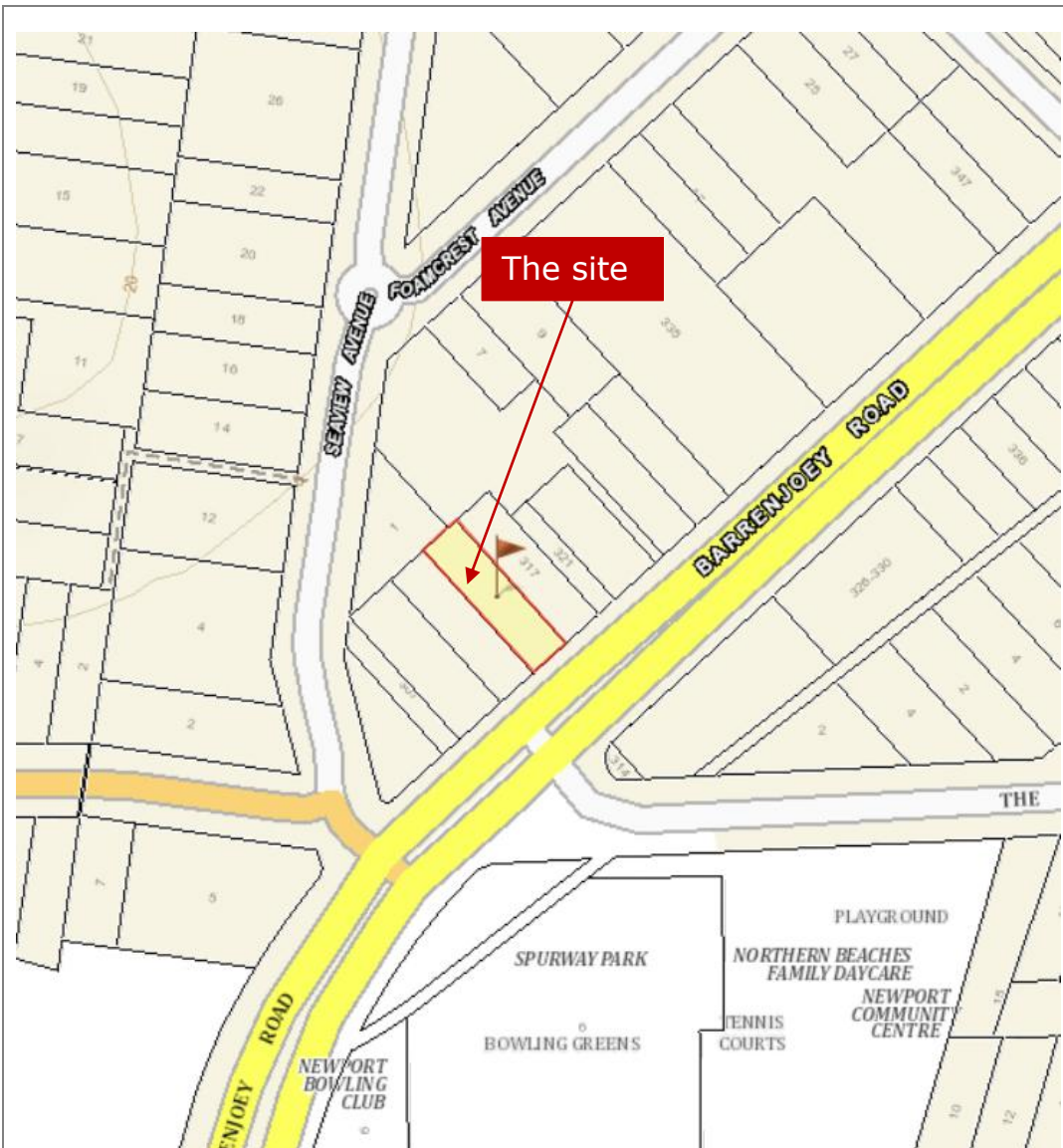
Annexure 1

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ANNEXURE 2

SUBJECT SITE PLAN



SUBJECT SITE PLAN

EXTRACT FROM SIX MAPS



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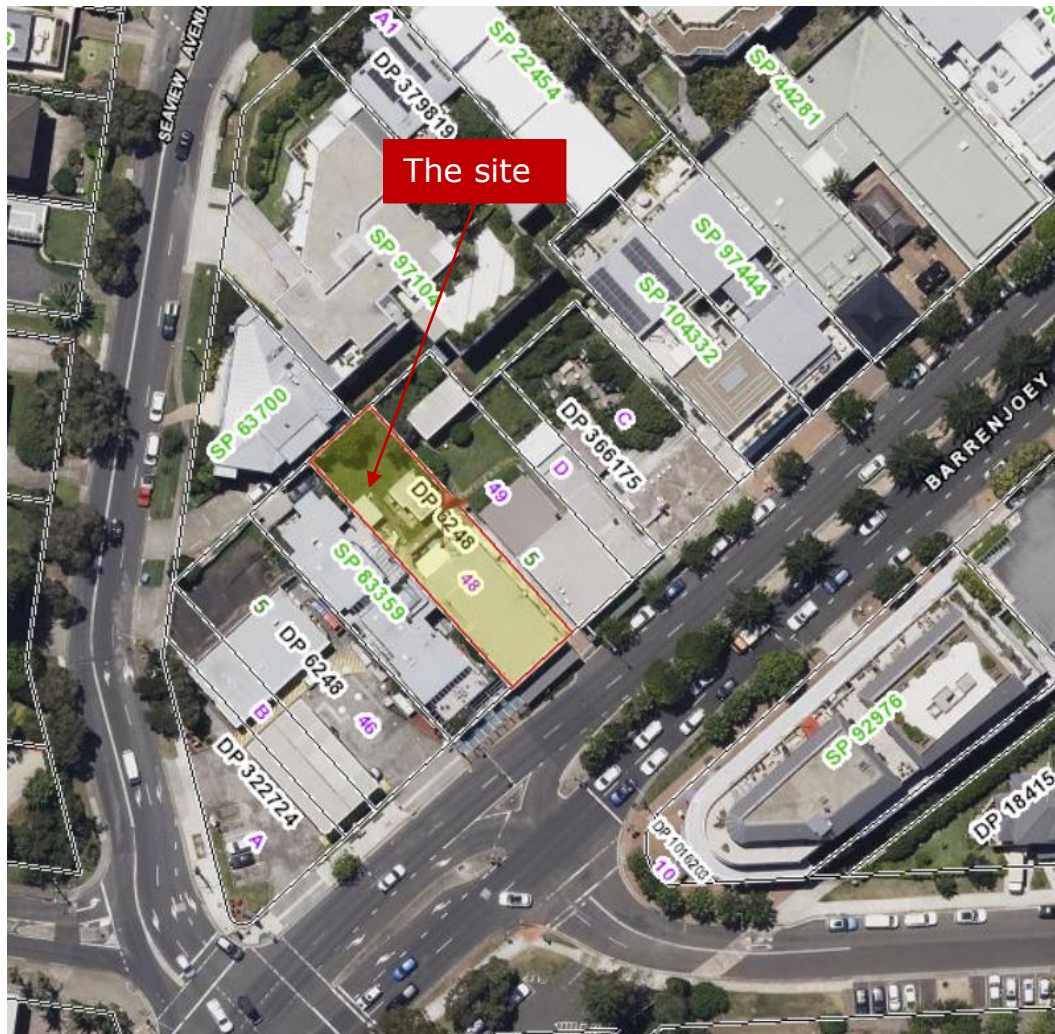
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ANNEXURE 3

CADASTRAL PLAN



CADASTRAL PLAN

EXTRACT FROM SIX MAPS



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ANNEXURE 4

PHOTOGRAPHIC PALETTE



Photograph 1 – Looking north from outside premises



Photograph 2 – View from Street frontage



Photograph 3 – Looking east along driveway



Photograph 4 – Internal photo



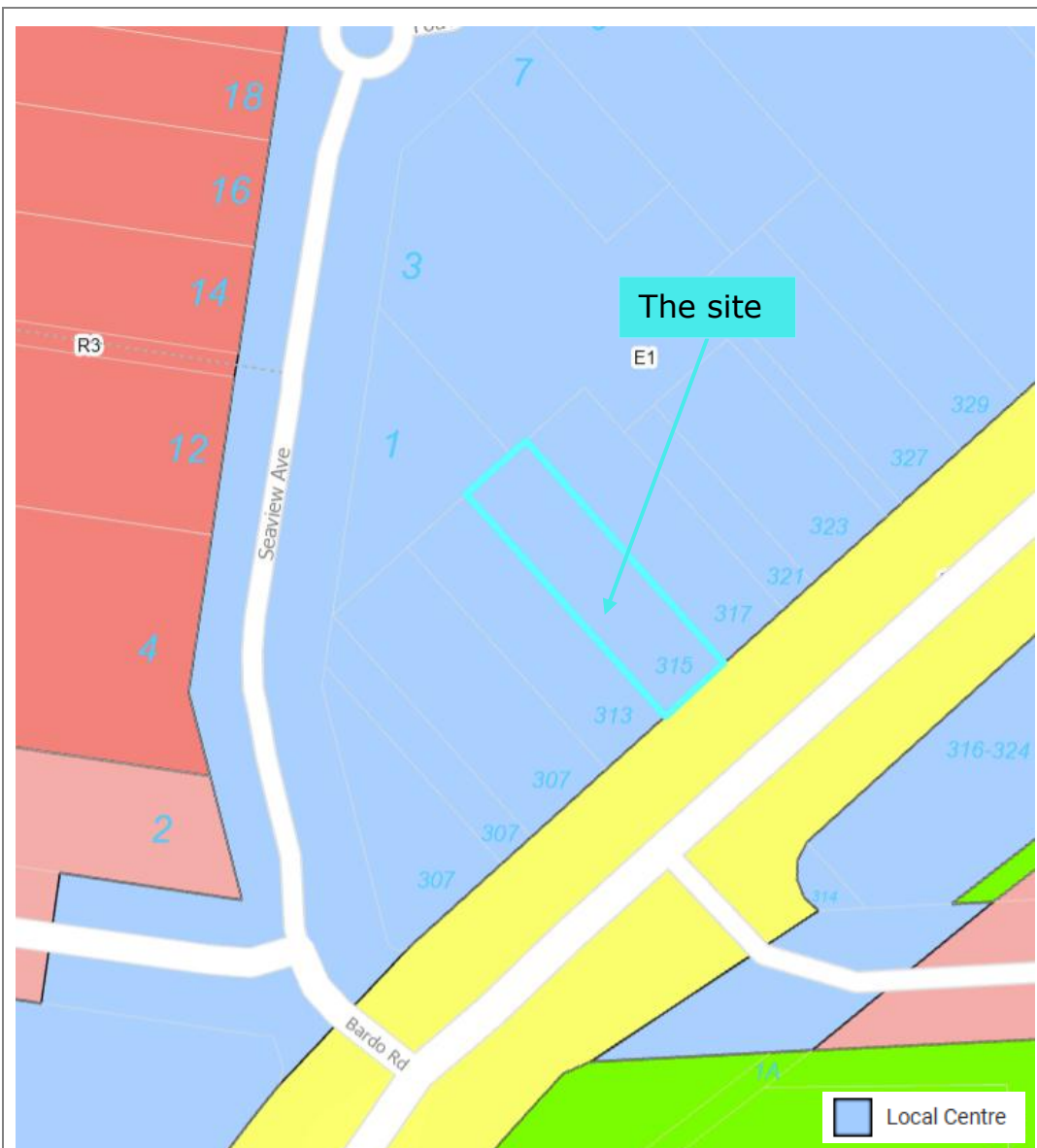
Photograph 5 – Internal photo



Photograph 6 – Internal photo

ANNEXURE 5

LAND ZONING MAP (EXTRACT FROM PLEP 2014)



LAND ZONING MAP

EXTRACT FROM PITTWATER LOCAL ENVIRONMENT PLAN 2014



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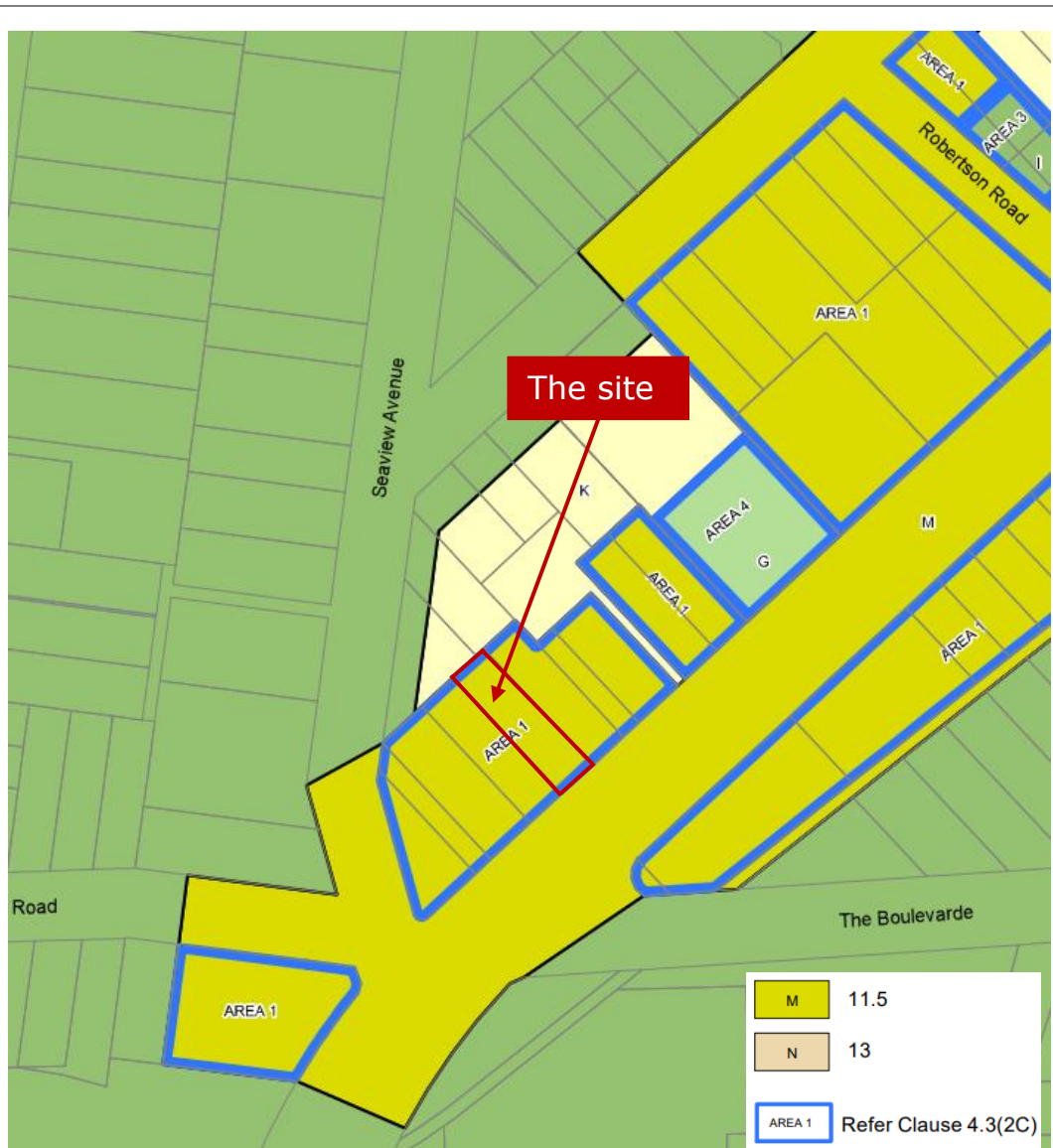
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ANNEXURE 6

HEIGHT OF BUILDINGS MAP (EXTRACT FROM PLEP 2014)



HEIGHT OF BUILDINGS MAP

EXTRACT FROM PITTWATER LOCAL ENVIRONMENT PLAN 2014



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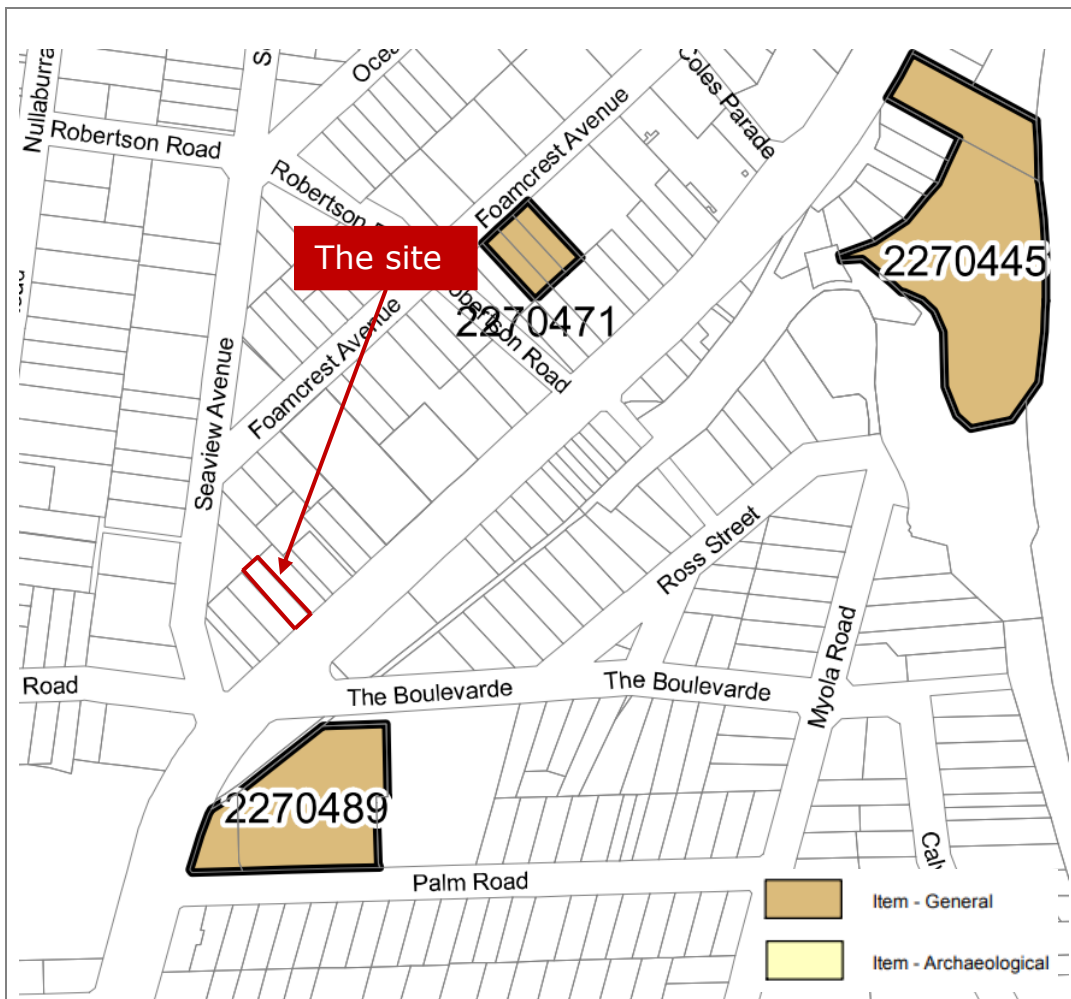
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ANNEXURE 7

HERITAGE MAP (EXTRACT FROM PLEP 2014)



HERITAGE MAP

EXTRACT FROM PITTWATER LOCAL ENVIRONMENT PLAN 2014



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Annexure 7

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ANNEXURE 8

BUSHFIRE PRONE LAND MAP
(EXTRACT FROM NORTHERN BEACHES BUSH FIRE PRONE
LAND MAP 2020)



BUSHFIRE PRONE LAND MAP

EXTRACT FROM NORTHERN BEACHES BUSH FIRE PRONE LAND MAP
2020



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ANNEXURE 9

FLOOD HAZARD MAP (EXTRACT FROM NBC FLOOD HAZARD
MAP)



FLOOD HAZARD MAP

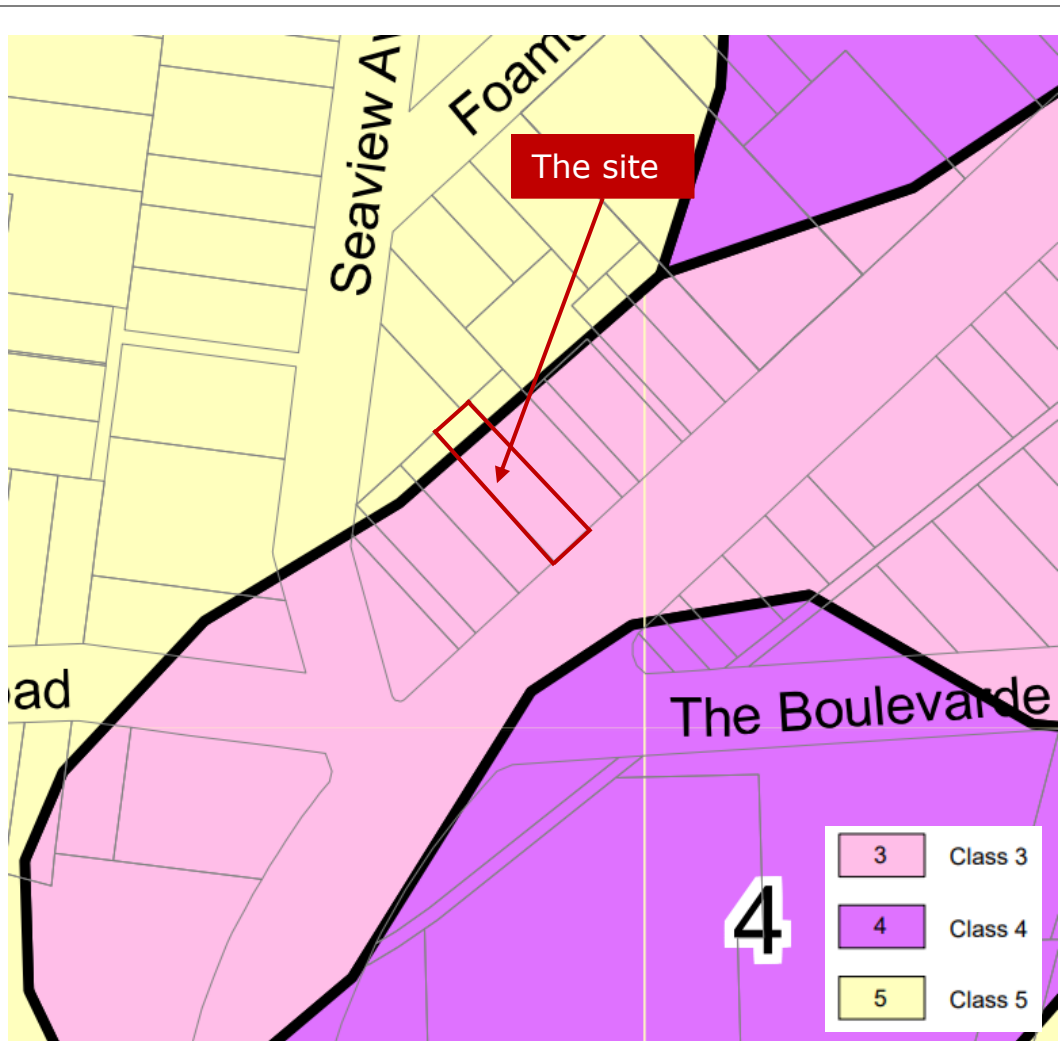
EXTRACT FROM NORTHERN BEACHES COUNCIL FLOOD HAZARD MAP



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ANNEXURE 10

ACID SULFATE SOILS MAP (EXTRACT FROM PLEP 2014)



ACID SULFATE SOILS MAP

EXTRACT FROM PITTWATER LOCAL ENVIRONMENT PLAN 2014



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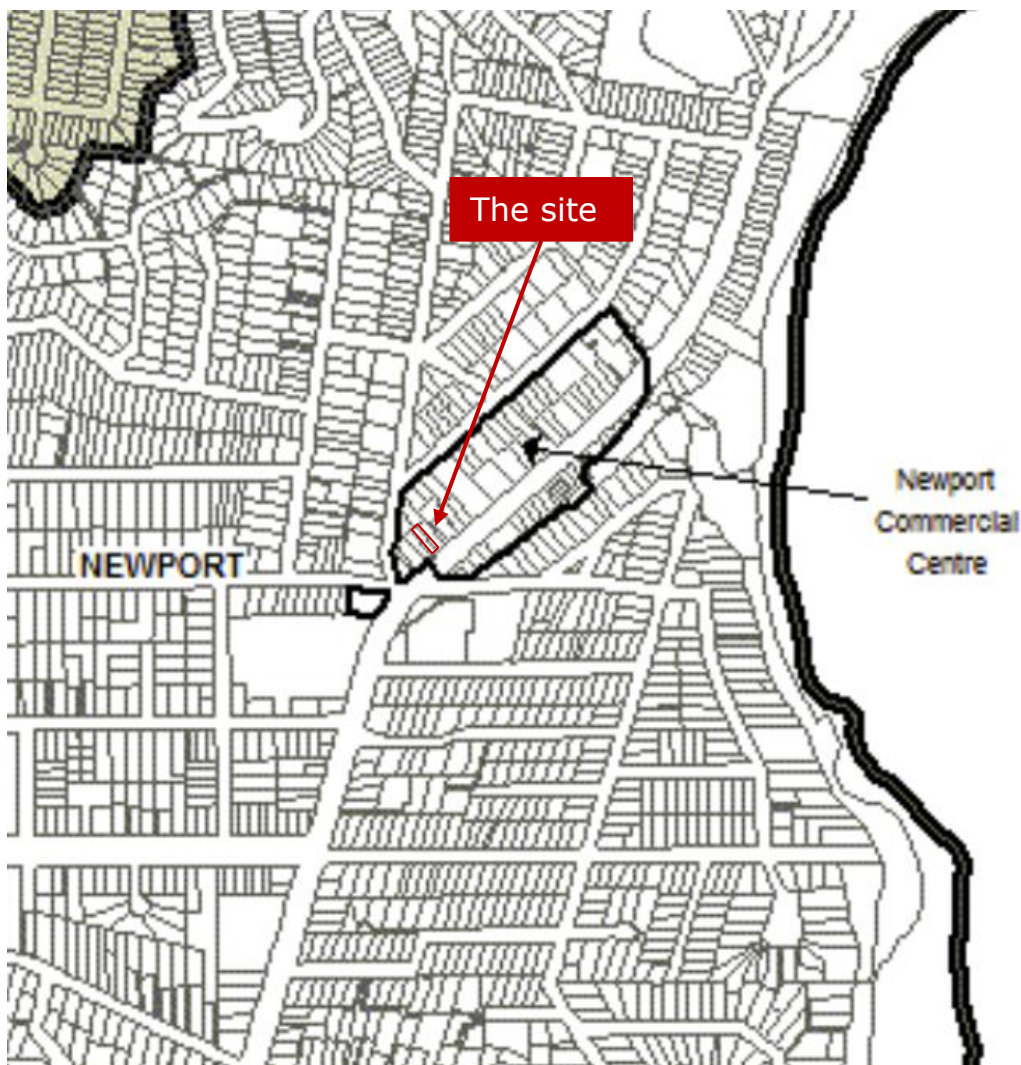
Annexure 10

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ANNEXURE 11

NEWPORT LOCALITY MAP (EXTRACT FROM PDCP)



NEWPORT LOCALITY MAP

EXTRACT FROM PITTWATER 21 DEVELOPMENT CONTROL PLAN



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