

STATEMENT OF ENVIRONMENTAL EFFECTS

PRIVATE RECREATION AREA ANCILLARY TO BLACKMORES DEVELOPMENT

**15 JUBILEE AVENUE
WARRIEWOOD**

MARCH 2019



statement of environmental effects

Submission to
NORTHERN BEACHES COUNCIL

**PRIVATE RECREATION AREA ANCILLARY TO
BLACKMORES DEVELOPMENT**

15 JUBILEE AVENUE WARRIEWOOD

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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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(EXTRACT FROM NORTHERN BEACHES COUNCIL)**

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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 (the 'development application') seeking consent for the creation of a *private* recreation area (the 'proposed development') on the land known as No 15 Jubilee Avenue, Warriewood (the 'site').

The private recreation area is for use by the staff of Blackmores Limited, who own the site as well as the land immediately opposite (No 20 Jubilee Avenue, Warriewood), being development ancillary to the development carried out on No 20 Jubilee Avenue.

Consideration has been given to the environmental merit of the proposal having due regard to the following relevantly applicable legislation, statutory planning instruments and subordinate documents:

- *Environmental Planning and Assessment Act 1979* ('EPAA');
- *Environmental Planning and Assessment Regulation 2000* ('EPAR');
- *State Environmental Planning Policy (Exempt & Complying Development Codes) 2008* ('Codes SEPP');
- *Pittwater Local Environmental Plan 2014* ('PLEP'); and
- *Pittwater 21 Development Control Plan* ('PDCP').

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

2.0 SITE LOCATION AND DESCRIPTION

2.1 Location of the Site and its Environs

The site is located approximately 3.0 km northeast of the Centro Warriewood Shopping centre and enjoys public transport linkages by road to Mona Vale, Chatswood, North Sydney and Sydney City.



The site enjoys road linkages with Mona Vale, Elanora Heights, Narrabeen, Dee Why, Seaforth, Chatswood, North Sydney and Sydney City.

The surrounding area is a mix of commercial and warehouse built elements with low density residential buildings north of Mona Vale Road and east, towards Pittwater Road at Mona Vale.

Blackmores Campus, a large commercial development, is located directly opposite to the site on No 20 Jubilee Avenue. Other noteworthy developments in the immediate precinct include the 'Pharmacare' headquarters and a large commercial development known as MVB.

Streets are broad, contain traffic calming devices (roundabouts) and cater to heavy vehicles. Traffic is relatively light in the local feeder roads, although does comprise a broad range of vehicle types.

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

An aerial photograph is provided at **Annexure 2**.

2.2 Description of the Site

The property is legally described as Lot 202 in Deposited Plan 1019363 and is known as No 15 Jubilee Avenue, Warriewood.

The site is approximately 4554 sqm in area and is regular in shape.

The site is presently occupied by two shipping containers used for the purpose of storage, as consented to by Northern Beaches Council (refer DA N0316/16).

The site adjoins industrial allotments to the east and west, with Business Park zoned land on the northern side of Jubilee Avenue, although adjoining land to the east is used for residential purposes.

In terms of topography, the land slopes gradually down from east to west, along the Jubilee Avenue frontage. Insofar as existing vegetation is concerned, there are four large mature native trees on the west and southwest corner of the site, and small non-mature



native shrubs along the northeast front border of the site.

Vehicular and pedestrian access to the site is provided via Jubilee Avenue.

Annexure 3 provides a photographic palette.

3.0 DEVELOPMENT PROPOSAL

The proposed development involves the creation of a *private* recreation area on the site for use by the staff of Blackmores Limited, who own the site as well as the land immediately opposite (No 20 Jubilee Avenue).

Development is always carried on for one or more *purposes*. Correct categorisation of the purpose or purposes of a particular use or development proposal is an essential part of properly determining a development application. In that regard, the task of correctly categorising the purpose or purposes of a particular use or other development proposal is a threshold question in determining whether a particular development application is capable of lawful determination.

In order to properly categorise the purpose or purposes of a particular use or development proposal, one ordinarily looks to the underlying *sole* or *dominant* object or purpose of the particular use or proposal: see *Foodbarn Pty Limited v Solicitor-General* (1975) 32 LGRA 157.

Now, in characterising the purpose(s) of a proposed development, it is often the case that development has various component parts, that is, different *uses*, being the physical acts, such as the buildings, processes and activities. Where that is the case, the component parts (uses) may serve a single purpose. The *nature* of the use needs to be distinguished from the *purpose* of the use. Uses of different natures can still be seen to serve the same purpose. See *Chamwell Pty Limited v Strathfield Council* [2007] NSWLEC 114; (2007) 151 LGERA 400; *Terra Ag Services Pty Limited v Griffith City Council* [2017] NSWLEC 167.

It cannot be stressed enough that the *purpose* of the proposed development is *not* a 'recreation area' as that term is relevantly defined in the Dictionary to PLEP. For the sake of the record, that definition is as follows:



Recreation area means a place used for outdoor recreation that is normally open to the public, and includes:

- a children’s playground, or
- an area used for community sporting activities, or
- a public park, reserve or garden or the like,

and any ancillary buildings, but does not include a recreation facility (indoor), recreation facility (major) or recreation facility (outdoor).

In the case of the proposed development, the development will be wholly **ancillary** to the development carried out on No 20 Jubilee Avenue (otherwise known as the ‘Blackmores Campus’). The **purposes** of the development carried out on the Blackmores Campus are, firstly, a warehouse and distribution centre and, secondly, a general administration centre (offices), being the Australian headquarters of Blackmores Limited, the renowned pharmaceutical company.

For a use to be considered ancillary to some other use, the first mentioned use must subserve an otherwise permissible use: see *CB Investments Pty Ltd v Colo SC* (1980) 41 LGRA 270. In other words, for a use to be ancillary it must be ‘incidental’ to or be ‘subserved’ by the primary purpose or purposes: see *Foodbarn Pty Ltd v Solicitor-General* (1975) 32 LGRA 157; *Steedman v Baulkham Hills SC [No 2]* (1993) 31 NSWLR 562. What is ancillary is a question of fact and degree, and regard may need to be had to a number of factors *none* of which is determinative in itself (eg size, area of land used for the respective uses, the degree (if any) of integration, respective sales and income generation, and so forth) in order to determine whether a use is ancillary: see *Lizzio v Ryde Municipal Council* (1984) 155 CLR 211.

The site the subject of the development application (viz 15 Jubilee Avenue) and the Blackmores Campus site (viz 20 Jubilee Avenue) are *adjoining* sites. In that regard, land ‘adjoins’ other land where the respective land parcels are separated only by a road (as in this case), pathway, driveway or other thoroughfare: see *Auckland Lai v Warringah Shire Council* (1985) 58 LGRA 276 per Bignold J.

The proposed **use** [sic] of the site as a *private* recreation area, wholly for the use of Blackmores staff, is based on the perceived need by Blackmores management to promote the wellbeing and healthy lifestyle of the staff working on the



Blackmores campus during daytime working hours. The use is clearly and demonstrably incidental to, and otherwise subserved by, the primary purposes for which the substantive development is carried out on the Blackmores Campus. At the risk of repetition, the **use** [sic] of the site as a private recreation area is purely ancillary to the underlying **purposes** of the development carried out on the Blackmore Campus site immediately opposite.

The proposed development will occupy an estimated area of approximately 1,380 square meters, as part of the site which has a total area of 4,554 square meters. It will involve the beautification and embellishment of the site through landscaping strategies and the erection and installation of small-scale outdoor sporting structures (in particular, an area for a portable basketball hoop and portable volleyball net) and outdoor furniture of limited environmental impact.

The proposed development will retain existing constructed features, namely, the existing fences, as well as existing vegetation of significance, namely four mature native trees located in the western part of the site. A landscaping plan showing the proposed development and landscaping accompany the development application.

The western area of the site has been re-turfed.

This document will assess the development proposal for the described private recreation area for the purpose of the adjacent Blackmores Campus.

4.0 STATUTORY PLANNING FRAMEWORK

4.1 Pittwater Local Environment Plan 2014

Pittwater Local Environmental Plan 2014 (PLEP) is the relevantly applicable local environmental plan.

The aim of PLEP is, among other things, to promote economically, environmentally and socially sustainable development in the former Pittwater local government area (now part of the Northern Beaches local government area) and to ensure that development is consistent with the desired character of Pittwater's localities.



4.1.1 Zoning

The site is zoned B7 Business Park under PLEP.

The objectives of the B7 zone are as follow:

- To provide a range of office and light industrial uses.
- To encourage employment opportunities.
- To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.
- To provide healthy, attractive, functional and safe business areas

4.1.2 Permissibility

Development for the purposes of a 'warehouse or distribution centre' as well as 'office premises' are nominately permissible purposes for which development may be carried out, with consent, on land zoned B7 Business Park.

The proposed development involves the **use** [sic] of the site as a private recreation area, wholly for the use of Blackmores staff, based on the perceived need by Blackmores management to promote the wellbeing and healthy lifestyle of the staff working on the Blackmores campus during daytime working hours. In that regard, and to that end, the proposed use of the site is **ancillary** to the purposes for which development is carried out on the Blackmores Campus.

Given the **ancillary** nature of the proposed development, its purpose is not that of a 'recreation area' as defined in the Dictionary to PLEP. On the contrary, the proposed development will *not* be open to the public at large, or any particular section of the public, other than the staff of Blackmores working at the adjacent Blackmores Campus.

A zoning map extract from PLEP depicting the site is provided at **Annexure 4**.



4.1.3 Height of Buildings

Clause 4.3 of PLEP ('Height of Buildings') is a principal development standard of PLEP, noting that the term 'building' is defined in section 1.4(1) of the EPAA as follows:

'building' includes part of a building, and also includes any structure or part of a structure

The site is identified as being contained in area 'L' on the PLEP Height of Buildings Map – Sheet HOB_012. Area L provides for a maximum building height of 11.0 metres.

The proposed development involves the erection of only small-scale outdoor sports structures of a height no greater than the permissible height. In that regard, please refer to the landscaping plan accompanying the development application.

The development proposal is, therefore, consistent with the maximum building height as per the PLEP.

4.1.4 Acid Sulfate Soils

The subject property is highlighted as being in Class 5 of the Acid Sulfate Soils map pursuant to clause 6.1 of the PLEP.

An existing sewer easement is located towards the western end of the site.

In short, the proposed development will not disturb, expose or drain sulphate soils or cause environmental damage.

4.1.5 Earthworks

The area the subject of the development has been re-turfed however levels have not been changed materially.

Clause 7.2 of PLEP has been considered as part of the development application. That clause states, initially, that consent is required unless 'the earthworks are exempt development under



this Plan or another applicable environmental planning instrument’ (clause 7.2(a)).

The Codes SEPP specifies, in clause 2.30, a number of development standards for earthwork, retaining walls and structural support to be ‘exempt development’. The standards that are most relevantly applicable to the proposed development are as follows:

- (a) not be a cut or fill of more than 600mm below or above ground level (existing), and
- (b) be located at least 1m from each lot boundary, and
-
- (g) if the fill is more than 150mm deep—not occupy more than 25% of the area of the lot, ...

The abovementioned matters have been considered to the extent to which they are relevant to the proposed development.

4.2 Pittwater 21 Development Control Plan

The key aims of Pittwater 21 Development Control Plan 2012 (PDCP) relate to providing ecologically sustainable development and appropriate environmental, social and economic outcomes.

However, it must be stressed, at the outset, 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:

- (a) 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
- (b) 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
- (c) 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 purported ‘requirements’ in PDCP are, in law, only guidelines. They are *not* statutory or mandatory requirements—or requirements at all for that matter. Furthermore, any controls contained in PDCP, to the extent to which they are relevant to the proposed



development, must, as a matter of law, be applied flexibly and reasonably.

The site is located within the Warriewood Valley Release Area. A copy of the Warriewood Valley Land Release Area Map is provided at **Annexure 5**.

In our opinion, the proposed development is generally consistent with the outcomes of clause A4.16 of PDCP.

The proposal does not involve the erection of any new large or bulky structures, other than the previously mentioned small-scale outdoor sports facilities and outdoor furnishing.

The proposed development will have no adverse impact on the local natural environment, as the development would not involve any major environmental changes, such as tree removals, major earthworks, nor will the development involve the carrying out of activities that could have an impact on the local or adjacent natural environment.

The proposed development responds to the relevant controls of PDCP, namely, those in sections C and D (the latter only to a minimal extent relevantly applicable).

Section C ('Development Type Controls') will now be addressed, to the extent to which its controls are relevant, being the design controls specified under section C6 ('Design Criteria for Warriewood Valley Release Area').

4.2.1 Natural Environment and Landscaping Principles

Control C6.3 outcomes are intended to ensure, among other things, that landscaping enhances and complements the environment and surrounding landscape character, increase canopy cover, increases canopy cover and provides a pleasant and safe living environment that is environmentally responsive and contributes to the local character of the area.

The development proposal responds to the outcomes stated above.



The landscape design responds to the abovementioned controls and specifications, is sensitive to the landform, retains existing trees and adds complementary native species, thus enhancing the local environmental qualities and amenities and contributing to the local character of the area.

4.2.2 ESD, Safety and Social Inclusion

Part C6.3 of PDCP makes provision for the design of development in the Warriewood Valley so that any development complies with the principles of ESD, Crime Prevention Through Environmental Design (CPTED) guidelines, and Universal Design guidelines.

ESD determinations are mostly made in respect of development in the form of buildings, works and substantive uses of land (eg mines). In the case of the proposed development, which is low-key and low-scale in nature, much of the controls in this part of the development control plan are not directly relevant.

Regarding the integration of CPTED, the design for the recreation area incorporates aspects that contribute to:

- Natural surveillance—through measures of clear sightline between public and private, good location of entries that are visible from the street, avoiding blind spots;
- Access control—by mean of the existing fence as well as some additional landscaping, so as to work as attractive barriers to deter unauthorised access and providing clear entry points; and
- Territorial reinforcement—thus ensuring a sense of ownership by the target community through creating distinct transitions between public and private, and reducing illegitimate use.



4.2.3 Front Building Lines

Section D ('Locality Specific Development Controls') of PDCP will now be addressed, to the extent to which its provisions are relevant to the nature and scope of the proposed development.

The controls contained in section D16 ('Warriewood Valley Locality') are relevant to the development application.

The construction of the proposed structures, albeit small-scale in nature (eg outdoor furniture and small-scale sporting elements) respect the relevant controls, with a view to achieving the desired future character of the locality, and ensuring that the area of site disturbance is minimised and the area of soft surface maximised.

In that regard, section D6.16 states that all other forms of development (other than residential), specifically located in the B7 Business Park zone (where not otherwise fronting Mona Vale Road or Pittwater Road), must comply with a minimum front setback area of 3 metres.

All *structural* development in the proposed private recreation area respects the 3 metre front setback control. In addition, the landscape treatment intended for the site ensures that soft landscaping is maximised throughout the site, except as respects the hard surfaces required for the sporting structures.

4.2.4 Side and Rear Building Lines

Section D16.7 of PDCP provides for a minimum side and rear line for all developments (other than residential) in the IN2 Light Industrial or B7 Business Park (where no boundary frontage to Mona Vale Road or Pittwater Road) of 3 (three) meters.

The proposed new works comply with the 3m side and rear setback controls.



5.0 KEY ISSUES

5.1 Compliant Use

Development for the purposes of a 'warehouse or distribution centre' as well as 'office premises' are nominately permissible purposes for which development may be carried out, with consent, on land zoned B7 Business Park.

The proposed development involves the **use** [sic] of the site as a private recreation area, wholly for the use of Blackmores staff, based on the perceived need by Blackmores management to promote the wellbeing and healthy lifestyle of the staff working on the Blackmores campus during daytime working hours. In that regard, and to that end, the proposed use of the site is **ancillary** to the purposes for which development is carried out on the Blackmores Campus.

In addition, the proposed development and use will be compliant with the regime of planning controls.

5.2 Environmental and Amenity Impacts

The proposal is low-key and low-scale. The area of the site is large, and the proposed sporting structures are to be located at the western end of the site, as far away from residential properties as possible, thus minimising—or reducing to nil for all intents and purposes—any untoward noise impacts on nearby premises (in particular, the adjacent residentially used property to the east of the site).

In view of the fact that the proposed development is low-key and low-scale, no adverse environmental impacts are expected. On the contrary, the proposed development will make a positive contribution to environmental considerations, as well as aesthetic, in environmental amenity, by way of site embellishment, while at the same time contributing in a positive way to the health, wellbeing and work lifestyle of the Blackmores Campus community.



6.0 CONCLUSION

This document addresses the statutory planning regime applicable to the proposed development and demonstrates that the proposed development involving the creation and use of a private recreation area on the site, as an ancillary use to the development carried out on the Blackmores Campus at 20 Jubilee Avenue, is legally permissible with consent, compliant with the relevantly applicable development standards and other planning controls, consistent with the relevant guideline controls contained in PDCP, and appropriate in all the circumstances.

The heads of consideration contained in section 4.15 of the EPAA have been examined and considered to the extent to which they are relevantly applicable to the proposed development and, in our opinion, there are no matters which would prevent Council from granting consent to the proposed development in this instance, subject to the imposition of appropriate and reasonable conditions of consent.

In our opinion, the development proposal merits support from the consent authority and a grant of conditional development consent.

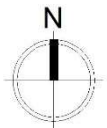
ANNEXURE 1

LOCATION PLAN



LOCATION PLAN

Google Six Map



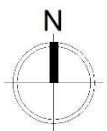
ANNEXURE 2

AERIAL PHOTOGRAPH



AERIAL PHOTOGRAPH

Google Six Map



ANNEXURE 3

PHOTOGRAPHIC PALETTE



Photograph 1 – View Looking East Along Jubilee Avenue. The Blackmore Property on North Side (left of frame) And 15 Jubilee Avenue on South Side (right of Frame)



Photograph 2 – Photograph Showing View from Jubilee Avenue Looking East North Towards the Site



Photograph 3 – View of the part of the Site on the Western side, affected by Proposal, currently re-turfed.



Photograph 4 – Other part of Site on Eastern Side, not affected by Proposal.



Photograph 6 – Looking East at Existing Dwelling House Adjacent to the Site (to the east)

ANNEXURE 4

ZONING MAP (EXTRACT FROM PLEP)



Pittwater Local Environmental Plan 2014

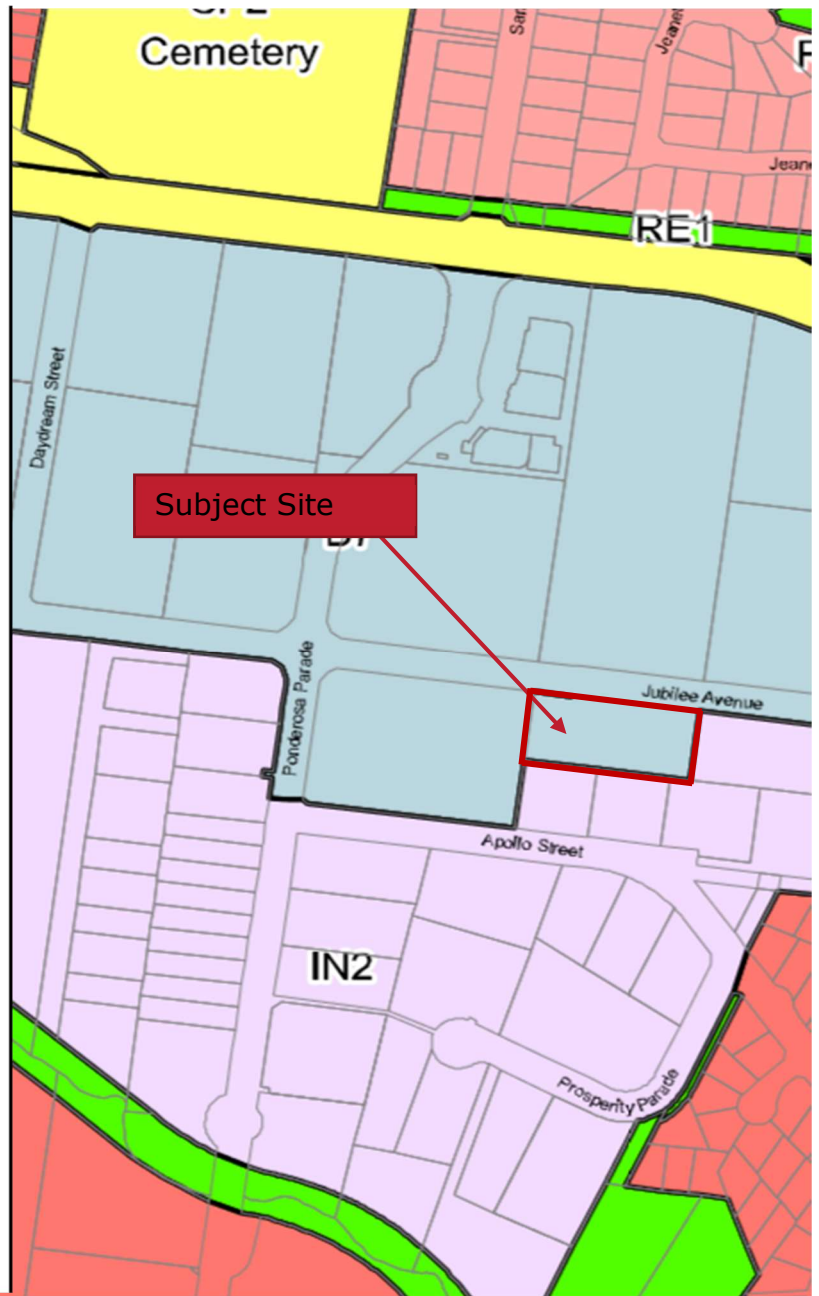
Land Zoning Map - Sheet LZN_012

Zone

- B1 Neighbourhood Centre
- B2 Local Centre
- B4 Mixed Use
- B6 Enterprise Corridor
- B7 Business Park
- E1 National Parks and Nature Reserves
- E2 Environment Conservation
- E3 Environmental Management
- E4 Environmental Living
- IN2 Light Industrial
- IN4 Working Waterfront
- R2 Low Density Residential
- R3 Medium Density Residential
- R5 Large Lot Residential
- RE1 Public Recreation
- RE2 Private Recreation
- RU2 Rural Landscape
- SP1 Special Activities
- SP2 Infrastructure
- SP3 Tourist
- W1 Natural Waterways
- W2 Recreational Waterways

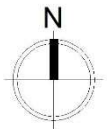
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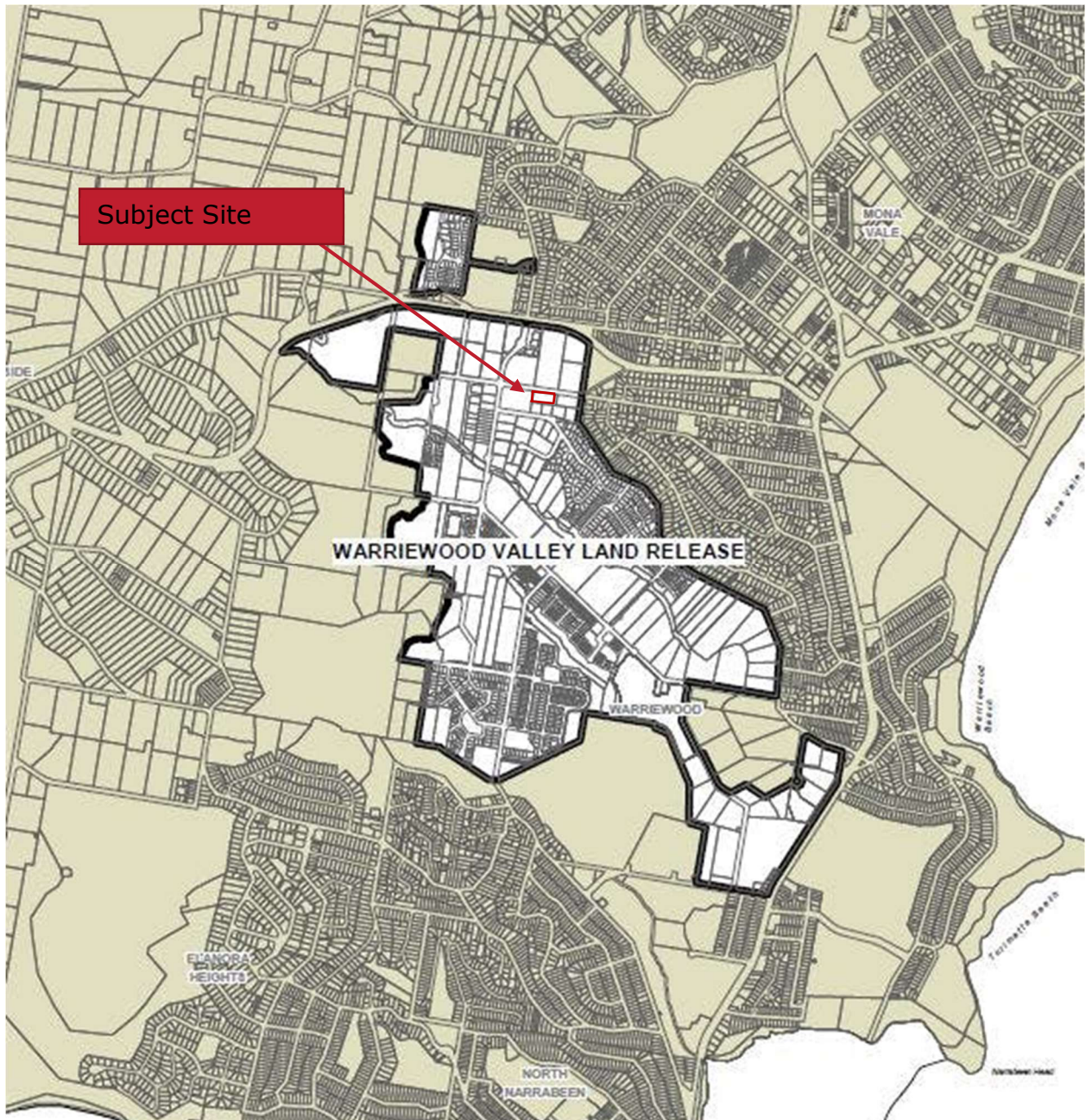
ZONING MAP

Extract from PLEP 2014



ANNEXURE 5

WARRIEWOOD VALLEY LAND RELEASE AREA MAP
(EXTRACT FROM NORTHERN BEACHES COUNCIL)



LAND RELEASE AREA
Extract from Northern Beaches Council

