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MAIL ROOM

28 September 2020

Chief Executive Officer
Northern Beaches Council
PO Box 882
MONA VALE NSW 1660

BY EMAIL AND POST

Dear Chief Executive Officer

**SUBMISSION RELATING TO DEVELOPMENT APPLICATION
DA 2020/1039 - 15 JUBILEE AVENUE WARRIEWOOD
USE OF PREMISES AS A 'PASSENGER TRANSPORT FACILITY'**

We are consultant town planners and we act on behalf of Viking Diesel and Electrics Pty Limited (our client). The company premises (our clients property) is located at No 6 Apollo Street Warriewood and backs on to the subject property to the south.

Purpose of this Document

This document is a submission by way of objection to Development Application 2020/1039 in relation to a 'Passenger Transport Facility' or 'Bus Depot' proposed for No 15 Jubilee Avenue Warriewood (the subject property or the subject site).

Background and Introduction

The Council is currently considering a development application in respect of the subject property. Submissions as regards the development application close on 29 September 2020, although the Council, per Planner Mr Maxwell Duncan, has advised that submissions will be accepted up to the time of determination of the development application (refer email from Mr Duncan to Ms Genevieve Henry dated 24 September 2020).

The development application seeks consent for the construction and use of a 'Passenger Transport Facility', alternatively described as a 'Bus Depot' on the subject site, to be used for the storage, cleaning, and refuelling of buses

(the proposed development or proposal) and at the same time providing staff amenities and carparking.

Our client's property is directly adjacent to, and to the south of the subject property and shares a rear boundary with the subject site.

As aforementioned, this submission constitutes an objection to the development application as lodged.

Site Location Description and Development History

The subject property is located on the southern side of Jubilee Avenue in Warriewood. 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 4554.0 sqm in area and is rectangular in shape, with length exceeding depth.

At present, the site is partly occupied by a shipping container on its eastern end and, as consented to by Northern Beaches Council (refer DA N0316/16), is used for the purpose of storage. Apart from this, the site is currently devoid of development. The remainder of the site, in the main, consists of a sweeping lawn area that is for the most part unused, despite Council in the recent past granting consent for use of its western end, as a 'recreational area' to benefit workers on the Blackmores Campus.

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 large mature trees in the west and southwest corner of the site and small non-mature native shrubs along the northeast border of the site.

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

Annexure 1 and **Annexure 2** provide a locality sketch of the subject property and a location plan showing the spatial relationship between the subject and our client's own property, respectively. **Annexure 3** provides a photographic palette containing a number of photos showing the subject site and other surrounding properties, and including the access route to the site via the intersection of Ponderosa Parade and Jubilee Avenue which lies to the west.

The surrounding area is a mix of commercial and warehouse built elements with low density residential development directly to the east, towards Pittwater Road at Mona Vale and also running uphill, and along the eastern side of Foley Street.

The subject property is one of the last largely undeveloped sites in the northern part of the Warriewood Valley Industrial Area.

Figure 1 below, provides an aerial photograph of the subject site and immediately surrounding development.

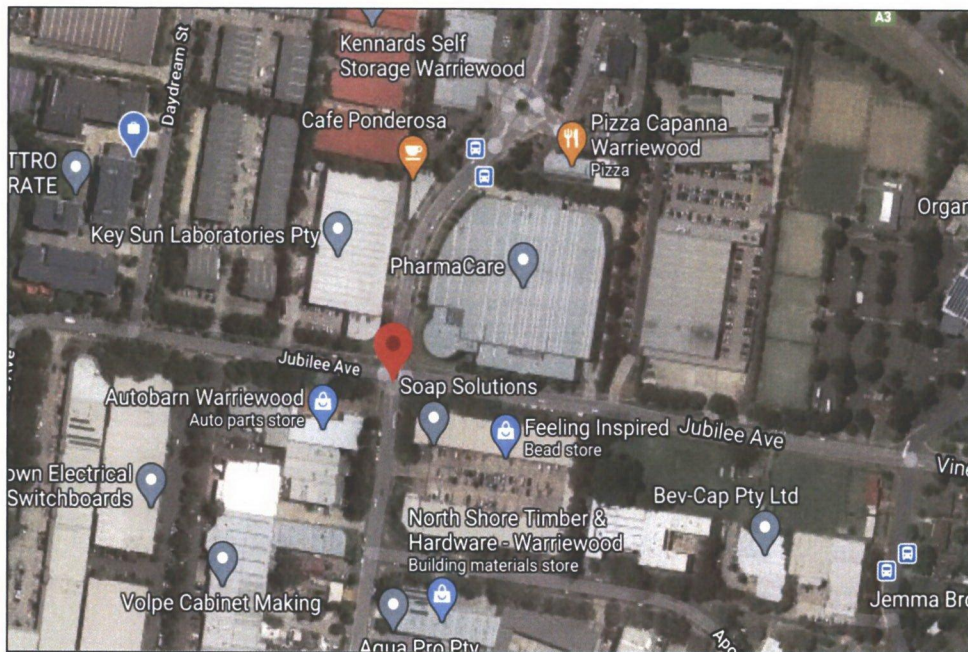


Figure 1 – Aerial Photograph of Locality

The Development Proposal

The development application proposes construction and use of a bus depot for the storage, cleaning and refuelling of buses. A large fuel storage tank is proposed as well as mechanical cleaning facilities for buses. The application also involves the provision of associated office and staff amenities, staff carparking and business signage. The application proposes removal of existing trees. Further details of the proposal include the following:

- The construction of a concrete hardstand area for the parking of 48 buses and 10 staff cars accessed via 2 driveways from Jubilee Avenue.
- The construction of a single storey office building with office and staff amenities, including a lunch room and bathroom facilities.
- The construction of a bunded bus wash bay in which a 'Speedywash Pony' mobile washing device will be utilised. This bunded area will have a first flush stormwater diversion system.
- The construction of a roofed and bunded fuel bay with an above ground 12,500L fuel tank.

- The construction of a variable height acoustic barrier with integrated canopy along the eastern edge of the property with a 3 metre setback maintained to this boundary for landscaping.
- The provision of boundary security fencing including open palisade fencing along the frontage of the property.
- The provision of non-illuminated business identification signage at the front of the property.

Nature of Submission

In preparing this submission, we have considered the following legislation, regulations and other statutory instruments and documents:

- *Environmental Planning and Assessment Act 1979* (EPAA);
- *Environmental Planning and Assessment Regulation 2000* (EPAR);
- *Protection of the Environment Operations Act 1997* (PEO);
- *State Environmental Planning Policy No 33 – Hazardous and Offensive Development* (SEPP No 33);
- *State Environmental Planning Policy (Infrastructure) 2007* (SEPP Infrastructure);
- *Pittwater Local Environmental Plan 2011* (PLEP); and
- *Pittwater 21 Development Control Plan 2014* (PDCP).

We have reviewed the development application and the various reports, plans and other documents accompanying or otherwise associated with the proposal.

There are certain aspects of the scheme that do not merit support and the scheme is, in our opinion, wholly unacceptable, as submitted.

In an overall context and having considered the subject property and its surrounds and the details of the proposed 'Passenger Transport Facility', we are of the view that the proposal, in its present form, should be refused given that the plethora of issues involved have not been or, alternatively, are unable to be addressed.

This submission constitutes an objection to the development application as lodged.

The objection details the various ways the proposal lacks a reasonable consideration for the amenity of the various nearby and adjoining properties (including both residential and commercial properties), does not comply with provisions in the regulatory instruments, and the ways it fails in relation to public interest terms.

Current Statutory Controls

The relevant local environmental planning instrument upon which this assessment relates, is the *Pittwater Local Environmental Plan 2014* (PLEP). The relevant subordinate document is the *Pittwater Development Control Plan 2014* (PDCP).

Under the local EPI, the development is zoned B7 Business Park (refer **Annexure 4**). The zoning has recently been altered from IN2 Light Industrial.

Issues

The objection is 'issues based', per details in the following paragraphs.

Legal Matters

Whilst we do not cavil with the clear fact that development for both a 'Passenger Transport Facility' or a 'Transport Depot' are permissible purposes in the B7 Business Park Zone, the applicant in its Statement of Environmental Effects (SEE), has not clearly expressed, by way of statutory definitions, the purpose for which consent is actually sought.

In the SEE prepared by the consultant town planner (BBF Town Planners, dated August 2020), the proposal is alternatively described as a 'Bus Depot' (see for instance the first paragraph on P4) and a 'Passenger Transport Facility' (refer cover sheet of SEE and elsewhere). With respect, neither of the descriptions accurately describe the proposal, for one or other reasons. 'Bus Depot' is not a purpose defined in the PLEP and is not referred to as a permissible purpose in the B7 Zone. As such it is an 'innominate prohibited purpose' referred to in Paragraph 4 of the landuse table in the PLEP.

Given the above legal misdescription of the development as a passenger transport facility, which suggests that passengers may visit the property, perhaps it should, as a matter of abundant precaution and to preclude an allegation of jurisdictional error, be re-notified with a correct description of the proposal. See content of Notification Sign and further commentary under:

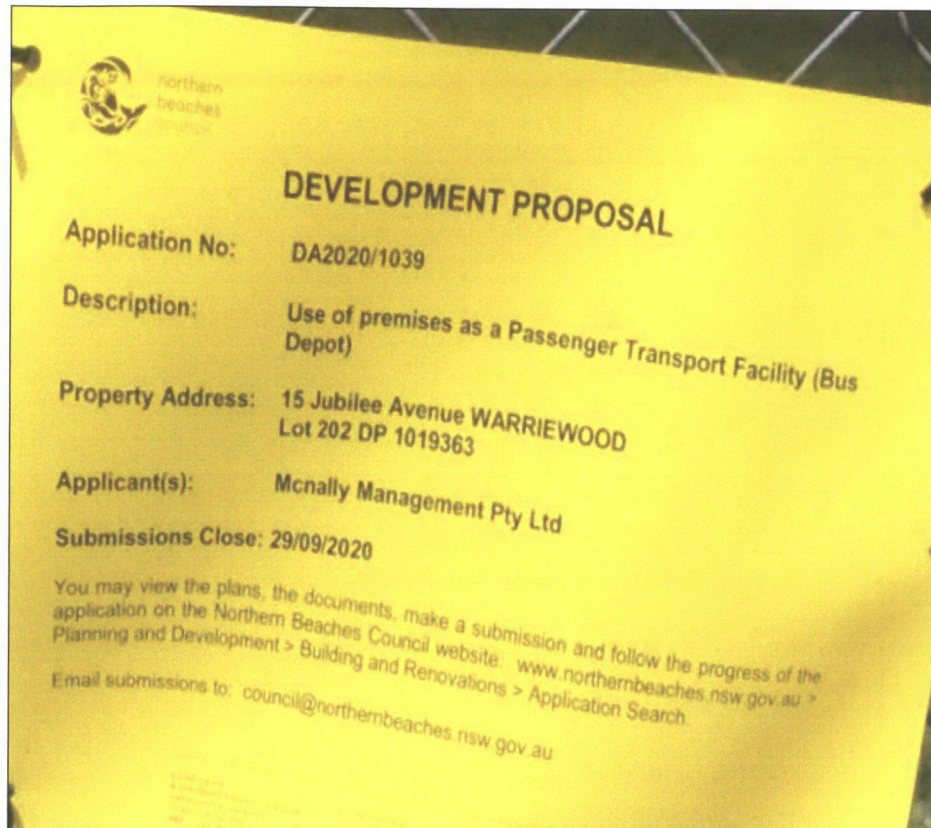


Figure 2 – Notification Sign Photographed 28 September 2020

There is another more compelling reason this application should be re-notified and that is due to the fact that it appears the notification signage was erected only recently, and on or **after** 23 September 2020, when a planner from this office attended the site to conduct an inspection following receipt of the brief from the client.

We note that 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 it is capable of lawful determination or is permissible in the relevant zone. In this case if the proposal does constitute a 'Bus Depot' then such a purpose is, as mentioned, prohibited in the B7 Zone and it is therefore beyond power for the consent authority to grant consent to the proposal. Similarly to the above for the purpose of hazard assessment under SEPP No 33, potentially hazardous industry and potentially offensive industry are permitted in zones where industry or storage establishments are permitted. Where industry or storage establishments are, as a class of development, prohibited by the land use table, potentially hazardous industry or potentially offensive industry is not permitted. Given these considerations, it is crucial for the applicant to correctly identify the nature of the proposed use.

If the alternative description as a 'Passenger Transport Facility' in the SEE is relied upon, then there is also an issue. The definition of passenger transport facility is as follows:

passenger transport facility means a building or place used for the assembly or dispersal of passengers by any form of transport, including facilities required for parking, manoeuvring, storage or routine servicing of any vehicle that uses the building or place.

Is it proposed for instance, that the property will be used for assembly or dispersal of passengers by bus? Is it proposed that other types of vehicle, other than buses, be parked and stored on site? The SEE, read in context, suggests that this is not the case and that the site is to be used for storage and servicing of buses as the dominant purpose, with ancillary refuelling, cleaning and maintenance and parking for drivers and other staff. For the development to be properly described per the above definition, the parking of buses etc must be subservient to assembly and dispersal of passengers. As we understand the application, this is not the case.

Given the above, our view is that the applicant has not properly described the purpose of the development proposal. In this context, the development application itself is misleading. This fundamental issue must be resolved prior to Council further considering the proposal. In our view the proposal would properly be described as a 'Transport Depot' involving passenger transport by bus. Transport depot is defined as follows in the dictionary to the PLEP:

transport depot means a building or place used for the parking or servicing of motor powered or motor drawn vehicles used in connection with a business, industry, shop or passenger or freight transport undertaking.

It is critical that Council insist that the development be described properly and in accordance with the requirements of the existing statutory planning regime. We note that transport depot is a purpose permissible with consent in the B7 Zone and we opine that this is a proper description of the proposal given that there is no intent for use of the site for the assembly or dispersal of passengers, when the application is read in context. A bus depot provides a better descriptive type outline, however as mentioned, this is a prohibited purpose in the zone.

Flowing from this we note that, 'potentially hazardous industries' and 'potentially offensive industries' are purposes permitted in zones where industry or storage establishments are also permitted. Where industry or storage establishments are, as a class of development, prohibited by the land use table, potentially hazardous industry or potentially offensive industry is not permitted. In this case light industrial uses are permitted in the B7 Business Park Zone, so it is perhaps safe to assume that potentially hazardous industries are also permitted, as a matter of law.

The transport depot may be considered hazardous due to the storage and transport of liquid fuel in a location close to the public domain and close to properties used for residential purposes. The dangers presented, relate to potential impacts by fire or explosion, in circumstances where fuel is dispensed from an above ground storage tank on a regular ongoing basis. Fuel tankers would also appear to be required to travel along Foley Street where such is presently prohibited (per information in the Traffic Report and **Annexure 3** Photographs of signage at Photograph 3).

The applicant would appear not to have considered the provisions of SEPP infrastructure. This SEPP applies to the State. An analysis of the provisions of the Infrastructure SEPP is beyond the scope of this submission, however the questions below, do arise:

1. Is the development required to be referred to the former RMS (now Transport for NSW)?
2. As a 'transport depot', what are the referral requirements, if any?
3. Does the application require concurrence by the former RMS?
4. Is the property in or near to a coastal management area and does this have any consequence in terms of SEPP Infrastructure?
5. Does the nature of the use involving potentially hazardous material require that it be referred to the former RMS?
6. Is the facility 'traffic generating development' pursuant to the SEPP Infrastructure.

Traffic Access

Our clients have outlined their own use of their land and the current traffic situation in this part of the Warriewood Valley, and describe their needs including access to Mona Vale Road travelling north from Apollo Street to Mona Vale Road, in the following way:

Viking Diesel and Electrics Pty Ltd is classified as an essential service business. We service and maintain emergency standby generators for Sydney Local Health (Royal Prince Alfred, Balmain, Canterbury, Concord and Balmain Hospitals), The Mater North Sydney, and many private hospitals and buildings in the Greater Sydney area. Our technicians are on call on a 24 hours roster. When an emergency call out is received the technicians are required to attend 6 Apollo Street Warriewood to collect equipment then leave for site as quickly as possible. In the event of us attending a hospital during an organ transplant (where our technicians are required on site in the plant room for the duration of the procedure) any traffic delays could be catastrophic.

As Council will appreciate, the upgrading of Mona Vale Road means that the most efficient route for access to many parts of Sydney from the Northern Beaches will in the future, be via this route. The intersection of Ponderosa/Jubilee however presents as a major impediment.

One of the fundamental flaws in the scheme as prepared by the applicant, is that it fails to take account of the existing vehicular traffic situation in the northern Warriewood Valley precinct with Jubilee/Ponderosa forming the focus for traffic movement north and west.

We note that the existing traffic counts for Jubilee Avenue by the applicants traffic consultant (SECA Solution Report of 18 August 2020), were undertaken on one day only, during a peak COVID-19 period in June 2020, where traffic was undoubtedly severely reduced compared to 'usual' weekday use. Further, the report regarding the 'existing situation' (at Page unnumbered) describes the locality in Jubilee Avenue as follows:

There are two major businesses located on the northern side of Jubilee Avenue towards the western end of the road that have large car parks for staff and a large portion of the traffic in the peak periods is accessing these two sites.

With respect, this description is completely misleading. There are numerous 'major' businesses that occupy Jubilee Avenue both on the eastern and western side of Jubilee Avenue and extending all along Daydream Street to Mona Vale Road and to the end of Jubilee Avenue. Many of these businesses are serviced by heavy vehicles. The Traffic Report provided by the applicant fails to mention that Jubilee/Ponderosa is the one point of vehicular access to countless businesses in this western sector of the northern Warriewood Valley. As a consequence, the intersection of Ponderosa Parade and Jubilee Avenue, which is serviced by a single lane roundabout is, even at present, unable to cope with traffic demands placed upon it. In this regard, the traffic consultant suggests the queue based on SIDRA in metres for vehicles approaching the intersection from the west (along Jubilee Avenue) is 6.8 metres with a delay of 8.3 seconds. With respect, this is absolute nonsense. During peak hour afternoons (say 4.00pm – 5.30pm) during weekdays, vehicles are very often stacked from Ponderosa Avenue all the way to the intersection of Daydream Street, based on our personal observations. This is a distance of over 170 metres (see Figure 3 under). The observation calls into question many of the other conclusions drawn by the consultant.

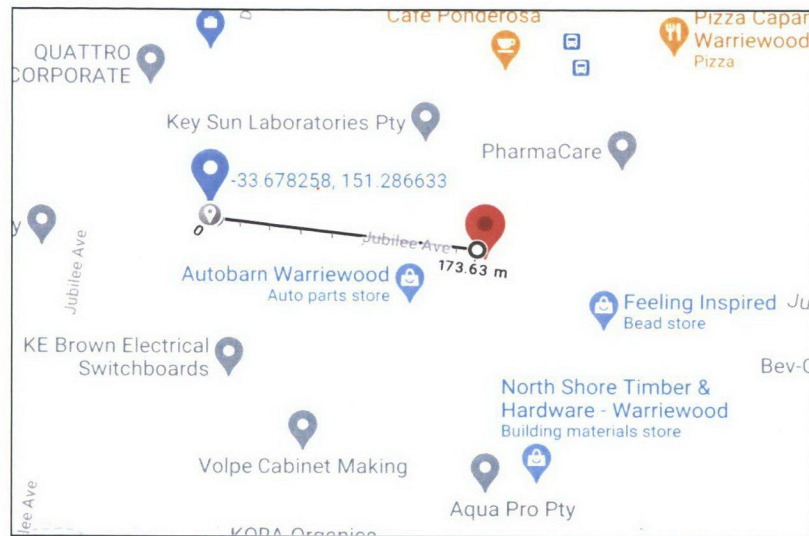


Figure 3 - Vehicle Queuing Distance

High traffic flows to and from the intensely used commercial/industrial area to the west are evident, in circumstances where there is no alternative route other than via this intersection. In this regard, we note that both Daydream Street and Jubilee Avenue to the west of Ponderosa Parade are both no-through routes either terminating northerly, or blocked at Mona Vale Road. Further, given that this intersection also provides the only route for heavy vehicles to the east, additional traffic pressure will be significant, even based on the traffic consultants own predictions.

If it is accepted that the proposal will result in increased *heavy* traffic using the intersection, it must follow that a deterioration in accessibility will result.

Given the numbers referred to in the traffic report accompanying the development application, such a deterioration will be severe (outbound increase am 22, and increase inbound pm 19 additional large vehicles). Not only is the round-about already at capacity during certain periods but the intersection is also constantly damaged by heavy vehicles, given the inadequate swept paths (refer **Annexure 3**, Photograph 5). Traffic flow is consequently severely impeded in this location and, given the nature of our clients landuse, there is a likelihood that the operation of this essential service business will be so impeded as to cause highly undesirable, even unacceptable, life threatening consequences.

We are of the opinion that a significant upgrade of the intersection of Jubilee Avenue and Ponderosa Parade is required as a consequence of this development application.

PDCP (clause B6.7 'Transport and Traffic Management') contains the following required 'Outcomes':

- Safe and orderly traffic, pedestrian and cyclist access to and from all development via the surrounding road network and transport infrastructure.

- The developer meets the cost of upgrading the surrounding road, and traffic and transport infrastructure to meet the needs generated by the development.

The 'Controls' for these outcomes provide, inter alia, that where development generates traffic and transport requirements in excess of the capacity of the existing road and transport network, the capacity of the surrounding public infrastructure and transport network is required to be upgraded to at least match the additional demands generated by the development. The above section of the PDCP also provides that the cost of traffic and transport facilities and adjustment of any utility service is the responsibility of the 'applicant'. In our view, this is the case in the present circumstances.

Other areas where the information as regards traffic matters is inadequate are as follows:

- The architectural plans and the traffic report appear to contradict each other. The plans indicate parking for 48 buses with 33 spaces + 15 parking overnight (Noxongiffen at D2). The Traffic Report notes that 48 buses will park overnight (refer 'Parking' at Page unnumbered).
- The development application shows on the plan details for various sizes of heavy vehicle. Is the length of vehicle to be limited to 12.5m or are longer vehicles envisaged on the site?
- A submitter has indicated that the hours of operation of the facility do not reflect the times for operation of local buses (the submitter has particular knowledge of the times for local bus services). In our experience as planners, bus depots usually need to have the flexibility of operating 24 hours and 7 days per week to achieve an acceptable level of efficiency.
- Policing bus movements such that no buses travel past the eastern boundary of the site as recommended by the acoustic consultant (at 5.1.2 of the acoustic report, bullet point 3) for noise levels to be satisfactorily mitigated (per calculations) is impossible and demonstrates a fundamental flaw in the scheme as regards noise impact on very nearby both residentially used and zoned developments. Further, the Traffic Report cited earlier appears to suggest that buses need to travel further east along Jubilee Avenue to access the site, if coming from the south along Ponderosa Parade. It is stated as follows in the Traffic Report ('Bus Access' at P unnumbered):

For a bus wishing to access the depot from the south via Ponderosa Parade, the bus would need to continue north to Mona Vale Road, turn right at the traffic signals and then turn right at Foley Street to then access the site via Jubilee Avenue. This access routes will need to be

discussed with Council to gain approval for using Foley Street. Whilst there is a weight limit, Foley Street is currently used by buses as part of regular bus services.

- The traffic report goes to great length to outline the benefits of the upgrade proposed for Mona Vale Road and Ponderosa Parade, however ignores the status of the intersection of Jubilee Avenue and Ponderosa Parade. As is obvious when Figure 1 above is considered, traffic to the former intersection must traverse the latter intersection to gain access to Mona Vale Road. As well as this, the Traffic Report provides details of the upgrade of the intersection of Mona Vale Road with Foley Street. With respect, we are at a loss to understand the direct relevance of this work in terms of the merit of the proposed development, without intervening upgrades to other parts of the local road network. We note also, as is acknowledged above, that heavy traffic is prohibited from using Foley Street given its location in a residential precinct.
- A submitter has suggested that reversing alarms are legally unable to be disabled in a bus depot, notwithstanding the recommendation of the acoustic consultant that these must be disabled after or before certain hours. The architectural drawings show, given the parking layout, that buses will need to reverse to navigate the depot area.
- Information relating to transport of potentially hazardous materials and the route of transport, frequency of supply and quantities to be transported, have not been supplied in the development application.
- As regards the traffic report, in terms of pedestrian safety at the intersection of Jubilee Avenue and Ponderosa Parade, the report states as follows, under 'Existing situation':

Jubilee Avenue connects with Ponderosa Parade via a 4-way roundabout controlled intersection. There are traffic islands on each approach allowing for pedestrians to cross the roads as required in two separate stages.

It then goes on to say under 'Pedestrian facilities' and then 'Road safety impacts':

The roundabout at Jubilee Avenue and Ponderosa Parade includes marked splitter islands for traffic on the approaches to the roundabout but no raised pedestrian islands.

With regard to pedestrians, it is considered that the roundabout at Jubilee Avenue and Ponderosa Parade does not provide a safe layout for pedestrian movements, due to the lack of raised traffic islands to provide protection for pedestrians crossing the road.

The above internal contradictions should be clarified.

Zone and Zone Objectives

As mentioned earlier, the property is zoned B7 Business Park under PLEP.

The zone objectives are as follows:

- 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.

The proposed development is, in our opinion, inconsistent with a number of the zone objectives under PLEP. Firstly a 'Passenger Transport Facility' is obviously not an office or light industrial use (per zone objectives). Further, whilst it will provide employment opportunities, the facilities and services involved in this proposal are unlikely to meet the day to day needs of workers in the area. Rather, the proposal has been designed to meet the needs of public transport users in a wider regional context. It will not be a service which of itself meets the needs of workers in the area. Lastly the facility will be likely to detract from the ability of this business area to operate in an attractive, functional and safe manner by greatly increasing traffic movements in a location where the local road system is already operating at capacity and by failing to demonstrate health and safety through a hazard assessment. The proposal will reduce functionality and diminish the value of a currently attractive and relatively safe business area, as well as this interface with nearby residentially zoned land.

The SEE (BBF, August 2020) indicates that the proposed bus depot satisfies the relevant zone objectives as follows (at P13):

The proposed bus depot satisfies the relevant zone objectives as provides (sic) facilities and services to meet the day to day transport needs of workers in the area. Accordingly, there is no statutory impediment to the granting of consent.

With respect to the author, not only is a 'bus depot' per se, prohibited development, but as shown, the proposal does not satisfy the zone objectives, as described above. Furthermore the zone objectives despite this statement, do not of themselves provide a 'statutory impediment' to the granting of consent. There are other parts of the PLEP that perform this function. In our view the very description of the development by the applicant does provide such a statutory impediment. That description should be re-drafted.

Desired Future Character

The desired future character of the Warriewood Valley Release Area is described as follows at clause A4.16 of the PDCP:

The Warriewood Valley Land Release Area will remain characterised by a mix of residential, retail, commercial, industrial, recreational, and educational land uses. The Warriewood Valley Land Release Area will be developed into a desirable urban community in accordance with the adopted planning strategy for Warriewood Valley, and will include a mix of low to medium density housing, industrial/commercial development and open space and community services. 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 will be designed to be safe from hazards. The creeklines, roads and open space areas will form the backbone of the new community, complemented with innovative water management systems, the natural environment, pedestrian/cycle path network, public transport, and recreation facilities. Development will incorporate native canopy trees and vegetation to minimise the bulk and scale of development and enhance the new community with a high quality landscape character. Development will integrate with the landform and landscape. A balance will be achieved between maintaining the landforms, landscapes and other features of the natural environment, and the development of land. In this respect large tracts of land known as the Warriewood Escarpment have been acquired and reserved as environmental protection, as well as the Warriewood wetland area, no urban development will be permitted in these areas.

As far as possible, the locally native tree canopy and vegetation will be retained and enhanced to assist development blending into the natural environment, and to enhance wildlife corridors. Heritage items and conservation areas indicative of the Guringai Aboriginal people and of early settlement in the area, and farming history in the valley, will be conserved. Vehicular, pedestrian and cycle access within and through the area 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.

The use proposed in this case is not that for retail, commercial, industrial recreational or educational purposes. Whilst we acknowledge that a 'transport depot' would support such purposes in a regional context, it is relevant that care must be taken in any development assessment as the proposal is not for a purpose that is actually entertained in the character statement.

We note the development application fails to provide for retention of a number of existing canopy trees.

Further, the proposed retention of the existing large tree in the north eastern corner of the land may give rise to noise impacts as regards the existing residential development to the east because of an inability to extend noise attenuation devices in this location and on the boundary. We ask that Council carefully review details of the proposed acoustic wall to ascertain if retention of this tree takes this into account.

Contrary also to the character statement above, the proposal doesn't provide for upgrading of vehicular access to and from the site (albeit remotely, at the intersection of Jubilee/Ponderosa) despite the fact that it will cause significant degradation of function in this location.

The applicant, in our view, does not properly address the area character statement, nor are the variations therefrom dealt with, other than in a most perfunctory manner.

Privacy and Setbacks

In our opinion, the applicant has not had sufficient regard for setback requirements referred to in the PDCP. In particular, electricity kiosks are proposed at the front boundary of the site within close proximity of a large fuel storage tank. A preliminary hazard assessment (PHA) should be undertaken to assess risk associated with this arrangement. Further however the 12,500 litre fuel storage tank is located in an area close to residential development and the public domain.

Size of Depot and Number of Buses

The proposal involves storage of 48 buses on a site that has an area of 4,554 sqm. As to the adequacy of the site to accommodate this number of buses, our research reveals the following:

The size of a bus depot is usually stated in terms of the number of buses that it can accommodate, which may vary from fewer than 10 vehicles to several hundred. The area required for any given number of buses will vary according to the shape and layout of the site. With a good layout, the approximate area required for a depot for 100 full-sized buses will be 2 hectares, or 20,000 square meters, including buildings.

The space required per bus will decrease slightly as the number of buses increases since the proportion of the area occupied by buildings will decrease. There are also certain economies of scale. For example, the requirement for office accommodation, or fuel issuing equipment does not increase in proportion to the number of vehicles allocated to a depot.

Source:

The Urban Bus Toolkit, The World Bank, Washington USA.

[https://ppiaf.org/sites/ppiaf.org/files/documents/toolkits/UrbanBusToolkit/assets/3/3.1/35\(vii\)b.html#:~:text=Bus%20depot%20size%20and%20locatio](https://ppiaf.org/sites/ppiaf.org/files/documents/toolkits/UrbanBusToolkit/assets/3/3.1/35(vii)b.html#:~:text=Bus%20depot%20size%20and%20locatio)

n&text=The%20area%20required%20for%20any,20%2C000%20square%20meters%2C%20including%20buildings.

The figures above indicate that the site is inadequate to accommodate the number of buses proposed. Even in the context of the site layout being 'good' and allowance for that being made, if the above figures are used as a guide, the maximum capacity for bus storage on a 4554 sqm site would be around 25, or less buses (basically half that which is sought).

In our view, the accommodation of more than the above guideline numbers, will eventually lead to pressure for storage of buses on public streets so reducing on street parking availability for other users and further traffic congestion in and around the location of the facility. Such may also be the case in relation to demand for off street car parking exceeding supply (here there would be less than 1 space per 10 employees).

Fuelling of Buses From Depot and SEPP No 33

If *State Environmental Planning Policy No 33 – Hazardous and Offensive Development* (SEPP No 33) identifies a development as potentially hazardous and/or offensive, the applicant is required to undertake a Preliminary Hazard Analysis (PHA) to determine the level of risk to people, property, and the environment at the proposed location and in the presence of controls. In this case, there would be storage of fuel above ground which may escape during the fuelling process, combined with circumstances where the property is close to the public domain and as well, proximate residential properties and a creek system.

The purpose of the PHA is to: identify the potential hazards associated with the proposal; analyse the hazards in terms of their consequences (effects) to people and the environment and the likelihood of occurrence; quantify the analysis and estimate the risks to surrounding land uses and the environment; and assess the risks in terms of the location, land use planning implications and existing criteria; and ensure that the proposed safeguards are adequate, and thus demonstrate that the operation will not impose an unacceptable level of risk.

A development proposal for a 'petrol station' for instance, where bulk fuel is stored, in our experience requires submission of a PHA with a development application (refer 'Industries that may be Potentially Hazardous' in Appendix 3 *Hazardous and Offensive Development Application Guidelines* [former NSW Department of Planning, 2011] – HODAG, January 2011). In our view, given the similarities between a transport depot and a petrol station as regards bulk storage of fuel and where fuel is transported and dispensed regularly, this proposal should require a PHA.

The need for a PHA is assessed in the following way:

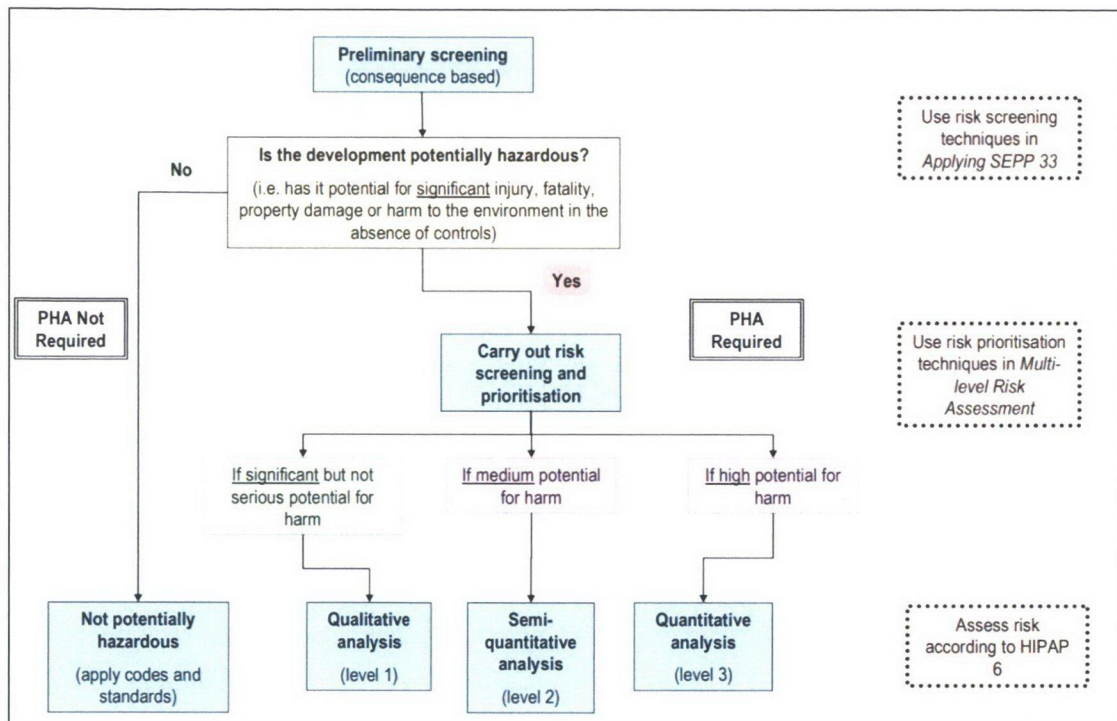


Figure 3 – Risk Assessment (source DoP, HODAG, 2011)

If the risk levels exceed the criteria of acceptability and/or if the controls are assessed as inadequate or unable to be readily controlled, then the development is classified as 'hazardous industry'. Where it is unable to prevent offensive impacts on the surrounding land users, the development is classified as 'offensive industry'. Both of these classifications may or may not be permissible within industrial/business zones in NSW. A development may also be considered potentially hazardous with respect to the transport of dangerous goods. A proposed development may be potentially hazardous if the number of generated traffic movements (for significant quantities of hazardous materials entering or leaving the site) is above the cumulative annual or peak weekly vehicle movements. A storage development is considered an 'industry' for the purposes of applying the SEPP No 33 tests even if the development is 'non industrial' in its nature. An example of this is a storage facility ancillary to a transport depot. SEPP No 33, *Hazardous and Offensive Development Application Guidelines*, cited above), outlines the screening thresholds for transportation. The submitted application does not present sufficient information on hazardous materials, flammable substances, and compressed or liquefied gases proposed to be stored or handled in the development site, nor does it deal with transport to or from the site and associated risk issues.

The applicant would not appear to have undertaken a PHA per clause 12 of State Environmental Planning Policy No 33 – Hazardous and Offensive Development (SEPP 33) as appears to be required for a development of this

nature where potentially hazardous fuel storage is proposed. Clause 12 of SEPP No 33 provides as follows:

A person who proposes to make a development application to carry out development for the purposes of a potentially hazardous industry must prepare (or cause to be prepared) a preliminary hazard analysis in accordance with the current circulars or guidelines published by the Department of Planning and submit the analysis with the development application.

The development proposal incorporates plans for a 12,500 litre fuel storage tank and possibly storage of other non-disclosed hazardous substances to operate the wash facility or undertake cleanup. The applicant has not incorporated any details of the requirements for servicing this fuel storage tank. Presumably, road tankers will need to access the site, however the traffic report does not make any mention of this issue or the number of times such tankers will need to attend at the site to make bulk fuel (presumably only diesel) deliveries. A hazard assessment dealing with this issue is required and this would not appear to have been provided as part of the DA package. We note that the New South Wales Environmental Protection Agency (EPA) has called for diesel fuel to be re-classified as a dangerous good for transport purposes. The present development application also does not appear to detail whether any other hazardous materials are proposed to be transported to the site.

The applicants' planner appears also to have failed to identify the potential hazards as regards this issue.

Amenity for Local Residents including Light Spill and Fumes

Impacts to local commercial/residential users will include the possibility of noise impacts, light spill (visual privacy), fuel fumes generated by idling buses and buses leaving and entering the site, as well as increased use of residential streets by vehicles servicing the transport depot in close proximity to a zone interface. Whilst we accept the conclusion that air quality may not be unacceptable in the area around the site, per the relevant report by Todoroski Air Sciences, we have two comments:

- Deterioration in air quality is one of a number of amenity impacts this development will cause, and in our view very often developments are held to be unsatisfactory due to a combination of amenity impacts. These other amenity impacts are outlined above.
- The Summary and Conclusions at P25 of the report mentions air quality "*in the area surrounding the Project site*", but appears to ignore the situation within the site itself, where there will be a number of staff located on a daily basis.

To our minds, this development can only degrade local amenity no matter the conditions that are imposed, by way of any consent granted.

Car Parking

The Traffic Report cited above, states that there will be the provision of 10 car spaces for use by bus drivers and other servicing staff to cater for 110 staff. The author of the report states that this number of parking spaces is adequate, however provides no source of authority or comparative facility to support his/her own assertion. To our minds, the number of staff parking spaces seems woefully inadequate given the nature of the use, the number of bus drivers and the number of staff required to provide ancillary services such as maintenance, refuelling and cleaning of buses.

Whilst the SEE identifies parking as a so called 'key environmental consideration' the report fails to even comment on the adequacy of the off street car parking arrangements, other than to advise that parking and access are addressed in the Traffic Report.

Land Owners Consent

Given that work is proposed on the Council verge, land owners consent is required before the Council can grant consent to the development. See extract from Noxongiffen Drawing Sheet D2 under:

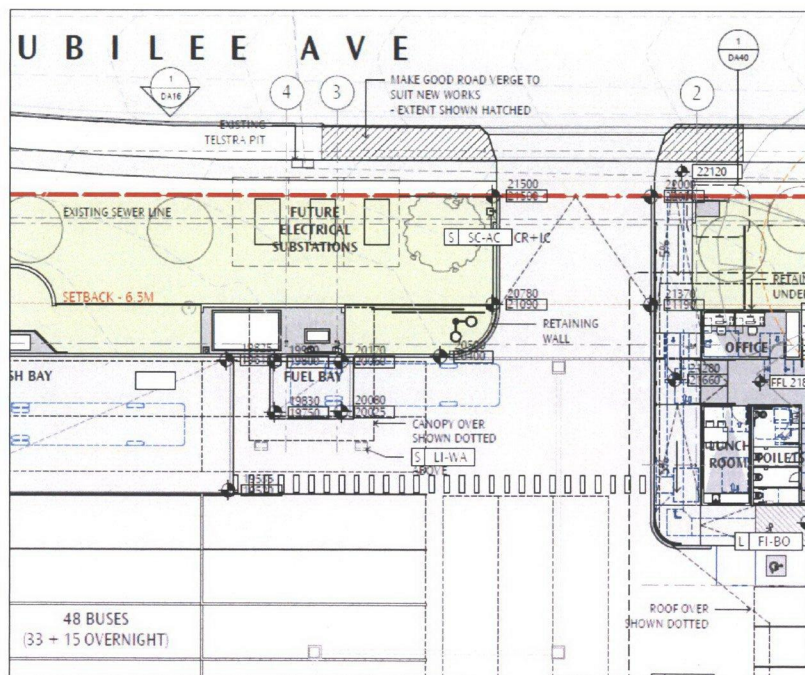


Figure 4 – Extract from 'Drawing MasterSet' Sheet D2

Work on Council Verge and Over Existing Easement

Council will note that work should not be undertaken within 3.0m of drainage or sewer easements. This includes landscaping or an electrical substation (according to the Council Engineers Section, per DA 2019/0268 relating to the subject property).

Creek System Impacts

We ask that Council carefully assess possible biodiversity impacts that may be caused to the existing creek system that adjoins the land on the western side. Given that there is a riparian zone to consider, we are of the opinion that the application should be referred to the NSW Natural Resources Access Regulator (NRAR). There are riparian setbacks that may be required in this regard. Council should also check as to whether the development may also be 'Integrated' (Integrated development links development consent for matters under Part 4 of the EPAA, with any associated approval, licence, consent, permission, or permit required under other legislation) pursuant to the EPAA in this context, and require referral pursuant to the *Water Management Act 2000*.



Photograph Showing Creek System Adjacent to Site

Conclusion

We conclude that the development proposal has either not incorporated sufficient information to allow a proper assessment, or failed to address at all, so many serious environmental issues that the application cannot in its present form, be approved.

We respectfully submit that, having regard to the likely impacts of the proposal upon adjoining properties and as regards the community generally, significant changes are required to the scheme to render it acceptable. In addition, infrastructure upgrades to the intersection of Ponderosa Parade and Jubilee Avenue are essential. In our opinion, the only appropriate course of action for the consent authority in the present circumstances is to request withdrawal, or failing that to refuse consent to the development application.

In the case of the proposed development and based on *Pafburn v North Sydney Council* [2005] NSWLEC 444 (16 August 2005), there is a legitimate expectation that the development to take place on the subject property 'will comply with the planning regime'. We further consider that it is legitimate to expect that any development should also succeed when assessed on its own merit.

We conclude that this is not the case in this matter, for reasons as follow:

- The development has not been described with sufficient precision such as to be able to be assessed and approved. We note that under the PLEP, development for a 'Bus Depot' is prohibited development.
- The applicant has not erected the site notification sign in accordance with Council Policy.
- The development is not properly or accurately described in the public notice and the scheme should be re-notified with an accurate description of the actual proposal.
- The development as proposed, as a 'potentially hazardous industry' does not deal with the fundamental issue of provision of a PHA under SEPP No 33.
- The applicant has not addressed requirements as regards referral of the matter to Transport for NSW, nor has the applicant considered whether the development is 'traffic generating development' under SEPP Infrastructure.
- In the context of the inadequacy of the Traffic Report, the applicant has not demonstrated that the proposal will not cause traffic impacts in the wider community, particularly as regards emergency call out requirements for nearby businesses (such as our client) and traffic

impacts in the vicinity of the intersection of Ponderosa Parade and Jubilee Avenue.

- Traffic counts taking place during the COVID-19 period, invalidate the traffic consultant's findings.
- The traffic consultant relies on buses traversing Foley Street (residential street with a 3 tonne limit) in order for his suggested alternative access 'model' to work. This is not acceptable nor is it currently permitted.
- The traffic consultant has completely misunderstood and therefore mislead Council as regards traffic demands during peak hour in terms of the roundabout at the intersection of Ponderosa Parade and Jubilee Avenue. Our view is that this intersection will need to be **fully signalised** for the issue to be addressed properly.
- Suggested conditions to be imposed to alleviate amenity issues for residents (such as vehicles not travelling past a certain point on public roads) are impossible to properly police.
- There are numerous contradictions as between consultants in the information supplied with the application.
- Aspects relating to frequency of transport of potentially hazardous materials (diesel fuel) to the site have been ignored by the applicant.
- As regards pedestrian safety in terms of the existing intersection at Ponderosa Parade and Jubilee Avenue, the traffic impact report is *internally* contradictory. As such, this casts doubt on the balance of the document as being credible.
- The applicant (in the SEE) fails to demonstrate the way the application is consistent with relevant zone objectives.
- The proposed development fails to adequately justify removal of endemic vegetation and degradation to the function of the local road network and as such the development may be considered to be inconsistent with the desired future character of the Warriewood Valley Release Area.
- Compelling evidence suggests that the development is an overdevelopment of the land (refer *Size of Depot and Number of Buses* in this document).
- Light spill to residential areas has not been properly addressed by the applicant.

- No evidence justifying the number of staff parking spaces that the development provides has been submitted.
- The applicant has not taken account of biodiversity issues given proximity to a creek.
- Land owners consent by Council would not appear to have been submitted as regards work in the road verge, comprising levels changes and multiple electricity kiosks.

If the consent authority is minded to grant development consent to the application, notwithstanding the serious inadequacies outlined in this submission, in our view a **deferred commencement consent** should be granted requiring that the intersection of Jubilee Avenue and Ponderosa Parade be upgraded to a signalised intersection, prior to an operative consent issuing. We note that upgrading is necessary, based on comments from the applicants traffic consultant, given that heavy traffic would otherwise need to traverse the adjoining residential neighbourhood.

Finally to accord with Councils own Policy, the application will require re-notification.

Our client reserves all of its rights and entitlements.

Yours faithfully,

TURNBULL PLANNING INTERNATIONAL PTY LIMITED



Pierre Le Bas

BA (Geog) (UNE) LLB (Hons1) Grad Cert Leg P (UTS) MTCP (Syd)

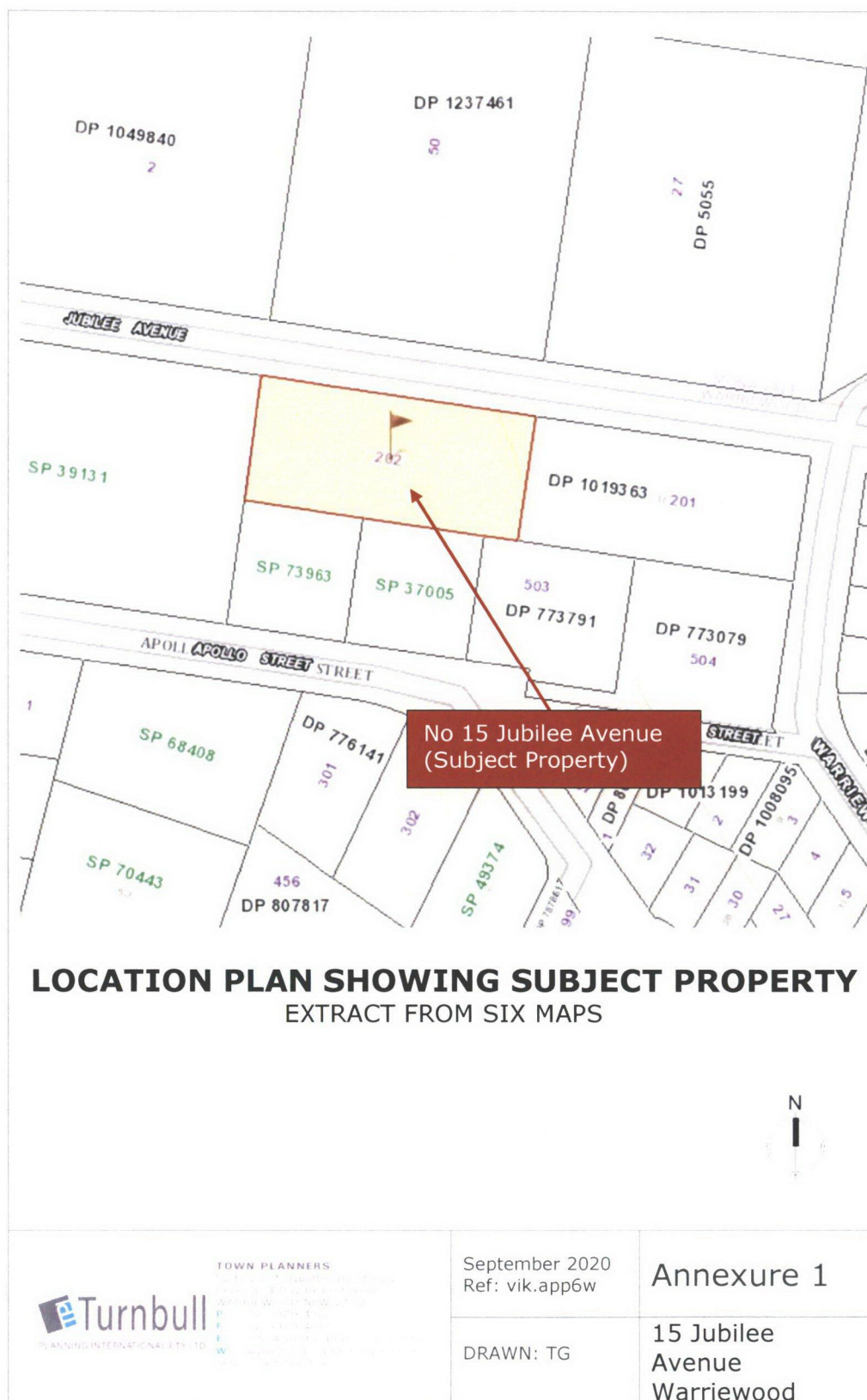
Director & Legal Counsel

pierre@turnbullplanning.com.au

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We disclose that an application for an earlier development proposal on the subject property comprising 'a recreation area' was submitted by this firm. The Blackmores Campus is the northern side of Jubilee Avenue, directly opposite the subject, and we declare that we have acted for Blackmores as regards a number of planning matters, focussing mainly on the Blackmores facility itself but also as regards the subject land.

ANNEXURE 1



ANNEXURE 2



ANNEXURE 3
PALETTE OF PHOTOGRAPHS



PHOTOGRAPH 1 – Subject property looking west



PHOTOGRAPH 2 – Subject property showing existing container stored on site

ANNEXURE 3
(CONTINUED)



PHOTOGRAPH 3 – Looking east along Jubilee Avenue and showing extant signage regarding truck access to Foley Street



PHOTOGRAPH 4 – Looking west along Jubilee Avenue, taken from opposite subject

**ANNEXURE 3
(CONTINUED)**



PHOTOGRAPH 5 – Existing roundabout at intersection of Jubilee Avenue and Ponderosa Parade



PHOTOGRAPH 6 – Subject site showing existing vegetation

ZONING MAP
EXTRACT FROM PLEP

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September 2020
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Annexure 4

DRAWN: TG

**15 Jubilee Avenue
Warriewood**