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21 March 2012

JULIET GRANT, REGIONAL DIRECTOR
SYDNEY EAST REGION – NORTH EAST
DEPARTMENT OF PLANNING
GPO BOX 39
SYDNEY NSW 2001



Dear Juliet

PLANNING PROPOSAL FOR THE PRESERVATION OF TREES AND VEGETATION

At its meeting of 19 March 2012, Council's Planning and Integrated Built Environment Committee considered a report in relation to the preservation of trees and vegetation in the Pittwater Local Government Area (LGA). Council's Committee resolved:

- "1. That Council endorse the statutory process to amend the Pittwater Local Environmental Plan 1993 to include the text from Clause 5.9 (Preservation of trees or vegetation) of the Standard Instrument LEP.
- 2 That Community Consultation is carried out in accordance with any Gateway Determination issued by the Department of Planning and that the outcomes of the community consultation process are reported to Council.
- 3 On the grounds of public benefit and environmental preservation the Council endorse the lifting of the moratorium imposed on 17 October 2011 and progress the subject Planning Proposal."

Please find enclosed the Planning Proposal, the report to Council and Council Minute.

We formally request that the Planning Proposal be referred to the LEP Review Panel for determination under the 'gateway process'.

If you have any questions in relation to this matter, please contact Kelly Wilkinson on (02) 9970 1283.

Kind regards

Andrew Pigott
PRINCIPAL STRATEGIC PLANNER

Attachments:

- Planning Proposal
- Council Report
- Council Minute





**ATTACHMENT
PLANNING PROPOSAL**



PITTWATER COUNCIL

PLANNING PROPOSAL

To amend the Pittwater Local Environmental Plan 1993 by including a clause for the preservation of trees or vegetation

Prepared By Pittwater Council

PART 1 OBJECTIVES OR INTENDED OUTCOMES

The intended outcome of this Planning Proposal is to strengthen the controls concerning the protection of trees and vegetation in the Pittwater Local Government Area (LGA) to halt the loss of vegetation through illegal clearing, in order to enhance and conserve biodiversity.

PART 2 EXPLANATION OF PROVISIONS

Amend the *Pittwater Local Environmental Plan 1993* (Pittwater LEP) by incorporating the text from Clause 5.9 of the Standard Instrument LEP (Preservation of trees or vegetation) (refer to Attachment 1) in place of the current clause in the Pittwater LEP for the preservation of trees (Clause 41) (refer to Attachment 2 for Clause 41 and Clause 8 of the *Environmental Planning and Assessment Model Provisions 1980*).

Amendments to Clause 6 (Model Provisions) and the Model Provisions adopted through the Pittwater LEP will also be required as part of this proposal. The amendments involve:

- Clause 6 'Model Provisions' – delete (2)(a1) and amend (1)(b) by inserting '8'
- Model Provisions – delete Clause 8 of the Model Provisions

Refer to Attachment 3 for Clause 6 of the Pittwater LEP.

Clause 5.9 of the Standard Instrument LEP states that it applies to '*...species or kinds of trees or other vegetation that are prescribed for the purposes of this clause by a development control plan...*'. As such, a new control has been drafted for inclusion in the Pittwater 21 Development Control Plan (Pittwater 21 DCP). The new control is being facilitated through the annual house-keeping review of the Pittwater 21 DCP, which is anticipated to be in place prior to this Planning Proposal being published on the NSW Legislation website.

PART 3 JUSTIFICATION

A Need for the Planning Proposal

(A1) Is the Planning Proposal a result of any strategic study or report?

The Planning Proposal is, first and foremost, in response to incidences of illegal clearing of bushland within the Pittwater LGA. As a result, *Pittwater's 2020 Strategic Plan – Our Sustainable Future* (Pittwater's Strategic Plan) incorporates the need to preserve our natural environment through land use and development controls. Several relevant objectives include:

'To conserve and enhance biodiversity through appropriate land use and development controls...To recognise bushland, landscape and vegetation in land use allocation and development controls'

In order to achieve such objectives, the following strategic initiative was specifically identified in Pittwater's Strategic Plan:

'Review, update and implement development controls and conditions regarding landscape vegetation and bushland management'

- (A2) Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Currently Clause 41 of the Pittwater LEP refers to Clause 8 (Preservation of Trees) of the *Environmental Planning and Assessment Model Provisions 1980*, which both make reference to Council's Tree Preservation and Management Order. However, Council's current Tree Preservation and Management Order (gazetted in October 2009) does not protect bushland from illegal clearing. As the Pittwater LEP already addresses tree preservation, an amendment to strengthen the LEP is considered the best means to remedy this situation.

Clause 8 of the Model Provision only makes provision for '*...preserving existing amenity...*', whereas objective of Clause 5.9 of the Standard Instrument LEP is: '*...to preserve the amenity of the area, including biodiversity values, through the preservation of trees and other vegetation...*'

Clause 5.9 of the Standard Instrument LEP also states that it applies to '*...species or kinds of trees or other vegetation that are prescribed...by a development control plan...*'

Strengthening Pittwater's LEP by including an objective, such as the one within Clause 5.9 of the Standard Instrument LEP, as well as a reference to Pittwater's DCP where the terms 'tree' and 'bushland' are prescribed, is considered the best means of achieving the intended outcome of this Planning Proposal.

A further advantage of utilising the text from Clause 5.9 of the Standard Instrument LEP is when it comes time to implementing Pittwater's Standard Instrument LEP, the standard Clause 5.9 will already be in use. As such, the processes involved in tree and/or bushland pruning and/or removal under the Standard Instrument LEP will already be in place.

- (A3) Is there a net community benefit?

A net community benefit will result from the subject Planning Proposal as it intends to protect Pittwater's natural bushland and treed environment, which is a unique characteristic of the Pittwater LGA, and is a key reason why people want to live and work in the area. Protecting Pittwater's natural environment will maintain the natural beauty and amenity of the LGA, being of great benefit to the quality of life of the Pittwater community as well as future generations.

B Relationship to Strategic Planning Framework

- (B1) Is the Planning Proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Metropolitan Plan for Sydney 2036 and exhibited draft strategies)?

The Planning Proposal is consistent with the objectives and actions contained within the Metropolitan Plan for Sydney and the Draft North-East Sub-regional Strategy as it provides for the protection of Sydney's unique diversity of plants and animals, which is a specific objective in both the Metropolitan Plan for Sydney 2036 and Draft North-East Sub-regional Strategy.

The local community has a high level of concern for the protection of our environment with many hundreds of people actively involved as environmental volunteers in partnership with the Natural Environment and Education Business Unit of Pittwater Council and the Coastal Environment Centre.

Including the text from Clause 5.9 of the Standard Instrument LEP will help to protect and enhance Pittwater's biodiversity particularly on private property which is essential for preserving Pittwater's scenic beauty and maintaining its amenity. The Planning Proposal will help to manage the impact of development/activities on the natural environment and manage natural resources.

(B2) Is the Planning Proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?

The Planning Proposal is consistent with Pittwater's Strategic Plan, which incorporates the need to preserve our natural environment. Several relevant objectives include:

'To conserve and enhance biodiversity through appropriate land use and development controls...To recognise bushland, landscape and vegetation in land use allocation and development controls... To halt the loss of biodiversity and advance its recovery'

(B3) Is the Planning Proposal consistent with applicable state environmental planning policies?

The Planning Proposal is consistent with the State Environmental Planning Policies as set out at Attachment 4.

(B4) Is the Planning Proposal consistent with applicable Ministerial Directions (S117 Directions)?

The Planning Proposal is consistent with the Section 117 Directions as set out at Attachment 5.

C Environmental, social and economic impact

(C1) Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

The Planning Proposal aims to assist in the protection of biodiversity including threatened species, populations, ecological communities, and their habitats. There are no critical habitats declared for the Pittwater LGA.

The Planning Proposal will have a positive impact on Pittwater's biodiversity.

(C2) Are there any other likely environmental effects as a result of the Planning Proposal and how are they proposed to be managed?

No adverse environmental effects are likely to occur as a result of the Planning Proposal.

Should the Planning Proposal be made, when a Development Application (DA) includes tree and/or bushland removal, or when a Tree and Bushland Removal Application form is submitted, supporting information, such as an Ecological Impact Assessment and/or Arborist report including relevant 7-Part Tests of Significance for threatened species, populations or ecological communities (under Section 5A of the *Environmental Planning and Assessment Act 1979*), may be required in order for any environmental impact to be adequately assessed.

(C3) How has the Planning Proposal adequately addressed any social and economic effects?

Pittwater's natural bushland and treed environment is a major reason why people want to live and work in Pittwater. The protection of the environment provides a common focus along with community interaction through volunteer environmental programs such as bush regeneration.

In September 2010 Pittwater Council completed its first comprehensive community survey with Pittwater residents. Environmental and sustainability initiatives, managing and protecting creeks and waterways, protecting native plants and animals and restoring natural bushland were considered of highest importance.

The Planning Proposal will allow Council to legally enforce the protection of trees and bushland vegetation (as prescribed in the new control drafted for the Pittwater 21 DCP) within the Pittwater LGA.

The Pittwater environment, in particular the preservation of its bushland and treed canopy, is a fundamental part in achieving a sustainable Pittwater economy.

D State and Commonwealth interests

(D1) Is there adequate public infrastructure for the Planning Proposal?

Not applicable.

(D2) What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?

No consultation has been carried out at this stage. Council notes that this response will be amended post-consultation following the Gateway Determination.

PART 4 COMMUNITY CONSULTATION

Council proposes that the Planning Proposal be exhibited consistent with the requirements of Section 57 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and Section 29 of the *Local Government Act 1993* and/or any other requirements as determined by the Gateway Determination under Section 56 of the *Environmental Planning & Assessment Act 1979*.

Council proposes to undertake community consultation in accordance with Council's adopted Community Engagement Policy. As a minimum, the following is proposed:

- Advertising in the local newspaper and on Council's website at the start of the exhibition period
- An exhibition period of twenty-eight (28) days from the date it appears in the newspaper and on Council's website
- A letter to all landowners of non-urban land (as they do not receive the Manly Daily)
- A letter to all registered community groups in Pittwater

Clause 5.9 of the Standard Instrument LEP:

5.9 *Preservation of trees or vegetation [compulsory, except subclause (9) optional]*

- (1) *The objective of this clause is to preserve the amenity of the area, including biodiversity values, through the preservation of trees and other vegetation.*
- (2) *This clause applies to species or kinds of trees or other vegetation that are prescribed for the purposes of this clause by a development control plan made by the Council.*

Note. *A development control plan may prescribe the trees or other vegetation to which this clause applies by reference to species, size, location or other manner.*

- (3) *A person must not ringbark, cut down, top, lop, remove, injure or wilfully destroy any tree or other vegetation to which any such development control plan applies without the authority conferred by:*
 - (a) *development consent, or*
 - (b) *a permit granted by the Council.*
- (4) *The refusal by the Council to grant a permit to a person who has duly applied for the grant of the permit is taken for the purposes of the Act to be a refusal by the Council to grant consent for the carrying out of the activity for which a permit was sought.*
- (5) *This clause does not apply to a tree or other vegetation that the Council is satisfied is dying or dead and is not required as the habitat of native fauna.*
- (6) *This clause does not apply to a tree or other vegetation that the Council is satisfied is a risk to human life or property.*
- (7) *A permit under this clause cannot allow any ringbarking, cutting down, topping, lopping, removal, injuring or destruction of a tree or other vegetation:*
 - (a) *that is or forms part of a heritage item or that is within a heritage conservation area, or*
 - (b) *that is or forms part of an Aboriginal object or that is within an Aboriginal place of heritage significance,*

unless the Council is satisfied that the proposed activity:

- (c) *is of a minor nature or is for the maintenance of the heritage item, Aboriginal object, Aboriginal place of heritage significance or heritage conservation area, and*

- (d) *would not adversely affect the heritage significance of the heritage item, Aboriginal object, Aboriginal place of heritage significance or heritage conservation area.*

Note. *As a consequence of this subclause, the activities concerned will require development consent. The heritage provisions of clause 5.10 will be applicable to any such consent.*

- (8) *This clause does not apply to or in respect of:*

- (a) *the clearing of native vegetation:*
 - (i) *that is authorised by a development consent or property vegetation plan under the Native Vegetation Act 2003,*
or
 - (ii) *that is otherwise permitted under Division 2 or 3 of Part 3 of that Act, or*
- (b) *the clearing of vegetation on State protected land (within the meaning of clause 4 of Schedule 3 to the Native Vegetation Act 2003) that is authorised by a development consent under the provisions of the Native Vegetation Conservation Act 1997 as continued in force by that clause, or*
- (c) *trees or other vegetation within a State forest, or land reserved from sale as a timber or forest reserve under the Forestry Act 1916, or*
- (d) *action required or authorised to be done by or under the Electricity Supply Act 1995, the Roads Act 1993 or the Surveying and Spatial Information Act 2002, or*
- (e) *plants declared to be noxious weeds under the Noxious Weeds Act 1993.*

Note. *Permissibility may be a matter that is determined by or under any of these Acts.*

Clause 41 of the *Pittwater Local Environmental Plan 1993*:

41 Preservation of trees

A tree preservation order made and in force immediately before the appointed day under any instrument that applied to land to which this plan applies shall be deemed to be a tree preservation and management order made by the council under clause 8 of the [Environmental Planning and Assessment Model Provisions 1980](#) and may be rescinded or varied by the council in accordance with that clause.

Clause 8 of the *Environmental Planning and Assessment Model Provisions 1980*:

8 Preservation of trees

- (1) Where it appears to the council that it is expedient for the purpose of securing amenity or of preserving existing amenity, it may, for that purpose and by resolution, make an order (hereinafter referred to as a tree preservation order) and may, by like resolution, rescind or vary any such order.*
- (2) A tree preservation order may prohibit the ring-barking, cutting down, topping, lopping, removing, injuring or wilful destruction of any tree or trees specified in the order except with the consent of the council and any such consent may be given subject to such conditions as the council thinks fit.*
- (3) A tree preservation order may relate to any tree or trees or to any specified class, type or description of trees on land described particularly or generally by reference to the Local Government area or any divisions thereof.*
- (4) The council shall forthwith upon the making of a tree preservation order cause notice of the making of the order to be published in the Gazette and in a newspaper circulating in the area in which the land described in the order is situated.*
- (5) A person who contravenes or causes or permits to be contravened a tree preservation order shall be guilty of an offence.*
- (6) It is a sufficient defence to proceedings under this clause relating to the ring-barking, cutting down, topping, lopping, removal, injury or wilful destruction of a tree to prove:*
 - (a) that the tree was dying or dead or had become dangerous, or*
 - (b) that taking the action was reasonably necessary to protect human life, buildings or other property from imminent danger from a bush fire burning in the vicinity of the land on which the tree was situated, or*
 - (c) that written notice about the proposed action was given to the council of the area in which the tree was situated and the council, before the action was taken, confirmed in writing:*

- (i) *that the tree was in a fuel free zone within the meaning of the document entitled "Planning for Bush Fire Protection" published by the Department of Bush Fire Services, and*
- (ii) *that, if the council has classified species of trees as being likely to present a significant fire hazard, the tree was of such a species, or*
- (d) *that written notice about the proposed action was given to that council, a period of not less than 14 days occurred after the notice was given (and before the action was taken) and the council did not advise the person during that period that it opposed the action being taken.*

In this subclause, notice means a notice that includes the name and address of the person who gives it and that explains that a tree of a named species situated in a specified position on land described in the notice is intended to be ring-barked, cut down, topped, lopped, removed, injured or wilfully destroyed for the purpose of bush fire hazard reduction.

- (7) *The powers conferred on the council in pursuance of this clause shall not apply to trees in a State forest or on land reserved as a timber reserve within the meaning of the Forestry Act 1916, or to trees required to be trimmed or removed under section 48 of the Electricity Supply Act 1995, or to trees situated on the Trust lands (within the meaning of the Royal Botanic Gardens and Domain Trust Act 1980).*

Clause 6 of the *Pittwater Local Environmental Plan 1993*:

6 *Model Provisions*

- (1) *The Environmental Planning and Assessment Model Provisions 1980 (in this clause referred to as the Model Provisions), except:*

- (a) *the definitions of advertisement, advertising structure, car repair station, dwelling, educational establishment, general store, home occupation, light industry, major road frontage, mineral sand mine, parking space, professional consulting rooms, public utility undertaking, recreation facility, roadside stall, rural worker's dwelling, site area, tavern, tourist facilities and units for aged persons in clause 4 (1), and*
- (b) *clauses 5 (5), 12, 15, 16, 17, 18, 23, 24, 26, 27, 28, 30, 31, 32, 33 and 34 and items 1 and 10 of Schedule 1,*

are adopted for the purposes of this plan.

- (2) *For the purposes of this plan, the Model Provisions shall be deemed to be amended:*

- (a) *by inserting in clause 5 (1) after the word "within" the words "a foreshore scenic protection area or within",*
- (a1) *by omitting from clause 8 the words "tree preservation order" wherever occurring and by inserting instead the words "tree preservation and management order",*
- (b) *(Repealed)*
- (c) *by omitting from clause 35 (c) the words "carried on in dwelling-houses",*
- (d) *by inserting in Item 2 of Schedule 1 after the word "drainage" the words ", telecommunication services", and*
- (e) *by inserting in Item 2 (d) of Schedule 1 after the word "electricity" the words "or to provide telecommunication services".*

Checklist – Consideration of State Environmental Planning Policies

The following SEPP's are relevant to the Pittwater Local Government Area. The Table identifies which of the relevant SEPPs apply to the Planning Proposal (or not) and if applying, is the Planning Proposal consistent with the provisions of the SEPP.

Title of State Environmental Planning Policy (SEPP)	Applicable	Consistent	Reason for inconsistency
SEPP No 1 – Development Standards	NO	-	-
SEPP No 4 – Development without consent...	NO	-	-
SEPP No 6 – Number of Storeys in a Building	NO	-	-
SEPP No 14 – Coastal Wetlands	YES	YES	-
SEPP No 21 – Caravan Parks	NO	-	-
SEPP No 22 – Shops and Commercial Premises	NO	-	-
SEPP No 26 – Littoral Rainforests	YES	YES	-
SEPP No 30 – Intensive Agriculture	NO	-	-
SEPP No 32 – Urban Consolidation (Redevelopment of Urban Land)	YES	YES	-
SEPP No 33 – Hazardous and Offensive Development	NO	-	-
SEPP No 44 – Koala Habitat Protection	YES	YES	-
SEPP No 50 – Canal Estate Development	NO	-	-
SEPP No 55 – Remediation of Land	NO	-	-
SEPP No 60 – Exempt and Complying Development	NO	-	-
SEPP No 62 – Sustainable Aquaculture	NO	-	-
SEPP No 64 – Advertising and Signage	NO	-	-
SEPP No 65 – Design Quality of Residential Flat Development	NO	-	-

SEPP No 70 – Affordable Housing (Revised Schemes)	NO	-	-
SEPP 71 – Coastal Protection	YES	YES	-
SEPP (Affordable Rental Housing) 2009	NO	-	-
SEPP (Building Sustainability Index: BASIX) 2004	NO	-	-
SEPP (Exempt and Complying Development Codes) 2008	NO	-	-
SEPP (Housing for Seniors or People with a Disability) 2004	NO	-	-
SEPP (Infrastructure) 2007	NO	-	-
SEPP (Major Development) 2005	NO	-	-
SEPP (Mining, Petroleum Production and Extractive Industries) 2007	NO	-	-
SEPP (Rural Lands) 2008	YES	YES	-
SEPP (State and Regional Development) 2011	NO	-	-
SEPP (Temporary Structures) 2007	NO	-	-

The following is a list of the deemed SEPP's (formerly Sydney Regional Environmental Plans) relevant to the Pittwater Local Government Area.

Title of deemed SEPP, being Sydney Regional Environmental Plan (SREP)	Applicable	Consistent	Reason for inconsistency
SREP No 20 – Hawkesbury-Nepean River (No 2 -1997)	YES	YES	-

Checklist – Consideration of [Section 117](#) Ministerial Directions

1 Employment and Resources

	Direction	Applicable	Consistent
1.1	Business and Industrial Zones	YES	YES
1.2	Rural Zones	YES	YES
1.3	Mining, Petroleum Production and Extractive Industries	NO	N/A
1.4	Oyster Aquaculture	NO	N/A
1.5	Rural Lands	YES	YES

Justification for inconsistency

NIL

2 Environment and Heritage

	Direction	Applicable	Consistent
2.1	Environmental Protection Zones	YES	YES
2.2	Coastal Protection	YES	YES
2.3	Heritage Conservation	YES	YES
2.4	Recreation Vehicle Areas	YES	YES

Justification for inconsistency

NIL

3 Housing, Infrastructure and Urban Development

	Direction	Applicable	Consistent
3.1	Residential Zones	YES	YES
3.2	Caravan Parks and Manufactured Home Estates	YES	YES
3.3	Home Occupations	YES	YES
3.4	Integrating Land Use and Transport	YES	YES
3.5	Development Near Licensed Aerodromes	YES	YES

Justification for inconsistency

NIL

4 Hazard and Risk

	Direction	Applicable	Consistent
4.1	Acid Sulphate Soils	YES	YES
4.2	Mine Subsidence and Unstable Land	NO	N/A
4.3	Flood Prone Land	YES	YES
4.4	Planning For Bushfire Protection	YES	YES

Justification for inconsistency

NIL

5 Regional Planning

	Direction	Applicable	Consistent
5.1	Implementation of Regional Strategies	NO	N/A
5.2	Sydney Drinking Water Catchments	NO	N/A
5.3	Farmland of State and Regional Significance on NSW Far North Coast	NO	N/A
5.4	Commercial and Retail Development along the Pacific Hwy, North Coast	NO	N/A
5.5	Development in the vicinity of Ellalong, Paxton and Millfield	NO	N/A
5.8	Second Sydney Airport: Badgerys Creek	NO	N/A

Justification for inconsistency

NIL

6 Local Plan Making

	Direction	Applicable	Consistent
6.1	Approval and Referral Requirements	YES	YES
6.2	Reserving Land for Public Purposes	YES	YES
6.3	Site Specific Purposes	NO	N/A

Justification for inconsistency

NIL

7 Metropolitan Planning

	Direction	Applicable	Consistent
7.1	Implementation of the Metropolitan Strategy	YES	YES

Justification for inconsistency

NIL



**ATTACHMENT
COUNCIL REPORT**

SUBJECT: Planning Proposal - Preservation of trees or bushland vegetation

Meeting: Planning an Integrated Built Environment Committee

Date: 19 March 2012

STRATEGY: Vegetation Strategy

ACTION: Review, update and implement development controls and conditions regarding landscape vegetation and bushland management

PURPOSE OF REPORT

The purpose of this report is to allow Council to formally consider including a new clause concerning the preservation of trees and bushland vegetation into the *Pittwater Local Environmental Plan 1993* (Pittwater LEP). This will strengthen Council's ability to control and manage the removal of trees and/or bushland vegetation, which is essential to conserving biodiversity in and the amenity of the Pittwater Local Government Area (LGA).

To facilitate the proposed amendment to the Pittwater LEP, this report seeks Council's endorsement to forward the attached Planning Proposal to the Department of Planning & Infrastructure (DP&I) for assessment and Gateway Determination in accordance with the requirements of Section 56 of the *Environmental Planning & Assessment Act 1979* (EP&A Act). Refer to **Attachment 1** for the Planning Proposal.

1.0 BACKGROUND

- 1.1 In December 2008 Council was unable to successfully prosecute a case involving bushland clearing due to confusion regarding the definition of bushland as outlined in the Tree Preservation Order (1996) at that time. Consequently in September 2009, Council resolved to amend the Tree Preservation Order to remove reference to bushland.

Having regard for the above and to provide the Council with capacity to prosecute illegal clearing and seek reinstatement of illegally cleared trees or vegetation through restoration orders, and to introduce greater certainty into the preservation of trees and vegetation in Pittwater, it is proposed to amend both the Pittwater LEP and the Pittwater 21 Development Control Plan (DCP).

2.0 ISSUES

2.1 Local Environmental Plan

- 2.1.1 With regard to amending the Pittwater LEP, on 17 October 2011, the Planning an Integrated Built Environment Committee resolved (inter alia):

'2. That Council not process future individual Planning Proposals other than through the Pittwater Standard Instrument LEP process unless in exceptional circumstances, being demonstrated public benefit, demonstrated hardship, environmental preservation or as contained with the Warriewood Valley Strategic Review area.

3. *All individual Planning Proposals submitted during the period of preparation of the Pittwater Standard Instrument LEP be initially reported to Council for notation in relation (2) above. Noting that it will remain open to Council to lift the moratorium in exceptional circumstances being demonstrated public benefit, demonstrated hardship or environmental preservation.'*

The subject Planning Proposal is considered to meet the exceptional circumstances criteria as it's intended outcome is to protect trees and bushland vegetation in Pittwater (environmental preservation), which will ultimately result in a public benefit.

It is therefore recommended that Council consider the subject Planning Proposal and endorse the recommendation of this report to commence the statutory process for amending the Pittwater LEP.

- 2.1.2 Currently all Councils in New South Wales are required to prepare a new LEP in line with the Standard Instrument LEP template. This provides an opportunity to regularise tree and vegetation preservation and removal processes.

It is noted that Pittwater's draft Standard Instrument LEP is expected to be exhibited in mid 2012. However having regard for the current uncertainty surrounding the protection of bushland in Pittwater, it is considered prudent to proceed with the amendment to the current LEP, rather than wait for the adoption of Pittwater's draft Standard Instrument LEP.

It is therefore proposed that the text from Clause 5.9 of the Standard Instrument LEP (Preservation of trees or vegetation) (refer to **Attachment 2**), which is a mandatory clause, be incorporated into the Pittwater LEP in place of the current clause for the preservation of trees (Clause 41) (refer to **Attachment 3**).

2.2 *Development Control Plan*

- 2.2.1. Clause 5.9 of the Standard Instrument LEP states that it applies to '*...species or kinds of trees or other vegetation that are prescribed for the purposes of this clause by a development control plan...*' As such, a new control has been drafted for inclusion in the Pittwater 21 DCP, where the terms 'tree' and 'bushland' are prescribed.

The new draft control will be facilitated through the current review of the Pittwater 21 DCP, which will be reported to Council in March 2012. It is anticipated that the new control will be in place prior to the amendment to the Pittwater LEP being published on the NSW Legislation website.

Council staff consider that Clause 5.9 of the Standard Instrument LEP, along with the draft control for the Pittwater 21 DCP, is the best means for rectifying and modernising the current situation, and ensuring the preservation of trees and vegetation in Pittwater. Further, when it comes time to implementing Pittwater's draft Standard Instrument LEP, standard Clause 5.9 will already be in use. As such, the processes involved in tree and/or vegetation pruning and/or removal under the Standard Instrument LEP will already be in place.

2.3 *Assessment*

- 2.3.1 The day after the amendment to the Pittwater LEP is published on the NSW Legislation website, the current Tree Preservation and Management Order (TPMO) will automatically be repealed.

The proposed amendment to the Pittwater LEP, and concurrent amendment to the Pittwater 21 DCP, provides that if the removal of a tree and/or bushland vegetation is proposed as part of a Development Application (DA) for another purpose (such as a new dwelling), the tree and/or bushland vegetation removal will be assessed as part of that process. However, if it does not form part of a DA, a Tree and Bushland Vegetation Removal Application form would need to be submitted to Council. A Tree and Preservation Officer would then assess the application and either issue a permit or refuse the application.

The existing assessment provisions for tree and/or bushland vegetation removal applications will remain largely unchanged. The existing Tree Removal Application form however, will be amended to include bushland vegetation removal works.

All relevant matters, such as heritage or threatened species, will still be considered regardless of the application type (e.g. a DA, a permit or an assessment under Part 5 of the EP&A Act).

2.4 Planning Proposal

2.4.1 When a Planning Proposal is lodged, preliminary non-statutory notification is usually undertaken in order to gauge the view of the community. In this case, preliminary non-statutory notification is not considered necessary for the following reasons:

- Pittwater's *2020 Strategic Plan – Our Sustainable Future* specifically includes the following objectives:

'To conserve and enhance biodiversity through appropriate land use and development controls... To recognise bushland, landscape and vegetation in land use allocation and development controls... To halt the loss of biodiversity and advance its recovery'

And the following Strategic Initiatives:

'Develop planning controls to ensure biodiversity principles are integrated into and applied to development and land use... Review, update and implement development controls and conditions regarding landscape vegetation and bushland management'

Which Council endorsed at its meeting of 21 April 2008.

- Having regard for the current uncertainty surrounding the protection of bushland in Pittwater, it is considered prudent to proceed with the amendment to the current LEP as soon as possible
- The Planning Proposal will result in a net community benefit by strengthening the controls surrounding tree and bushland vegetation removal, and thereby conserve the biodiversity and maintain the natural amenity of the Pittwater LGA
- The Planning Proposal will not result in any detrimental impact to the Pittwater community or the environment

2.4.2 If Council endorses to progress the subject Planning Proposal, it will be forwarded to the DP&I for assessment and Gateway Determination. If the DP&I decides to progress the Planning Proposal, community consultation will be undertaken in accordance with Section 57 of the EP&A Act (refer to **Attachment 4** for a diagram outlining how a LEP is made under Part 3 of the EP&A Act).

Given that the Planning Proposal will apply to the whole Pittwater LGA, it is considered inappropriate to send letters to all landowners.

The following is proposed to advise residents that the subject Planning Proposal is on public exhibition:

- An advertisement in the Manly Daily
- A letter to all landowners of non-urban land (as they do not receive the Manly Daily)
- A letter to all registered community groups in Pittwater
- Information on the 'Documents on exhibition' page on Pittwater Council's website

The public exhibition period will extend for 28 days or as otherwise specified in the Gateway Determination.

3.0 FORWARD PATH

- 3.1 The Planning Proposal will be forwarded to the DP&I for assessment and Gateway Determination. The Gateway Determination will advise whether or not the Planning Proposal should proceed. If it is agreed that the Planning Proposal should proceed, the Gateway Determination will include requirements and timeframes for the remainder of the process for amending the Pittwater LEP.
- 3.3 The Planning Proposal will then go on public exhibition, and a report will be presented to Council on the outcome of the Gateway Determination and subsequent community consultation including any submissions received.
- 3.4 The Planning Proposal will then be forwarded to the DP&I for amending the Pittwater LEP.
- 3.5 The new draft control will be facilitated through the current review of the Pittwater 21 DCP, which will be reported to Council in March 2012.

4.0 SUSTAINABILITY ASSESSMENT

4.1 Supporting & Connecting our Community (Social)

- 4.1.1 Pittwater's natural bushland and treed environment is a major reason why people want to live and work in Pittwater. The protection of the environment provides a common focus along with community interaction through volunteer environmental programs such as bush regeneration.

4.2 Valuing & Caring for our Natural Environment (Environmental)

- 4.2.1 Incorporating text from Clause 5.9 (Preservation of trees or vegetation) of the Standard Instrument LEP into the Pittwater LEP and incorporating provisions regarding bushland preservation in the Pittwater 21 DCP will allow Council to legally enforce protection of bushland as well as trees in the Pittwater LGA.

4.3 Enhancing our Working & Learning (Economic)

- 4.3.1 The Pittwater environment, in particular the preservation of its bushland and treed canopy, is a fundamental part in achieving a sustainable Pittwater economy.

4.4 Leading an effective & Collaborative Council (Governance)

- 4.4.1 Incorporating text from Clause 5.9 (Preservation of trees or vegetation) of the Standard Instrument LEP into the Pittwater LEP and incorporating provisions regarding bushland preservation in the Pittwater 21 DCP will allow Council to legally enforce protection of bushland as well as trees in the Pittwater LGA.

4.5 Integrating our Built environment (Infrastructure)

- 4.5.1 Pittwater's vision seeks to preserve its treed and bushland character in its urban context, which is maintained through the proposed amendment to the Pittwater LEP and Pittwater 21 DCP.

5.0 EXECUTIVE SUMMARY

- 5.1 The purpose of this report is to allow Council to formally consider including a new clause concerning the preservation of trees and vegetation into the *Pittwater Local Environmental Plan 1993* (Pittwater LEP). This will strengthen Council's ability to control and manage the removal of trees and/or vegetation, which is essential to conserving biodiversity in and the amenity of the Pittwater Local Government Area (LGA).
- 5.2 The attached Planning Proposal (**Attachment 1**) proposes to incorporate the text from Clause 5.9 (Preservation of trees or vegetation) of the Standard Instrument LEP into the current Pittwater LEP in place of the current clause for the preservation of trees (Clause 41).
- 5.3 To facilitate the proposed amendment to the Pittwater LEP, this report seeks Council's endorsement to forward the attached Planning Proposal to the DP&I for assessment and Gateway Determination in accordance with the requirements of Section 56 of the *Environmental Planning & Assessment Act 1979* (EP&A Act).
- 5.4 The moratorium imposed on 17 October 2011 needs to be lifted in order to progress the subject Planning Proposal as an exceptional circumstance.
- 5.5 Clause 5.9 of the Standard Instrument LEP states that it applies to '*...species or kinds of trees or other vegetation that are prescribed for the purposes of this clause by a development control plan...*' As such, a new control has been drafted for inclusion in the Pittwater 21 DCP, where the terms 'tree' and 'bushland' are prescribed. The new draft control will be facilitated through the current review of the Pittwater 21 DCP, which will be reported to Council in March 2012.
- 5.6 The day after the amendment to the Pittwater LEP is published on the NSW Legislation website, the current Tree Preservation and Management Order (TPMO) will automatically be repealed.

RECOMMENDATION

- 1 That Council endorse the statutory process to amend the *Pittwater Local Environmental Plan 1993* to include the text from Clause 5.9 (Preservation of trees or vegetation) of the Standard Instrument LEP.
- 2 That Community Consultation is carried out in accordance with any Gateway Determination issued by the Department of Planning and that the outcomes of the community consultation process are reported to Council.
- 3 On the grounds of public benefit and environmental preservation the Council endorse the lifting of the moratorium imposed on 17 October 2011 and progress the subject Planning Proposal.

Report prepared by
Kelly Wilkinson, Senior Strategic Planner

Lindsay Dyce
MANAGER, PLANNING AND ASSESSMENT



PITTWATER COUNCIL

PLANNING PROPOSAL

To amend the Pittwater Local Environmental Plan 1993 by including a clause for the preservation of trees or vegetation

Prepared By Pittwater Council

PART 1 OBJECTIVES OR INTENDED OUTCOMES

The intended outcome of this Planning Proposal is to strengthen the controls concerning the protection of trees and vegetation in the Pittwater Local Government Area (LGA) to halt the loss of vegetation through illegal clearing, in order to enhance and conserve biodiversity.

PART 2 EXPLANATION OF PROVISIONS

Amend the *Pittwater Local Environmental Plan 1993* (Pittwater LEP) by incorporating the text from Clause 5.9 of the Standard Instrument LEP (Preservation of trees or vegetation) (refer to Appendix 1) in place of the current clause in the Pittwater LEP for the preservation of trees (Clause 41) (refer to Appendix 2 for Clause 41 and Clause 8 of the *Environmental Planning and Assessment Model Provisions 1980*).

Amendments to Clause 6 (Model Provisions) and the Model Provisions adopted through the Pittwater LEP will also be required as part of this proposal. The amendments involve:

- Clause 6 'Model Provisions' – delete (2)(a1) and amend (1)(b) by inserting '8'
- Model Provisions – delete Clause 8 of the Model Provisions

Refer to Appendix 3 for Clause 6 of the Pittwater LEP.

Clause 5.9 of the Standard Instrument LEP states that it applies to '*...species or kinds of trees or other vegetation that are prescribed for the purposes of this clause by a development control plan...*'. As such, a new control has been drafted for inclusion in the Pittwater 21 Development Control Plan (Pittwater 21 DCP). The new control is being facilitated through the annual house-keeping review of the Pittwater 21 DCP, which is anticipated to be in place prior to this Planning Proposal being published on the NSW Legislation website.

PART 3 JUSTIFICATION

A Need for the Planning Proposal

(A4) Is the Planning Proposal a result of any strategic study or report?

The Planning Proposal is, first and foremost, in response to incidences of illegal clearing of bushland within the Pittwater LGA. As a result, *Pittwater's 2020 Strategic Plan – Our Sustainable Future* (Pittwater's Strategic Plan) incorporates the need to preserve our natural environment through land use and development controls. Several relevant objectives include:

'To conserve and enhance biodiversity through appropriate land use and development controls...To recognise bushland, landscape and vegetation in land use allocation and development controls'

In order to achieve such objectives, the following strategic initiative was specifically identified in Pittwater's Strategic Plan:

'Review, update and implement development controls and conditions regarding landscape vegetation and bushland management'

(A5) Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Currently Clause 41 of the Pittwater LEP refers to Clause 8 (Preservation of Trees) of the *Environmental Planning and Assessment Model Provisions 1980*, which both make reference to Council's Tree Preservation and Management Order. However, Council's current Tree Preservation and Management Order (gazetted in October 2009) does not protect bushland from illegal clearing. As the Pittwater LEP already addresses tree preservation, an amendment to strengthen the LEP is considered the best means to remedy this situation.

Clause 8 of the Model Provision only makes provision for '*...preserving existing amenity...*', whereas objective of Clause 5.9 of the Standard Instrument LEP is: '*...to preserve the amenity of the area, including biodiversity values, through the preservation of trees and other vegetation...*'

Clause 5.9 of the Standard Instrument LEP also states that it applies to '*...species or kinds of trees or other vegetation that are prescribed...by a development control plan...*'

Strengthening Pittwater's LEP by including an objective, such as the one within Clause 5.9 of the Standard Instrument LEP, as well as a reference to Pittwater's DCP where the terms 'tree' and 'bushland' are prescribed, is considered the best means of achieving the intended outcome of this Planning Proposal.

A further advantage of utilising the text from Clause 5.9 of the Standard Instrument LEP is when it comes time to implementing Pittwater's Standard Instrument LEP, the standard Clause 5.9 will already be in use. As such, the processes involved in tree and/or bushland pruning and/or removal under the Standard Instrument LEP will already be in place.

(A6) Is there a net community benefit?

A net community benefit will result from the subject Planning Proposal as it intends to protect Pittwater's natural bushland and treed environment, which is a unique characteristic of the Pittwater LGA, and is a key reason why people want to live and work in the area. Protecting Pittwater's natural environment will maintain the natural beauty and amenity of the LGA, being of great benefit to the quality of life of the Pittwater community as well as future generations.

B Relationship to Strategic Planning Framework

(B5) Is the Planning Proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Metropolitan Plan for Sydney 2036 and exhibited draft strategies)?

The Planning Proposal is consistent with the objectives and actions contained within the Metropolitan Plan for Sydney and the Draft North-East Sub-regional Strategy as it provides for the protection of Sydney's unique diversity of plants and animals, which is a specific objective in both the Metropolitan Plan for Sydney 2036 and Draft North-East Sub-regional Strategy.

The local community has a high level of concern for the protection of our environment with many hundreds of people actively involved as environmental volunteers in partnership with the Natural Environment and Education Business Unit of Pittwater Council and the Coastal Environment Centre.

Including the text from Clause 5.9 of the Standard Instrument LEP will help to protect and enhance Pittwater's biodiversity particularly on private property which is essential for preserving Pittwater's scenic beauty and maintaining its amenity. The Planning Proposal will help to manage the impact of development/activities on the natural environment and manage natural resources.

(B6) Is the Planning Proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?

The Planning Proposal is consistent with Pittwater's Strategic Plan, which incorporates the need to preserve our natural environment. Several relevant objectives include:

'To conserve and enhance biodiversity through appropriate land use and development controls... To recognise bushland, landscape and vegetation in land use allocation and development controls... To halt the loss of biodiversity and advance its recovery'

(B7) Is the Planning Proposal consistent with applicable state environmental planning policies?

The Planning Proposal is consistent with the State Environmental Planning Policies as set out at Appendix 4.

(B8) Is the Planning Proposal consistent with applicable Ministerial Directions (S117 Directions)?

The Planning Proposal is consistent with the Section 117 Directions as set out at Appendix 5.

C Environmental, social and economic impact

(C4) Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

The Planning Proposal aims to assist in the protection of biodiversity including threatened species, populations, ecological communities, and their habitats. There are no critical habitats declared for the Pittwater LGA.

The Planning Proposal will have a positive impact on Pittwater's biodiversity.

(C5) Are there any other likely environmental effects as a result of the Planning Proposal and how are they proposed to be managed?

No adverse environmental effects are likely to occur as a result of the Planning Proposal.

Should the Planning Proposal be made, when a Development Application (DA) includes tree and/or bushland removal, or when a Tree and Bushland Removal Application form is submitted, supporting information, such as an Ecological Impact Assessment and/or Arborist report including relevant 7-Part Tests of Significance for threatened species, populations or ecological communities (under Section 5A of the *Environmental Planning and Assessment Act 1979*), may be required in order for any environmental impact to be adequately assessed.

(C6) How has the Planning Proposal adequately addressed any social and economic effects?

Pittwater's natural bushland and treed environment is a major reason why people want to live and work in Pittwater. The protection of the environment provides a common focus along with community interaction through volunteer environmental programs such as bush regeneration.

In September 2010 Pittwater Council completed its first comprehensive community survey with Pittwater residents. Environmental and sustainability initiatives, managing and protecting creeks and waterways, protecting native plants and animals and restoring natural bushland were considered of highest importance.

The Planning Proposal will allow Council to legally enforce the protection of trees and bushland vegetation (as prescribed in the new control drafted for the Pittwater 21 DCP) within the Pittwater LGA.

The Pittwater environment, in particular the preservation of its bushland and treed canopy, is a fundamental part in achieving a sustainable Pittwater economy.

D State and Commonwealth interests

(D3) Is there adequate public infrastructure for the Planning Proposal?

Not applicable.

(D4) What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?

No consultation has been carried out at this stage. Council notes that this response will be amended post-consultation following the Gateway Determination.

PART 4 COMMUNITY CONSULTATION

Council proposes that the Planning Proposal be exhibited consistent with the requirements of Section 57 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and Section 29 of the *Local Government Act 1993* and/or any other requirements as determined by the Gateway Determination under Section 56 of the *Environmental Planning & Assessment Act 1979*.

Council proposes to undertake community consultation in accordance with Council's adopted Community Engagement Policy. As a minimum, the following is proposed:

- Advertising in the local newspaper and on Council's website at the start of the exhibition period
- An exhibition period of twenty-eight (28) days from the date it appears in the newspaper and on Council's website
- A letter to all landowners of non-urban land (as they do not receive the Manly Daily)
- A letter to all registered community groups in Pittwater

Clause 5.9 of the Standard Instrument LEP:

5.9 Preservation of trees or vegetation [compulsory, except subclause (9) optional]

- (1) *The objective of this clause is to preserve the amenity of the area, including biodiversity values, through the preservation of trees and other vegetation.*
- (2) *This clause applies to species or kinds of trees or other vegetation that are prescribed for the purposes of this clause by a development control plan made by the Council.*

Note. A development control plan may prescribe the trees or other vegetation to which this clause applies by reference to species, size, location or other manner.

- (3) *A person must not ringbark, cut down, top, lop, remove, injure or wilfully destroy any tree or other vegetation to which any such development control plan applies without the authority conferred by:*
 - (a) *development consent, or*
 - (b) *a permit granted by the Council.*
- (4) *The refusal by the Council to grant a permit to a person who has duly applied for the grant of the permit is taken for the purposes of the Act to be a refusal by the Council to grant consent for the carrying out of the activity for which a permit was sought.*
- (5) *This clause does not apply to a tree or other vegetation that the Council is satisfied is dying or dead and is not required as the habitat of native fauna.*
- (6) *This clause does not apply to a tree or other vegetation that the Council is satisfied is a risk to human life or property.*
- (7) *A permit under this clause cannot allow any ringbarking, cutting down, topping, lopping, removal, injuring or destruction of a tree or other vegetation:*
 - (a) *that is or forms part of a heritage item or that is within a heritage conservation area, or*
 - (b) *that is or forms part of an Aboriginal object or that is within an Aboriginal place of heritage significance,*

unless the Council is satisfied that the proposed activity:

- (c) *is of a minor nature or is for the maintenance of the heritage item, Aboriginal object, Aboriginal place of heritage significance or heritage conservation area, and*
- (d) *would not adversely affect the heritage significance of the heritage item, Aboriginal object, Aboriginal place of heritage significance or heritage conservation area.*

Note. As a consequence of this subclause, the activities concerned will require development consent. The heritage provisions of clause 5.10 will be applicable to any such consent.

(8) *This clause does not apply to or in respect of:*

- (a) *the clearing of native vegetation:*
 - (i) *that is authorised by a development consent or property vegetation plan under the Native Vegetation Act 2003, or*
 - (ii) *that is otherwise permitted under Division 2 or 3 of Part 3 of that Act, or*
- (b) *the clearing of vegetation on State protected land (within the meaning of clause 4 of Schedule 3 to the Native Vegetation Act 2003) that is authorised by a development consent under the provisions of the Native Vegetation Conservation Act 1997 as continued in force by that clause, or*
- (c) *trees or other vegetation within a State forest, or land reserved from sale as a timber or forest reserve under the Forestry Act 1916, or*
- (d) *action required or authorised to be done by or under the Electricity Supply Act 1995, the Roads Act 1993 or the Surveying and Spatial Information Act 2002, or*
- (e) *plants declared to be noxious weeds under the Noxious Weeds Act 1993.*

Note. *Permissibility may be a matter that is determined by or under any of these Acts.*

Clause 41 of the *Pittwater Local Environmental Plan 1993*:

41 Preservation of trees

A tree preservation order made and in force immediately before the appointed day under any instrument that applied to land to which this plan applies shall be deemed to be a tree preservation and management order made by the council under clause 8 of the [Environmental Planning and Assessment Model Provisions 1980](#) and may be rescinded or varied by the council in accordance with that clause.

Clause 8 of the *Environmental Planning and Assessment Model Provisions 1980*:

8 Preservation of trees

- (1) Where it appears to the council that it is expedient for the purpose of securing amenity or of preserving existing amenity, it may, for that purpose and by resolution, make an order (hereinafter referred to as a tree preservation order) and may, by like resolution, rescind or vary any such order.*
- (2) A tree preservation order may prohibit the ring-barking, cutting down, topping, lopping, removing, injuring or wilful destruction of any tree or trees specified in the order except with the consent of the council and any such consent may be given subject to such conditions as the council thinks fit.*
- (3) A tree preservation order may relate to any tree or trees or to any specified class, type or description of trees on land described particularly or generally by reference to the Local Government area or any divisions thereof.*
- (4) The council shall forthwith upon the making of a tree preservation order cause notice of the making of the order to be published in the Gazette and in a newspaper circulating in the area in which the land described in the order is situated.*
- (5) A person who contravenes or causes or permits to be contravened a tree preservation order shall be guilty of an offence.*
- (6) It is a sufficient defence to proceedings under this clause relating to the ring-barking, cutting down, topping, lopping, removal, injury or wilful destruction of a tree to prove:*
 - (a) that the tree was dying or dead or had become dangerous,*
 - (b) that taking the action was reasonably necessary to protect human life, buildings or other property from imminent danger from a bush fire burning in the vicinity of the land on which the tree was situated,*
 - (c) that written notice about the proposed action was given to the council of the area in which the tree was situated and the council, before the action was taken, confirmed in writing:*
 - (i) that the tree was in a fuel free zone within the meaning of the document entitled "Planning for Bush Fire Protection" published by the Department of Bush Fire Services, and*
 - (ii) that, if the council has classified species of trees as being likely to present a significant fire hazard, the tree was of such a species, or*

- (e) *that written notice about the proposed action was given to that council, a period of not less than 14 days occurred after the notice was given (and before the action was taken) and the council did not advise the person during that period that it opposed the action being taken.*

In this subclause, notice means a notice that includes the name and address of the person who gives it and that explains that a tree of a named species situated in a specified position on land described in the notice is intended to be ring-barked, cut down, topped, lopped, removed, injured or wilfully destroyed for the purpose of bush fire hazard reduction.

- (7) *The powers conferred on the council in pursuance of this clause shall not apply to trees in a State forest or on land reserved as a timber reserve within the meaning of the Forestry Act 1916, or to trees required to be trimmed or removed under section 48 of the Electricity Supply Act 1995, or to trees situated on the Trust lands (within the meaning of the Royal Botanic Gardens and Domain Trust Act 1980).*

Clause 6 of the *Pittwater Local Environmental Plan 1993*:

6 *Model Provisions*

(1) *The Environmental Planning and Assessment Model Provisions 1980 (in this clause referred to as the Model Provisions), except:*

(a) *the definitions of advertisement, advertising structure, car repair station, dwelling, educational establishment, general store, home occupation, light industry, major road frontage, mineral sand mine, parking space, professional consulting rooms, public utility undertaking, recreation facility, roadside stall, rural worker's dwelling, site area, tavern, tourist facilities and units for aged persons in clause 4 (1), and*

(b) *clauses 5 (5), 12, 15, 16, 17, 18, 23, 24, 26, 27, 28, 30, 31, 32, 33 and 34 and items 1 and 10 of Schedule 1,*

are adopted for the purposes of this plan.

(2) *For the purposes of this plan, the Model Provisions shall be deemed to be amended:*

(a) *by inserting in clause 5 (1) after the word "within" the words "a foreshore scenic protection area or within",*

(a1) *by omitting from clause 8 the words "tree preservation order" wherever occurring and by inserting instead the words "tree preservation and management order",*

(b) *(Repealed)*

(c) *by omitting from clause 35 (c) the words "carried on in dwelling-houses",*

(d) *by inserting in Item 2 of Schedule 1 after the word "drainage" the words ", telecommunication services", and*

(e) *by inserting in Item 2 (d) of Schedule 1 after the word "electricity" the words "or to provide telecommunication services".*

Checklist – Consideration of State Environmental Planning Policies

The following SEPP's are relevant to the Pittwater Local Government Area. The Table identifies which of the relevant SEPPs apply to the Planning Proposal (or not) and if applying, is the Planning Proposal consistent with the provisions of the SEPP.

Title of State Environmental Planning Policy (SEPP)	Applicable	Consistent	Reason for inconsistency
SEPP No 1 – Development Standards	NO	-	-
SEPP No 4 – Development without consent...	NO	-	-
SEPP No 6 – Number of Storeys in a Building	NO	-	-
SEPP No 14 – Coastal Wetlands	YES	YES	-
SEPP No 21 – Caravan Parks	NO	-	-
SEPP No 22 – Shops and Commercial Premises	NO	-	-
SEPP No 26 – Littoral Rainforests	YES	YES	-
SEPP No 30 – Intensive Agriculture	NO	-	-
SEPP No 32 – Urban Consolidation (Redevelopment of Urban Land)	YES	YES	-
SEPP No 33 – Hazardous and Offensive Development	NO	-	-
SEPP No 44 – Koala Habitat Protection	YES	YES	-
SEPP No 50 – Canal Estate Development	NO	-	-
SEPP No 55 – Remediation of Land	NO	-	-
SEPP No 60 – Exempt and Complying Development	NO	-	-
SEPP No 62 – Sustainable Aquaculture	NO	-	-
SEPP No 64 – Advertising and Signage	NO	-	-
SEPP No 65 – Design Quality of Residential Flat Development	NO	-	-
SEPP No 70 – Affordable Housing (Revised Schemes)	NO	-	-
SEPP 71 – Coastal Protection	YES	YES	-
SEPP (Affordable Rental Housing) 2009	NO	-	-
SEPP (Building Sustainability Index: BASIX) 2004	NO	-	-

SEPP (Exempt and Complying Development Codes) 2008	NO	-	-
SEPP (Housing for Seniors or People with a Disability) 2004	NO	-	-
SEPP (Infrastructure) 2007	NO	-	-
SEPP (Major Development) 2005	NO	-	-
SEPP (Mining, Petroleum Production and Extractive Industries) 2007	NO	-	-
SEPP (Rural Lands) 2008	YES	YES	-
SEPP (State and Regional Development) 2011	NO	-	-
SEPP (Temporary Structures) 2007	NO	-	-

The following is a list of the deemed SEPP's (formerly Sydney Regional Environmental Plans) relevant to the Pittwater Local Government Area.

Title of deemed SEPP, being Sydney Regional Environmental Plan (SREP)	Applicable	Consistent	Reason for inconsistency
SREP No 20 – Hawkesbury-Nepean River (No 2 - 1997)	YES	YES	-

Checklist – Consideration of [Section 117](#) Ministerial Directions

1 Employment and Resources

	Direction	Applicable	Consistent
1.1	Business and Industrial Zones	YES	YES
1.2	Rural Zones	YES	YES
1.3	Mining, Petroleum Production and Extractive Industries	NO	N/A
1.4	Oyster Aquaculture	NO	N/A
1.5	Rural Lands	YES	YES

Justification for inconsistency

NIL

2 Environment and Heritage

	Direction	Applicable	Consistent
2.1	Environmental Protection Zones	YES	YES
2.2	Coastal Protection	YES	YES
2.3	Heritage Conservation	YES	YES
2.4	Recreation Vehicle Areas	YES	YES

Justification for inconsistency

NIL

3 Housing, Infrastructure and Urban Development

	Direction	Applicable	Consistent
3.1	Residential Zones	YES	YES
3.2	Caravan Parks and Manufactured Home Estates	YES	YES
3.3	Home Occupations	YES	YES
3.4	Integrating Land Use and Transport	YES	YES
3.5	Development Near Licensed Aerodromes	YES	YES

Justification for inconsistency

NIL

4 Hazard and Risk

	Direction	Applicable	Consistent
4.1	Acid Sulphate Soils	YES	YES
4.2	Mine Subsidence and Unstable Land	NO	N/A
4.3	Flood Prone Land	YES	YES
4.4	Planning For Bushfire Protection	YES	YES

Justification for inconsistency

NIL

5 Regional Planning

	Direction	Applicable	Consistent
5.1	Implementation of Regional Strategies	NO	N/A
5.2	Sydney Drinking Water Catchments	NO	N/A
5.3	Farmland of State and Regional Significance on NSW Far North Coast	NO	N/A
5.4	Commercial and Retail Development along the Pacific Hwy, North Coast	NO	N/A
5.5	Development in the vicinity of Ellalong, Paxton and Millfield	NO	N/A
5.8	Second Sydney Airport: Badgerys Creek	NO	N/A

Justification for inconsistency

NIL

6 Local Plan Making

	Direction	Applicable	Consistent
6.1	Approval and Referral Requirements	YES	YES
6.2	Reserving Land for Public Purposes	YES	YES
6.3	Site Specific Purposes	NO	N/A

Justification for inconsistency

NIL

7 Metropolitan Planning

	Direction	Applicable	Consistent
7.1	Implementation of the Metropolitan Strategy	YES	YES

Justification for inconsistency

NIL

Clause 5.9 of the Standard Instrument LEP:

5.9 *Preservation of trees or vegetation [compulsory, except subclause (9) optional]*

- (1) *The objective of this clause is to preserve the amenity of the area, including biodiversity values, through the preservation of trees and other vegetation.*
- (2) *This clause applies to species or kinds of trees or other vegetation that are prescribed for the purposes of this clause by a development control plan made by the Council.*

Note. *A development control plan may prescribe the trees or other vegetation to which this clause applies by reference to species, size, location or other manner.*

- (3) *A person must not ringbark, cut down, top, lop, remove, injure or wilfully destroy any tree or other vegetation to which any such development control plan applies without the authority conferred by:*
 - (a) *development consent, or*
 - (b) *a permit granted by the Council.*
- (4) *The refusal by the Council to grant a permit to a person who has duly applied for the grant of the permit is taken for the purposes of the Act to be a refusal by the Council to grant consent for the carrying out of the activity for which a permit was sought.*
- (5) *This clause does not apply to a tree or other vegetation that the Council is satisfied is dying or dead and is not required as the habitat of native fauna.*
- (6) *This clause does not apply to a tree or other vegetation that the Council is satisfied is a risk to human life or property.*
- (7) *A permit under this clause cannot allow any ringbarking, cutting down, topping, lopping, removal, injuring or destruction of a tree or other vegetation:*
 - (a) *that is or forms part of a heritage item or that is within a heritage conservation area, or*
 - (b) *that is or forms part of an Aboriginal object or that is within an Aboriginal place of heritage significance,*

unless the Council is satisfied that the proposed activity:

- (c) *is of a minor nature or is for the maintenance of the heritage item, Aboriginal object, Aboriginal place of heritage significance or heritage conservation area, and*

- (d) *would not adversely affect the heritage significance of the heritage item, Aboriginal object, Aboriginal place of heritage significance or heritage conservation area.*

Note. *As a consequence of this subclause, the activities concerned will require development consent. The heritage provisions of clause 5.10 will be applicable to any such consent.*

- (8) *This clause does not apply to or in respect of:*

- (a) *the clearing of native vegetation:*
 - (i) *that is authorised by a development consent or property vegetation plan under the Native Vegetation Act 2003, or*
 - (ii) *that is otherwise permitted under Division 2 or 3 of Part 3 of that Act,*
- (b) *the clearing of vegetation on State protected land (within the meaning of clause 4 of Schedule 3 to the Native Vegetation Act 2003) that is authorised by a development consent under the provisions of the Native Vegetation Conservation Act 1997 as continued in force by that clause, or*
- (c) *trees or other vegetation within a State forest, or land reserved from sale as a timber or forest reserve under the Forestry Act 1916, or*
- (d) *action required or authorised to be done by or under the Electricity Supply Act 1995, the Roads Act 1993 or the Surveying and Spatial Information Act 2002, or*
- (e) *plants declared to be noxious weeds under the Noxious Weeds Act 1993.*

Note. *Permissibility may be a matter that is determined by or under any of these Acts.*

Clause 41 of the *Pittwater Local Environmental Plan 1993*:

41 Preservation of trees

A tree preservation order made and in force immediately before the appointed day under any instrument that applied to land to which this plan applies shall be deemed to be a tree preservation and management order made by the council under clause 8 of the [Environmental Planning and Assessment Model Provisions 1980](#) and may be rescinded or varied by the council in accordance with that clause.

Clause 8 of the *Environmental Planning and Assessment Model Provisions 1980*:

8 Preservation of trees

- (1) Where it appears to the council that it is expedient for the purpose of securing amenity or of preserving existing amenity, it may, for that purpose and by resolution, make an order (hereinafter referred to as a tree preservation order) and may, by like resolution, rescind or vary any such order.*
- (2) A tree preservation order may prohibit the ring-barking, cutting down, topping, lopping, removing, injuring or wilful destruction of any tree or trees specified in the order except with the consent of the council and any such consent may be given subject to such conditions as the council thinks fit.*
- (3) A tree preservation order may relate to any tree or trees or to any specified class, type or description of trees on land described particularly or generally by reference to the Local Government area or any divisions thereof.*
- (4) The council shall forthwith upon the making of a tree preservation order cause notice of the making of the order to be published in the Gazette and in a newspaper circulating in the area in which the land described in the order is situated.*
- (5) A person who contravenes or causes or permits to be contravened a tree preservation order shall be guilty of an offence.*
- (6) It is a sufficient defence to proceedings under this clause relating to the ring-barking, cutting down, topping, lopping, removal, injury or wilful destruction of a tree to prove:*
 - (a) that the tree was dying or dead or had become dangerous,*
 - (b) that taking the action was reasonably necessary to protect human life, buildings or other property from imminent danger from a bush fire burning in the vicinity of the land on which the tree was situated,*

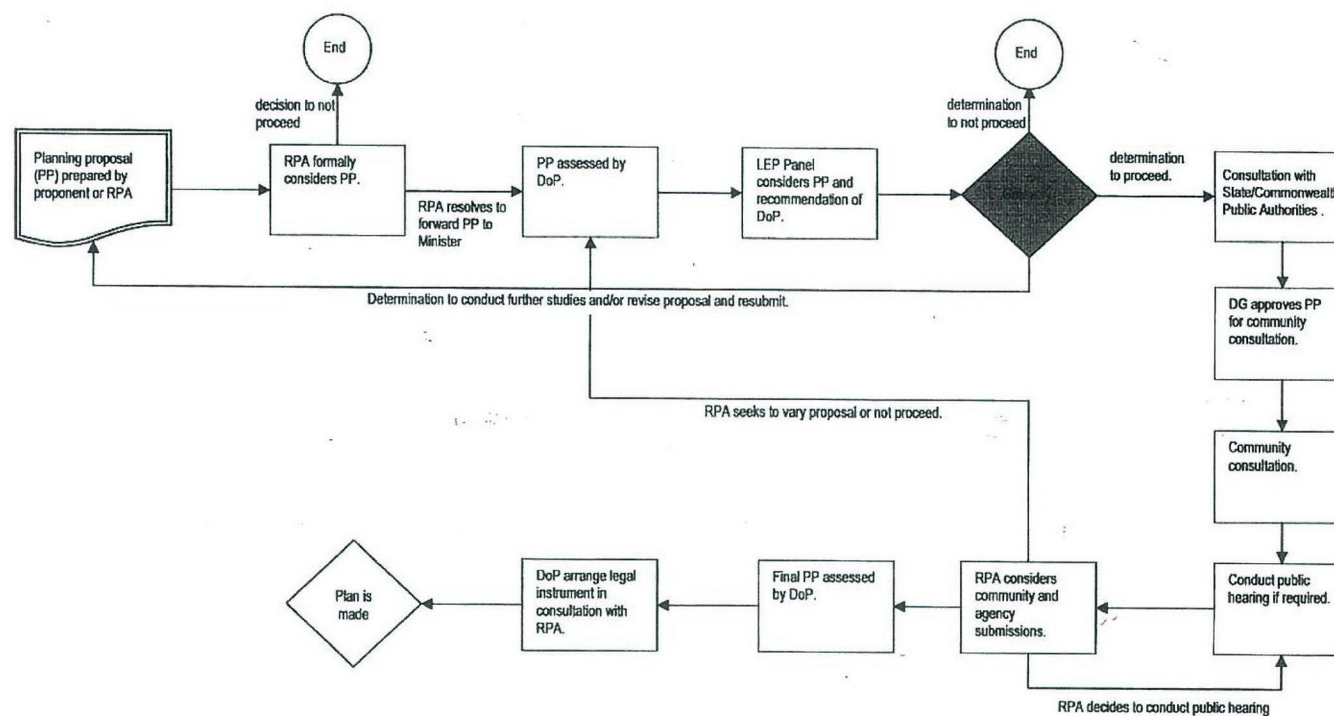
- (c) *that written notice about the proposed action was given to the council of the area in which the tree was situated and the council, before the action was taken, confirmed in writing:*
- (i) *that the tree was in a fuel free zone within the meaning of the document entitled "Planning for Bush Fire Protection" published by the Department of Bush Fire Services, and*
 - (ii) *that, if the council has classified species of trees as being likely to present a significant fire hazard, the tree was of such a species, and*
- (f) *that written notice about the proposed action was given to that council, a period of not less than 14 days occurred after the notice was given (and before the action was taken) and the council did not advise the person during that period that it opposed the action being taken.*

In this subclause, notice means a notice that includes the name and address of the person who gives it and that explains that a tree of a named species situated in a specified position on land described in the notice is intended to be ring-barked, cut down, topped, lopped, removed, injured or wilfully destroyed for the purpose of bush fire hazard reduction.

- (7) *The powers conferred on the council in pursuance of this clause shall not apply to trees in a State forest or on land reserved as a timber reserve within the meaning of the Forestry Act 1916, or to trees required to be trimmed or removed under section 48 of the Electricity Supply Act 1995, or to trees situated on the Trust lands (within the meaning of the Royal Botanic Gardens and Domain Trust Act 1980).*

How a Local Environmental Plan is made under Part 3 of the EP&A Act:

Figure 5 – Process to make a local environmental plan



Note:

- RPA means Relevant Planning Authority (such as Council)
- Extracted from 'A guide to preparing local environmental plans' prepared by Department of Planning & Infrastructure (July 200)



**ATTACHMENT
COUNCIL MINUTE**

C11.4: Planning Proposal - Preservation of trees or bushland vegetation

Meeting: Planning an Integrated Built Environment Committee

Date: 19 March 2012

COUNCIL DECISION (By Exception)

- 4 That Council endorse the statutory process to amend the *Pittwater Local Environmental Plan 1993* to include the text from Clause 5.9 (Preservation of trees or vegetation) of the Standard Instrument LEP.
- 5 That Community Consultation is carried out in accordance with any Gateway Determination issued by the Department of Planning and that the outcomes of the community consultation process are reported to Council.
- 6 On the grounds of public benefit and environmental preservation the Council endorse the lifting of the moratorium imposed on 17 October 2011 and progress the subject Planning Proposal.

(Cr Hegarty / Cr Giles)