

PITTWATER COUNCIL

PLANNING PROPOSAL

Refine the Pittwater LEP to provide planning certainty and secure a limited scale focal neighbourhood centre at 23B Macpherson Street, Warriewood that is in keeping with the Planning Framework 2010 and Pittwater 21 DCP

PART 1 OBJECTIVES OR INTENDED OUTCOMES

Refine the Pittwater LEP 1993 to provide planning certainty and secure a limited scale focal neighbourhood centre at 23B Macpherson Street, Warriewood (appendix A) that is in keeping with the Warriewood Valley Planning Framework 2010 and Pittwater 21 DCP.

PART 2 EXPLANATION OF PROVISIONS

Amend the Pittwater LEP 1993 to provide planning certainty and secure a limited scale of the permissible built form that is in keeping with the planned Focal Neighbourhood Centre for the incoming population of Warriewood Valley Land Release Area that incorporates retailing for their daily local 'convenience' by including the following:

- a. amend the provisions of clauses 30B (2), (2A) and (2B) within Division 7A Warriewood Valley Urban Land Release such that Council may grant consent for development that is *consistent with* rather than 'has considered' the objectives of the zones 2(f), 4(b) and 3(e) respectively;
- b. amend the wording of Division 7A Warriewood Valley Urban Land Release, clause 30B(4) so that it requires any consent to development of land must be *consistent with* rather than 'must consider' any development control plan which may apply to the land;
- c. amend Schedule 11, Part 2 Zone objectives of the Warriewood Valley Urban Land Release, Zone 2(f) (Urban Purposes – Mixed Residential) to include additional objective as follows;

'(d) to provide opportunities for a focal neighbourhood centre with a limited overall retail floor space area of 855m² to 2,222m² and that large individual premises exceeding 855m² (for example, large supermarkets) in Warriewood are generally not supported.';
- d. insert the new clause after Division 7A, 30B (4) as follows;

'(5) The Council must not grant consent for development on land within Warriewood Valley for the purposes of neighbourhood shops where the total combined retail floor space area is below 855m² or above 2,222m².'
- e. amend the definition of 'neighbourhood shop' in Pittwater LEP 1993 Schedule 10 as follows

"neighbourhood shop means retail premises not exceeding 800m² in retail floor area used for the purposes of selling small daily convenience goods such as foodstuffs, personal care products, newspapers and the like to provide for the day-to-day needs of people who live or work in the local area, and may include ancillary services such as a post office, bank or dry cleaning, but does not include restricted premises.

PART 3 JUSTIFICATIONS

A Need for the Planning Proposal

- (A1) Is the planning proposal a result of any strategic study or report?

On 19 April 2010, Pittwater Council resolved to pursue the options set out by Mallesons Stephen Jaques (Council's solicitors) to 'limit the footprint of any future retail area on 23B Macpherson Street, Warriewood.' (Appendix D). Council made the resolution to pursue the options to provide planning certainty and secure a scale of the permissible built form that is in keeping with the planned Focal Neighbourhood Centre for the incoming population of Warriewood Valley Land Release that incorporates retailing for daily local 'convenience'.

Community expectation is for a limited scale retail facility of up to 2,222m², which is floor space quantum that has been set out in the Warriewood Valley Planning Framework 2010 and previously the Warriewood Valley Urban Land Release Draft Planning Framework 1997. Implementing the objectives of this planning proposal will ensure those expectations are clear to all.

The Warriewood Valley Planning Framework 2010 is an update of the original planning strategy for the development of Warriewood Valley Land Release Area, the Warriewood Valley Urban Land Release Draft Planning Framework 1997.

Pittwater's comprehensive Pittwater 21 DCP includes the quantum of retail floor space. The quantum was initially built into DCP no. 29 – Warriewood Valley Urban Land Release (now repealed).

The requirement for limited scale retailing facility to meet the needs of the incoming population of Warriewood Valley was first identified by The Ingleside/Warriewood Urban Land Release Area Demographic and Facility/Service Needs Studies 1994. This study was part of the suite of background environmental studies which informed the Warriewood Valley Urban Land Release Draft Planning Framework 1997.

The quantum of floor space to be included in the LEP was independently assessed by Hill PDA in 2006 (appendix E). The Hill PDA assessment concluded that there was a current demand for a supermarket in the vicinity of 800m² floor space and 371m² of floor space for specialty retailing, based on the 2001 Census, in the Release Area.

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

The subject site is part of Sector 8. The masterplan for that sector indicated the likely residential development form for that sector, including a retail development on this site. The sector masterplan was adopted by Council as part of the rezoning process and was rezoned in 2004.

Like all the land in Sector 8, the subject site is zoned 2(f) (Urban Purposes – Mixed Residential) under Pittwater LEP. On 12 March 2010 Pittwater LEP

1993 Schedule 10 was amended to permit additional uses of "neighbourhood shop" and "restaurant" on 23B Macpherson Street, Warriewood. These additional uses were defined in accordance with the relevant Standard Instrument definitions, as follows:

"neighbourhood shop" means retail premises used for the purposes of selling small daily convenience goods such as foodstuffs, personal care products, newspapers and the like to provide for the day-to-day needs of people who live or work in the local area, and may include ancillary services such as a post office, bank or dry cleaning, but does not include restricted premises.

restaurant means a building or place the principal purpose of which is the provision of food or beverages to people for consumption on the premises and that may also provide takeaway meals and beverages."

Applying a floor space quantum for neighbourhood shop will provide certainty for developers and the community alike regarding the appropriate size of individual premises and, that overall development of the Warriewood Valley Focal Neighbourhood Centre will not exceed 2,222 m².

The Planning Proposal is the best means of achieving the objectives, consistent with the Warriewood Valley Planning Framework 2010 and Pittwater 21 DCP.

(A3) Is there a net community benefit?

The amendment to Pittwater LEP 1993 on 12 March 2010 permits neighbourhood shop and/or restaurant as the first step to achieving the focal neighbourhood centre planned for the Warriewood Valley Release Area. As outlined in the current Pittwater 21 DCP control C6.15, the planned retail offering was always intended to be limited to serving the daily shopping needs of current residents and future population of the Release Area.

This proposal is a refinement of the Pittwater LEP to ensure planning consistency and certainty by applying the retail floor space of 855 m² to 2222m² into the LEP, clearly delineate a maximum amount of retail floor space for individual premises, maximum built form, bulk and scale that matches local resident's expectations as well as the wider community. This planning certainty is a benefit to neighbours, developers and Council.

The Planning Proposal on the subject site is a refinement of the benefits to the current and future Warriewood Valley community. It still ensures sustainable travel and enables retail development to occur that provides/meets the daily shopping needs and convenience to residents of the Warriewood Valley Release Area as originally intended without disturbing the established retail hierarchy.

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 Sydney Metropolitan Strategy and exhibited draft strategies)?

The planning proposal is more consistent with the objectives of the Sydney Metropolitan Strategy and the Draft North-East Sub-Regional Strategy where it promotes the location of a local centre within a residential area. The planning of the Warriewood Valley Release Area is based on the premise of a liveable and walkable community, with provision of a safe pedestrian and cycle network through the release area with connections to employment/recreation areas and the proposed Warriewood Valley neighbourhood centre (the subject of this planning proposal).

Under the Centres' Hierarchy it is envisaged that the planning proposal may take the form of a "small village" or "neighbourhood centre" aimed at servicing the daily shopping needs and offers convenience to residents of the release area. The planning proposal is centrally located within the Release Area, and fronts Macpherson Street, which is the primary vehicular for and public transport route through the Release Area. A pedestrian/ cycleway network exists and is able to connect to the subject site.

Under the centres' designation, the proposal should not impact on Warriewood Square and Mona Vale (identified as a "Stand Alone Shopping Centre" and "Town Centre" respectively in the Draft Sub-Regional Strategy). Limiting the size of individual premises and size of overall retail allowed will ensure that the established retail hierarchy is not disturbed.

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

As per responses to A(1) and A(2) above, the planning proposal is consistent with the foundations of the *Warriewood Valley Planning Framework 2010* being the underlying strategic plan for the development of the Warriewood Valley Urban Land Release Area.

- (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 in appendix B.

- (B4) Is the planning proposal consistent with applicable Ministerial Directions (S117 Directions)?

The Planning Proposal is inconsistent with some of the Section 117 Directions. Justification is set out in appendix C.

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 relates to refining the development potential of a focal neighbourhood centre at the subject land that respects the local retail hierarchy of Pittwater and is consistent with the 2010 Planning Framework and Pittwater 21 DCP by inserting the quantum of floor space into the LEP.

The subject property contains a section of Fern Creek, which links to Narrabeen Wetlands providing a corridor link between the escarpment and the valley. Nonetheless, the site does not contain any critical habitat or threatened species, populations or ecological communities, or their habitats under the Threatened Species Conservation Act (TSC Act).

The property was the subject of studies in 2002 when it was rezoned Non-Urban to 2(f). The current planning proposal will rely on this study, in regard to impact on other ecological communities or their habitats, given that this planning proposal is requesting a refinement of a permitted use on this site.

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

The likely environmental effects resulting from the planning proposal relate to traffic management, water management and potential impact on the amenity of adjoining residents. There are specific controls applying to the subject property in relation to traffic management and water management which forms part of the Sector development, of which this site forms part thereof, and are integral to any development proposal in the Warriewood Valley Release Area (some of which are part of the Section 94 Plan for Warriewood Valley release area).

The planning proposal will, when lodged as a DA, require assessment under Section 79C of the *Environmental Planning & Assessment Act 1979*.

- (C3) How has the planning proposal adequately addressed any social and economic effects?

As reiterated in A(1) above, a suite of studies undertaken in 1994 formed the basis of Warriewood Valley Planning Framework (2010), upon which the Warriewood Valley Release Area was planned and developed:

The supporting Ingleside/Warriewood Urban Land Release Area Demographic and Facility/ Service Needs Studies identified the potential need for retailing to be provided (at a limited scale) that provides retail convenience for the incoming population.

The Warriewood Valley Planning Framework 2010 provided the foundations for the preferred location for a retail centre that caters for and meets the needs of the incoming residential population of the Warriewood Valley release area.

A provision is in Pittwater 21 Development Control Plan (DCP), regarding the development of the Warriewood Valley Focal Neighbourhood Centre (control C6.15).

Given the period elapsed since the initial studies, Council commissioned Hill PDA in 2006 to provide an independent assessment to determine whether there is demand for a neighbourhood shopping centre in the release area, in particular locating it on the subject site. The 2006 Hill PDA assessment, based on the 2001 Census, indicated there is current demand for a supermarket of 800m² floor space and 371m² of floor space for specialty retailing. The specialty retailing cited includes a bakery, restaurant/café, delicatessen and possibly a clothing outlet that would appeal to the local market and be able to sustain a high level of turnover.

D State and Commonwealth interests

(D1) Is there adequate public infrastructure for the planning proposal?

The planning proposal is for a refinement of a permitted development type on the site. This site is on Macpherson Street, which is the main vehicular and public transport route for Warriewood Valley.

Public infrastructure is provided as part of the development of the Warriewood Valley Release Area, of which this site is in.

(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 after the gateway determination.

PART 4 COMMUNITY CONSULTATION

Council proposes that the planning proposal be exhibited in the following manner:

As a minimum:

- exhibition period of 14 days from date it appears in the local newspaper
- copies of the planning proposal will be publicly available during the exhibition at Council's Customer Service Centres (Avalon and Mona Vale) and on Council's website
- Adjoining property owners (within a 400m radius of the subject site) and the Warriewood Valley Rezoning Association be notified by letter (direct mail out).
- Notification to owners of Warriewood Square.



APPENDIX A – LOCALITY MAP



APPENDIX B – SEPP's CHECKLIST

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	YES	YES	
SEPP No 4 – Development without consent	YES	YES	
SEPP No 6 – Number of Storeys in a Building	YES	YES	
SEPP No 14 – Coastal Wetlands	YES	YES	
SEPP No 21 – Caravan Parks	NO	NOT APPLICABLE	
SEPP No 22 – Shops and Commercial Premises	YES	YES	
SEPP No 26 – Littoral Rainforests	NO	NOT APPLICABLE	
SEPP No 30 – Intensive Agriculture	NO	NOT APPLICABLE	
SEPP No 32 – Urban Consolidation	NO	NOT APPLICABLE	
SEPP No 33 – Hazardous and Offensive Development	NO	NOT APPLICABLE	
SEPP No 44 – Koala Habitat Protection	NO	NOT APPLICABLE	
SEPP No 50 – Canal Estate Development	NO	NOT APPLICABLE	
SEPP No 55 – Remediation of Land	NO	NOT APPLICABLE	
SEPP No 62 – Sustainable Aquaculture	NO	NOT APPLICABLE	
SEPP No 64 – Advertising and Signage	YES	YES	

SEPP No 65 – Design Quality of Residential Flat Development	YES	YES	
SEPP No 70 – Affordable Housing (Revised Schemes)	NO	NOT APPLICABLE	
SEPP (Affordable Rental Housing) 2009	YES	YES	
SEPP (Building Sustainability Index: BASIX) 2004	YES	YES	
SEPP (Exempt and Complying Development Codes) 2008	YES	YES	
SEPP (Housing for Seniors or People with a Disability) 2004	YES	YES	
SEPP (Infrastructure) 2007	YES	YES	
SEPP (Major Development) 2005	YES	YES	
SEPP (Mining, Petroleum Production and Extractive Industries) 2007	YES	YES	
SEPP (Temporary Structures and Places of Public Entertainment) 2007	YES	YES	

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)	NO	NOT APPLICABLE	

APPENDIX C – S117 CHECKLIST

Checklist – Consideration of Section 117 Ministerial Directions

1 Employment and Resources

	Direction	Applicable	Consistent
1.1	Business and Industrial Zones	No	n/a
1.2	Rural Zones	No	n/a
1.3	Mining, Petroleum Production and Extractive Industries	No	n/a
1.4	Oyster Aquaculture	No	n/a
1.5	Rural Lands	No	n/a

Justification - NIL

2 Environment and Heritage

	Direction	Applicable	Consistent
2.1	Environmental Protection Zones	Yes	No
2.2	Coastal Protection	No	n/a
2.3	Heritage Conservation	Yes	Yes – No Change
2.4	Recreation Vehicle Areas	Yes	Yes

Justification for inconsistency to 2.1 and 2.3

- 2.1 The draft LEP relates to a specific site identified in the Warriewood Valley Planning Framework 2010 as being the preferred site for a limited scale retail development in the Release Area. The Planning Framework is the background document upon which the Warriewood Valley Release Area has been developed. The zoning of the site is not being changed. The draft LEP is considered to be of minor significance.

3 Housing, Infrastructure and Urban Development

	Direction	Applicable	Consistent
3.1	Residential Zones	Yes	Yes – No Change
3.2	Caravan Parks and Manufactured Home Estates	Yes	No
3.3	Home Occupations	Yes	Yes – No Change
3.4	Integrating Land Use and Transport	Yes	Yes
3.5	Development near Licensed Aerodromes	Yes	Yes

Justification for inconsistency to 3.2

- 3.2 The draft LEP for the subject land seeks to provide planning certainty and secure the original objective for a focal neighbourhood centre that is in keeping with the local retail hierarchy of Pittwater and is consistent with the Warriewood Valley Planning Framework 2010 and Pittwater 21 DCP. The subject site was identified in the Warriewood Valley Urban Land Release Area Planning Framework as the preferred site for a limited scale retail development in the Release Area. The Planning Framework is the background document upon which the Warriewood Valley Release Area has been developed. The draft LEP is considered to be of minor significance.

4 Hazard and Risk

	Direction	Applicable	Consistent
4.1	Acid Sulphate Soils	Yes	Yes – No Change
4.2	Mine Subsidence and Unstable Land	No	n/a
4.3	Flood Prone Land	Yes	No
4.4	Planning For Bushfire Protection	No	n/a

Justification for inconsistency to 4.3

- 4.3 The subject site is already zoned 2(f) (Urban Purposes – Mixed Residential) under Pittwater LEP. The draft LEP seeks to provide planning certainty and secure the original objective for a focal neighbourhood centre that is in keeping with the local retail hierarchy of Pittwater and is consistent with the Warriewood Valley Planning Framework 2010 and Pittwater 21 DCP. The site was identified in the Warriewood Valley Planning Framework as the preferred site for a limited scale retail development in the Release Area. The Planning Framework is the background document upon which the Warriewood Valley Release Area has been developed. Additionally, the draft LEP is considered to be of minor significance.

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 - 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 – No Change
6.3	Site Specific Purposes	Yes	No

Justification for inconsistency to 6.3

- 6.3 This proposal is a refinement of the Pittwater LEP to ensure planning consistency and certainty following the recent development applications and rezoning of the site. The amendments to the Pittwater LEP will apply a total combined retail floor space of 855m² and 2,222m², clearly delineate a maximum amount retail floor space for individual premises not to exceed 800m², maximise built form, bulk and scale that will regularise community expectation and future development potential. The amendment will ensure that future development is in keeping with the local established retail hierarchy of Pittwater and is consistent with suit of background environmental studies which informed the Warriewood Valley Planning Framework 2010 and Pittwater 21 DCP. This planning certainty is a benefit to the site neighbours, developers and Council.

7 Metropolitan Planning

	Direction	Applicable	Consistent
7.1	Implementation of the Metropolitan Strategy	Yes	Yes

Justification - NIL

MALLESON'S STEPHEN JAQUES

Attention Mr Steve Evans

25 March 2010

The General Manager
Pittwater Council
PO Box 882
MONA VALE NSW 1660

Dear Sir

Advice - 23B MacPherson Street, Warriewood

We refer to your letter of instruction dated 15 February 2010.

You have sought our advice on whether, having regard to Direction 6.3 'Site Specific Provisions' of the s117 Directions, Council can include a provision in the Draft Pittwater LEP Amendment adopted by Council in November 2009 ("Amending LEP") that has the effect of prohibiting retail development on the site that exceeds a floorspace of 2,222m².

We note that since we received instructions the Amending LEP came into force on 5 March 2010. Accordingly, for the purposes of this advice, we will refer to the Amending LEP as the "Pittwater LEP (as amended)".

SUMMARY

As the Amending LEP came into force on 5 March 2010, the capacity to include a development standard to limit retail floor space on the site as part of the Amending LEP (as contemplated in the Standard Instrument) is no longer an option and any amendment to the Pittwater LEP (as amended) will only be relevant for future development applications.

Therefore, the Council's options for the current proposed development for the site are limited as any amendments to either the Pittwater LEP (as amended) or the Pittwater 21 DCP are unlikely to be given much weight by the Court on appeal as they were not publicly exhibited before the current proposal was lodged with the Council. That being said, the best option for Council for the current application would be to amend the Pittwater 21 DCP to make it clear that only small shops and not large supermarkets are intended for the site.

ADVICE - Options to Reduce Retail Floorspace on the Site

Whilst the inclusion of a development standard in the Amending LEP would have provided some protection against a development on the site exceeding a specified retail floor space (subject to any SEPP 1 Objection that is considered well founded), the inclusion of such a clause in any future LEP depends on the consent of the Minister. Accordingly, even if the Amending LEP was still before the Minister for gazettal, the consent of the Minister appears unlikely to have been forthcoming given

MSA

Level 61 Governor Phillip Tower 1 Farrer Place Sydney NSW 2000 Australia
DX 113 Sydney ABN 22 041 424 954 syd@malleasons.com www.malleasons.com
10246184_5 / 02-5502-6479

T +61 2 9296 2000
F +61 2 9296 3999

MALLESON'S STEPHEN JAKUES

Pittwater Council

25 March 2010

the Minister's insistence on the adherence to the Standard Instrument and Section 117 Directions, particularly Direction 6.3 which discourages unnecessarily site specific planning controls.

Direction 6.3 applies "*when a Council prepares a draft LEP to allow a particular development to be carried out*". That is the case here. The relevant part of the Direction in the present case is paragraph 4(c) which deals with situations where development is made permissible by allowing "*that land use on the relevant land without imposing any development standards or requirements in addition to those already contained in the principal environmental planning instrument being amended*". Direction 6.3 allows a draft LEP to be inconsistent with the direction only if the Council can satisfy the Director-General of the Department of Planning ("DoP") that the inconsistent provisions are of "minor significance".

We note from the Council's Report that the Council submitted a formal request to the Department of Planning in respect of a floor space standard for the site and was advised by letter dated 19 January 2010 that as a consequence of direction 6.3 "*it is unlikely that the Department of Planning will support the inclusion of a floor space restriction for 23B Macpherson Street in the Pittwater LEP. It is appropriate to retain such a standard in a Development Control Plan.*" Given that response, the Council did not seek to persuade the Department that the departure from the direction was of "minor significance".

The Council should also consider amending the definition of "*neighbourhood shop*" in the Pittwater LEP (as amended) so that the quantum of retail floor space forms part of that definition. This will have the effect of prohibiting large scale supermarkets and will not be subject to a SEPP 1 Objection as it is an outright prohibition. However, this will again require the consent of the Minister who may be reluctant to allow this amendment as it will not comply with the definition in the Standard Instrument. Unless and until the Department can be persuaded to allow a further LEP amendment, there is no way that the Council can mandate an absolute limit.

Other options available to Council will not have the effect of prohibiting retail development that exceeds a particular floor space. At most, they will have the effect on determining whether a proposal is acceptable on the merits. Further, any amendments to either the Pittwater LEP (as amended) or the Pittwater 21 DCP are unlikely to be given much weight by the Court on appeal as they were not publicly exhibited before the current proposal was lodged with the Council. The other options include:

1. Amending Pittwater 21 DCP so that it is clear that only small shops and not large supermarkets are intended for the site. This is the best method for the purposes of the current application. However, having regard to the decision of *Stockland Development Pty Ltd v Manly Council* (2004) 136 LGERA 254, the Court (on appeal) is likely to give this document less or diminished weight as it would be placed on public exhibition after the current application has been lodged with the Council, and after the Pittwater LEP (as amended) came into force allowing "*neighbourhood shops*" on the site, a clause which could be interpreted as facilitating the development.
2. Further amending the Pittwater LEP (as amended) in the following manner:
 - (a) amending Clause 30B(2) so that it requires a development to be **consistent** with the objectives of the 2(f) zone (to control the exercise of the power conferred on the

mf

MALLESON'S STEPHEN JAQUES

Pittwater Council

25 March 2010

Council by the Pittwater LEP (as amended) and *Environmental Planning and Assessment Act, 1979* to grant development consent to a development application);

- (b) amending Clause 30B(4) so that it requires a development to be consistent with the provisions of the Pittwater 21 DCP - currently all that clause 30B(4) requires is a mandatory consideration of its terms; and
 - (c) amending the specific objectives of the 2(f) zone to include a reference to the acceptable proposed retail floor area and that large retail areas (for example, large supermarkets) in Warriewood are generally not supported.
- 3 Placing a public positive covenant on the title of the site. We note that the Council discounted this option because clause 39(1) of the Pittwater LEP (as amended) suspends any covenants that impose a restriction on the carrying out of development for the purpose of enabling development to be carried out in accordance with the LEP. However, clause 39(2) of the Pittwater LEP (as amended) provides that a positive covenant for the benefit of the Council is not affected by clause 39(1). We agree however that the owner of the land will need to consent to the imposition of this covenant on title and for that reason we do not consider this to be a realistic option.

Please contact us if you wish to discuss any aspect of this advice.

Yours sincerely



per Debra Townsend
Partner
Direct line +61 2 9296 2341
Email Debra.Townsend@malleasons.com