

AGENDA

Notice is hereby given that an Ordinary Meeting of Council will be held at the Civic Centre, Dee Why on

Tuesday 28 March 2023

Beginning at 6:00pm for the purpose of considering and determining matters included in this agenda.



Louise Kerr
Interim Chief Executive Officer

OUR VISION

Delivering the highest quality service valued and trusted by our community

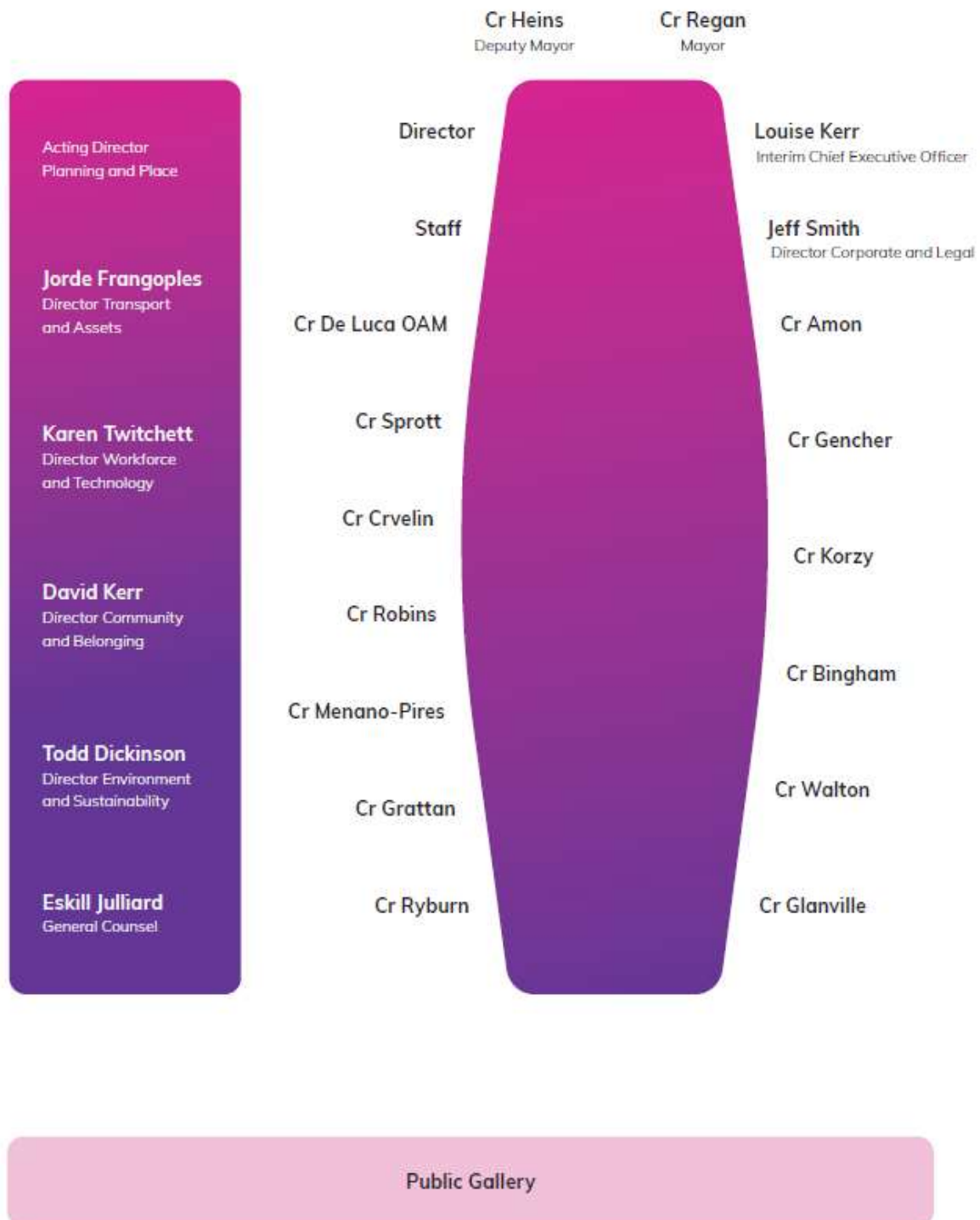
OUR VALUES

Trust Teamwork Respect Integrity Service Leadership

OUR OBLIGATIONS

I swear/solemnly and sincerely declare and affirm that I will undertake the duties of the office of councillor in the best interests of the people of the Northern Beaches and the Northern Beaches Council and that I will faithfully and impartially carry out the functions, powers, authorities and discretions vested in me under the Local Government Act 1993 or any other Act to the best of my ability and judgement.

Council Chambers Seating Plan



**Agenda for an Ordinary Meeting of Council
to be held on Tuesday 28 March 2023
at the Civic Centre, Dee Why
Commencing at 6:00pm**

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1.0 ACKNOWLEDGEMENT OF COUNTRY

As a sign of respect, Northern Beaches Council acknowledges the traditional custodians of these lands on which we gather and pays respect to Elders past and present.

2.0 APOLOGIES AND APPLICATIONS FOR LEAVE OF ABSENCE AND REMOTE ATTENDANCE

In accordance with Part 6 of the Code of Meeting Practice, Council will consider apologies, requests for leave of absence, and requests to attend meetings remotely via audio-visual link.

3.0 CONFIRMATION OF MINUTES

3.1 MINUTES OF ORDINARY COUNCIL MEETING HELD 28 FEBRUARY 2023

RECOMMENDATION

That the minutes of the Ordinary Council Meeting held 28 February 2023, copies of which were previously circulated, be confirmed as a true and correct record of the proceedings of that meeting.

4.0 DISCLOSURES OF INTEREST

In accordance with Part 17 of the Code of Meeting Practice, all Councillors must disclose and manage any conflicts of interest they may have in matters being considered at the meeting.

A Councillor who has a **pecuniary interest** in any matter with which Council is concerned, and who is present at a meeting of Council at which the matter is being considered, must disclose the nature of the interest to the meeting as soon as practicable.

The Councillor must not be present at, or in sight of, the meeting:

- a. at any time during which the matter is being considered or discussed, or
- b. at any time during which Council is voting on any question in relation to the matter.

A Councillor who has a **significant non-pecuniary** conflict of interest in a matter under consideration at a Council meeting, must manage the conflict of interest as if they had a pecuniary interest in the matter.

A Councillor who determines that they have a non-pecuniary conflict of interest in a matter that is **not significant** and does not require further action, when disclosing the interest must also explain why the conflict is not significant and does not require further action in the circumstances.

As required by Council's Code of Conduct and the Information and Privacy Commission's Information Access Guideline 1, returns made by designated persons are routinely tabled at Council meetings and published on Council's website.

5.0 PUBLIC FORUM AND PUBLIC ADDRESS

In accordance with Part 5 of the Code of Meeting Practice, residents, ratepayers, applicants or other persons may request to address Council in relation to any one matter related to the general business of Council but not the subject of a report on the agenda (Public Forum) and no more than two matters listed for consideration on the agenda (Public Address).

6.0 ITEMS RESOLVED BY EXCEPTION

In accordance with Part 14 of the Code of Meeting Practice, items that are dealt with by exception are items where the recommendations contained in the staff reports in the agenda are adopted without discussion.

8.0 CHIEF EXECUTIVE OFFICER'S DIVISION REPORTS

ITEM 8.1	NORTHERN BEACHES COUNCIL DISCRETIONARY FUND QUARTERLY REPORT
REPORTING MANAGER	INTERIM CHIEF EXECUTIVE OFFICER
TRIM FILE REF	2023/157300
ATTACHMENTS	NIL

SUMMARY

PURPOSE

To provide a report on the recipients and projects that have received an allocation from the Northern Beaches Council Discretionary Fund during the past quarter.

EXECUTIVE SUMMARY

The Northern Beaches Council Discretionary Fund provides the opportunity for Councillors to put forward requests from individuals and community organisations for financial assistance towards initiatives and services which benefit the local community or provide assistance to local residents.

Payments made for the period 7 December 2022 to 21 March 2023 totaling \$5,600.00 are listed below.

Recipient	Description	Allocation
Koori Kids Pty Ltd – NAIDOC Week Schools Initiative	Financial assistance towards the 2023 Schools Initiative offered to local primary schools	\$500.00
Rotary Club of North Sydney Inc.	Sponsorship for 5 children with special needs who attend Fisher Road Public School and their carers to attend the <i>World Festival of Magic</i> – funds also raised for Phoenix House and Royal Far West	\$600.00
Dee Why Ladies Amateur Swimming Club	Financial assistance towards the Dee Why Ladies Amateur Swimming Club – 100 th Year celebrations held on 4 February 2023	\$1,000.00
Special Olympics Sydney Northern Beaches	Contribution towards the Judy Buckley Memorial Golf Charity Day on 24 February 2023 – raising funds for people with an intellectual disability to participate in year-round sports and competitions	\$1,000.00
Balgowlah Suns Junior AFL Club Inc.	Contribution towards the Balgowlah Suns Big Freeze Charity Event to be held in June 2023 – raising funds for Motor Neurone Disease (MND) research	\$1,000.00
Local residents *	Financial assistance for 2 residents from the same family to represent Australia in the U19 Men's World Floorball Championships in	\$1,000.00

	Denmark in April 2023 <i>(note – total of 3 local residents were selected in the team)</i>	
Local resident *	Financial assistance for local resident to represent Australia in the U19 Men's World Floorball Championships in Denmark in April 2023 <i>(note – total of 3 local residents were selected in the team)</i>	\$500.00

* individual recipients' details are not included in this report for privacy reasons. All residents in receipt of funds are verified as residents of the Northern Beaches.

The next Northern Beaches Council Discretionary Fund quarterly report will be provided at the Ordinary Council meeting on 27 June 2023.

RECOMMENDATION OF INTERIM CHIEF EXECUTIVE OFFICER

That Council note payments totalling \$5,600.00 have been allocated from the Northern Beaches Council Discretionary Fund for the period 7 December 2022 to 21 March 2023.

REPORT

BACKGROUND

The Northern Beaches Council Discretionary Fund Policy supports individuals and community organisations through small financial donations. It also provides assistance to local residents to attend events or conferences that further develop educational or sporting endeavours at a representative level.

The Northern Beaches Council Discretionary Fund Policy requires recipient and project details to be reported to Council on a quarterly basis. This report only includes allocations that have been finalised.

As required under the policy, the maximum amount which may be allocated to an individual or community organisation is \$1,000 and only one payment can be made to an individual or community organisation within the same financial year.

All requests to the Northern Beaches Council Discretionary Fund are submitted to the Mayor, Deputy Mayor or a Councillor, and the Chief Executive Officer to certify that the allocation is made in accordance with the policy and that the funds are available.

CONSULTATION

Requests upon the discretionary fund are submitted to the Mayor, Deputy Mayor or Councillor and the Chief Executive Officer for approval in accordance with the policy.

TIMING

A quarterly report to Council is required by the Northern Beaches Council Discretionary Fund Policy.

LINK TO STRATEGY

This report relates to the Community Strategic Plan Outcome of:

- Community and Belonging - Goal 7: Our diverse community is supported to participate in their chosen cultural life.
- Community and Belonging - Goal 8: Our community feels safe and supported.
- Participation and Partnership - Goal 22: Our Council builds and maintains strong partnerships and advocates effectively on behalf of the community.

FINANCIAL CONSIDERATIONS

The funds allocated are provided within the existing annual budget of \$30,000 for the Northern Beaches Discretionary Fund. Total expenditure of \$12,893.00 is remaining. No funding will be provided outside of the allocated budget in each financial year. An amount of \$800.00 was included in the total expenditure reported in the Quarterly Report to Council on 13 December 2022 but not individually listed at the time. This amount was for a Youth Up Front Charity event which was cancelled. The amount of \$800.00 has been credited to the Discretionary Fund.

SOCIAL CONSIDERATIONS

The Northern Beaches Council Discretionary Fund supports individuals and community organisations and provides assistance to local residents to attend events or conferences that further develop their educational or sporting endeavours at a representative level.

ENVIRONMENTAL CONSIDERATIONS

The Northern Beaches Council Discretionary Fund – Quarterly Report has no specific environmental impact.

GOVERNANCE AND RISK CONSIDERATIONS

Payments allocated under the Northern Beaches Council Discretionary Fund have satisfied the requirements under both the Northern Beaches Council Discretionary Fund Policy and the approval process as last adopted by Council on 27 September 2022.

The next Quarterly Report will be provided at the Ordinary Council meeting on 27 June 2023.

9.0 CORPORATE AND LEGAL DIVISION REPORTS

ITEM 9.1	POWER OF ATTORNEY ARRANGEMENTS FOR INTERIM CHIEF EXECUTIVE OFFICER
REPORTING MANAGER	EXECUTIVE MANAGER GOVERNANCE & RISK
TRIM FILE REF	2023/164288
ATTACHMENTS	1 ↓ Revocation of Power of Attorney - Ray Brownlee 2 ↓ Power of Attorney - Louise Kerr

BRIEF REPORT

PURPOSE

To revoke the Power of Attorney to Mr Ray Brownlee, Chief Executive Officer and seek a Power of Attorney for the Interim Chief Executive Officer, Ms Louise Kerr.

REPORT

On 16 October 2018, Council granted a Power of Attorney to the Chief Executive Officer, Mr Ray Brownlee - Power of Attorney (Book 4751 No 832, registered 30 October 2018).

A Power of Attorney for Ms Louise Kerr, Interim Chief Executive Officer is sought for the purposes of giving effect to resolutions or functions of the Council where the use of the Power of Attorney is resolved or required.

LINK TO COUNCIL STRATEGY

This report relates to the Community Strategic Plan Outcome of Good governance - Goal 19 Our Council is transparent and trusted to make decisions that reflect the values of the community.

FINANCIAL CONSIDERATIONS

The recommendations of this report pose no financial impact on Council.

ENVIRONMENTAL CONSIDERATIONS

The recommendations of this report pose no environmental impact on Council.

SOCIAL CONSIDERATIONS

The recommendations of this report pose no social impact on Council.

GOVERNANCE AND RISK CONSIDERATIONS

The recommendations of this report maintain consistent governance arrangements while the Chief Executive Officer acting arrangements are in place.

RECOMMENDATION OF DIRECTOR CORPORATE AND LEGAL

That Council:

1. Revoke the Power of Attorney Book 4751 No 832, registered on 30 October 2018
 2. Affix the Common Seal of Council to the Revocation of Power of Attorney (Attachment 1)
 3. Grant Power of Attorney to Ms Louise Kerr, Interim Chief Executive Officer effective on and from 29 March 2023 to execute documents, dealings and instruments relating to the matters detailed in the draft instrument provided at Attachment 2 to this report
 4. Affix the Common Seal of Council to the Power of Attorney
 5. Attend to the registration of the Revocation of Power of Attorney Book 4751 No 832 and the new Power of Attorney to Ms Louise Kerr.
-



REVOCATION OF POWER OF ATTORNEY

NORTHERN BEACHES COUNCIL of 725 Pittwater Road, Dee Why hereby revoke the Power of Attorney dated 16 October 2018 and registered on 30 October 2018 Book 4751 No 832 appointing Ray Brownlee, Chief Executive Officer, of 1 Park Street, Mona Vale.

IN WITNESS WHEREOF the Council has hereunto set its Seal.

The Common Seal of NORTHERN
BEACHES COUNCIL

Was hereunto affixed on the _____
day of _____ 2023

Michael Regan
Mayor
725 Pittwater Road Dee Why NSW 2099

pursuant to the resolution of Council made
on the _____ day of March 2023 in
the presence of:

Louise Kerr
Interim Chief Executive Officer
725 Pittwater Road, Dee Why NSW 2099

GENERAL POWER OF ATTORNEY

1. Appointment of attorney by the principal

This Power of Attorney is made on _____ by Northern Beaches Council ('the Council') of 725 Pittwater Road Dee Why NSW as principal.

The Council hereby appoints Louise Kerr Interim Chief Executive Officer of 725 Pittwater Road Dee Why NSW to be its Attorney.

2. Powers

The Council's attorney may exercise the authority conferred by Part 2 of the *Powers of Attorney Act 2003* to do anything on the Council's behalf it may lawfully authorise an attorney to do, subject to the limitations set out in Clause 3.

3. Conditions and limitations

The Council places the following conditions and/or limitations on the authority of its attorney:

This Power of Attorney is limited to the execution of documents, which give effect to:

- (a) Resolutions of the Council where resolutions are required for the exercise of a function; or
- (b) Functions, which have been delegated to the Attorney.

This Power of Attorney does not operate as a delegation of any function of the Council for the purposes of Section 377 of the Local Government Act 1993.

4. Commencement

This power of attorney operates:

On and from _____

5. Your signature to make the appointment

IN WITNESS WHEREOF the Council has hereunto set its Seal on the date abovementioned.

The Common Seal of NORTHERN BEACHES COUNCIL

Was hereunto affixed on the Michael Regan
_____ day of _____ Mayor
2023 725 Pittwater Road, Dee Why NSW
2099

Pursuant to the resolution of Council Louise Kerr
made on the _____ day of Interim Chief Executive Officer
March 2023 in the presence of: 725 Pittwater Road, Dee Why NSW
2099

6. Attorney responsibilities

The Council's attorney must do the following:

- (a) Keep the Principal's money and property separate from the attorney's money and property;
- (b) Keep reasonable accounts and records of the Principal's money and property;
- (c) Not benefit from being an attorney, unless expressly authorised by the Principal;
- (d) Always act in the Principal's best interests;
- (e) Always act honestly in all matters concerning the Principal's legal and financial affairs.

Failure to do so may incur civil and/or criminal penalties.

NSW LAND REGISTRY SERVICES OFFICE USE ONLY

ITEM 9.2	RECRUITMENT OF INDEPENDENT MEMBER OF AUDIT, RISK AND IMPROVEMENT COMMITTEE
REPORTING MANAGER	EXECUTIVE MANAGER GOVERNANCE & RISK
TRIM FILE REF	2023/150174
ATTACHMENTS	NIL

BRIEF REPORT

PURPOSE

To select a Councillor representative for the assessment panel for independent membership of the Audit, Risk and Improvement Committee (ARIC).

REPORT

A vacancy in the external independent membership of Council's ARIC has arisen following the resignation of Sarah Richardson, effective following the March 2023 ARIC meeting.

In accordance with the ARIC Charter, the independent external membership of the Committee is determined by resolution of Council.

An Expression of Interest (EOI) process has been initiated to identify and appoint a suitably qualified independent external member to the Committee. Applications are currently being received and the EOI will close on 10 April 2023.

It is proposed that an assessment panel consisting of the Interim Chief Executive Officer, Louise Kerr, the current Chair of the ARIC, Stephen Horne and a Councillor representative be convened to assess the applications received and make recommendations to Council for the appointment of the independent member.

Due to the Easter period impacting the Council meeting schedule, it is anticipated the panel would convene at a mutually convenient time in April with a report to be brought to the May ordinary Council meeting for the Council to consider the recommendations and make an appointment to the ARIC.

The next ARIC meeting is scheduled for 13 June 2023.

LINK TO COUNCIL STRATEGY

This report relates to the Community Strategic Plan Outcome of:

Good governance - Goal 19 Our Council is transparent and trusted to make decisions that reflect the values of the community.

FINANCIAL CONSIDERATIONS

Funding to support the Audit, Risk and Improvement Committee is included in existing operational budgets.

ENVIRONMENTAL CONSIDERATIONS

The recruitment for an independent member of the Audit, Risk and Improvement Committee has no environmental impacts.

SOCIAL CONSIDERATIONS

Council is accountable to the community for the delivery of the Community Strategic Plan and a key function of the Audit, Risk and Improvement Committee is to promote good corporate governance, transparency and external accountability.

GOVERNANCE AND RISK CONSIDERATIONS

The Audit, Risk and Improvement Committee (ARIC) plays a pivotal role in the governance framework to provide Council with independent assurance and assistance in the areas of internal audit, risk management, compliance and control, governance, organisational performance and improvement and external accountability responsibilities.

Membership of the ARIC is in accordance with the Committee Charter, which is based on the guidelines issued by the Chief Executive of the Office of Local Government pursuant to section 23A of the *Local Government Act 1993*. The NSW Government has released updated Guidelines for Risk Management and Internal Audit for Local Government in NSW that will outline the operations of ARIC including membership, however these are yet to be formally supported by regulation.

The Expressions of Interest process and requirements for the new member have been aligned to meet the current charter and the new guidelines and ensure the Committee as a whole has a complementary mix of skills and capabilities.

RECOMMENDATION OF DIRECTOR CORPORATE AND LEGAL

That:

1. Council endorse a panel to provide recommendations to Council following its assessment and evaluation of the Expressions of Interest for independent membership of the Audit, Risk and Improvement Committee.
 2. The panel is to comprise the Interim Chief Executive Officer, the Chair of the Audit, Risk and Improvement Committee and one Councillor.
-

ITEM 9.3	MINUTES OF THE AUDIT, RISK AND IMPROVEMENT COMMITTEE MEETINGS HELD ON 6 DECEMBER 2022
REPORTING MANAGER	EXECUTIVE MANAGER GOVERNANCE & RISK
TRIM FILE REF	2022/784877
ATTACHMENTS	1 Minutes - ARIC - 20221206 (Included In Attachments Booklet)

BRIEF REPORT

PURPOSE

To report the confirmed minutes of the Audit, Risk and Improvement Committee (ARIC) ordinary meeting held on 6 December 2022 (provided at Attachment 1).

REPORT

The ARIC plays a pivotal role providing Council with independent assurance and advice in the areas of internal audit, financial management, risk management, compliance and control, organisational performance, and improvement. In accordance with the ARIC Charter, confirmed minutes of ARIC meetings are to be reported to Council.

LINK TO COUNCIL STRATEGY

This report relates to the Community Strategic Plan Outcome of Good Governance - Goal 19: Our Council is transparent and trusted to make decisions that reflect the values of the community.

FINANCIAL CONSIDERATIONS

Funding to support the Audit, Risk and Improvement Committee is included in the existing budget.

ENVIRONMENTAL CONSIDERATIONS

There are no environmental impacts in relation to this report.

SOCIAL CONSIDERATIONS

There are no social impacts in relation to this report.

GOVERNANCE AND RISK CONSIDERATIONS

Councils are required to have an ARIC in accordance with section 428A of the *Local Government Act 1993*. The ARIC Charter outlines that a key function of the ARIC is to assess and provide advice on Council's governance, compliance and risk management functions. ARIC's oversight aims to ensure that appropriate controls are in place for risk exposures as they relate to the strategic objectives of Council, and to satisfy itself that Council is taking a fully informed risk-based approach.

RECOMMENDATION OF DIRECTOR CORPORATE AND LEGAL

That Council note the confirmed minutes of the Audit, Risk and Improvement Committee ordinary meeting held on 6 December 2022.

ITEM 9.4	SUSPENSION OF ALCOHOL FREE ZONE FOR TASTE OF MANLY 2023
REPORTING MANAGER	EXECUTIVE MANAGER COMMUNITY ENGAGEMENT & COMMUNICATIONS
TRIM FILE REF	2023/127484
ATTACHMENTS	1 Taste of Manly 2023 Proposed Licenced Area Map

SUMMARY

PURPOSE

To suspend the Alcohol Free Zone and Alcohol Prohibited Area in Manly CBD in specific locations within the event site for the 2023 Taste of Manly (food and drink festival) to be held on Saturday 27 and Sunday 28 May 2023.

EXECUTIVE SUMMARY

Taste of Manly will be held on Saturday 27 and Sunday 28 May 2023 from 11.30am to 5.30pm daily. It is proposed that the Alcohol Free Zone and Alcohol Prohibited Area in Manly CBD be suspended for the event. Alcohol has been permitted at this event in recent years without incident.

RECOMMENDATION OF DIRECTOR CORPORATE AND LEGAL

That Council:

1. Suspend operation of the Alcohol Free Zone and Alcohol Prohibited Area for the Taste of Manly 2023 event only within the designated festival area in Manly on Saturday 27 and Sunday 28 May 2023 between the hours of 11.30am and 5.30pm daily.
 2. Provide appropriate notice of the suspension of the Alcohol Free Zone and Alcohol Prohibited Area, in accordance with s645(i) of the *Local Government Act 1993*.
 3. Events staff continue to liaise with Police from the Northern Beaches Local Area Command in relation to safe management of the area during the suspensions.
-

REPORT

BACKGROUND

Taste of Manly will be held on Saturday 27 and Sunday 28 May 2023 from 11.30am to 5.30pm daily. As per the attached map, the festival will be presented along Manly Beachfront promenade and within a road closure along North and South Steyne between Raglan Street and Wentworth Street, as well as along The Corso pedestrian mall from the beachfront to Darley Road.

Given the nature of this event, alcohol will be sold from designated festival stalls and consumed within the licensed area. This festival area is situated within the existing Alcohol Free Zone and Alcohol Prohibited Area in the Manly CBD and as such, persons who consume alcohol in this area would be committing an offence if Council was not to suspend these restrictions in the event location for the period of the event.

Under the provisions of section 645(1) of the *Local Government Act 1993*, Council “may, at the request of any person or body or of its own motion, suspend the operation of an alcohol-free zone by publishing notice of the suspension in a newspaper circulating in the area as a whole or in a part of the area that includes the zone concerned”.

The event has been running successfully for over 30 years. The Events Team continues to liaise with Police from the Local Area Command Licensing Team in relation to safe management of the area during the delivery of Taste of Manly.

In response it is recommended that:

- The operation of the Alcohol Free Zones (The Corso, North Steyne and South Steyne) and Alcohol Prohibited areas (Manly Beachfront promenade) in the Manly CBD be suspended on Saturday 27 and Sunday 28 May 2023 from 11.30am to 5.30pm for the Taste of Manly event.

CONSULTATION

Council has worked and continues to work closely and successfully with Northern Beaches Police Local Area Command to ensure the safe operation of the area during the event.

In 2023, Council will contract Canvas Events to hold and operate the liquor licence on Council's behalf. Canvas Events will oversee the operation of the licence in conjunction with Council's Events Team and RSA-certified contract security guards. The Licensee, Events Team and Security Manager will be onsite throughout the event to liaise with stallholders and authorities to ensure the responsible service of alcohol and licensing conditions are adhered to.

TIMING

The Alcohol Free Zone (The Corso, North Steyne and South Steyne) and Alcohol Prohibited Area (Manly Beachfront promenade) will be suspended in the designated event area only between the hours of 11.30am and 5.30pm on Saturday 27 and Sunday 28 May 2023. The Alcohol Free Zone and Alcohol Prohibited Area will remain in place outside of these days, times and locations.

LINK TO STRATEGY

This report relates to the Northern Beaches Event Strategy 2018 – 2023.

This report also relates to the Community Strategic Plan Outcome of:

- Community and belonging - Goal 8 Our community feels safe and supported
- Housing, places and spaces - Goal 11 Our local centres are vibrant and healthy, catering for diverse economic and social needs

- Partnership and participation - Goal 22 Our Council builds and maintains strong partnerships and advocates effectively on behalf of the community

FINANCIAL CONSIDERATIONS

All costs associated with the responsible management of alcohol service have been included in the existing 2023 event budget.

SOCIAL CONSIDERATIONS

The consumption of alcohol will only be allowed within the approved event site and times. Council will provide sufficient security personnel to monitor anti-social behaviour and the responsible service of alcohol. Council will also engage User Pays police to further monitor the event site.

ENVIRONMENTAL CONSIDERATIONS

Event participants can only consume alcoholic drinks in the reusable glasses purchased at the event. Council will provide increased waste services for the festival to manage the disposal of food, alcohol and other products.

GOVERNANCE AND RISK CONSIDERATIONS

Alcohol has been permitted at the Taste of Manly event in recent years without incident. For the 2023 event a range of risk management measures will be put in place to manage alcohol-related matters including ID checks, drink limits, no BYO or takeaway sales, and security personnel will be engaged to manage crowd behaviour.

TASTE OF MANLY 2023

Proposed licenced area



ITEM 9.5	MONTHLY INVESTMENT REPORT - FEBRUARY 2023
REPORTING MANAGER	CHIEF FINANCIAL OFFICER
TRIM FILE REF	2023/140297
ATTACHMENTS	NIL

SUMMARY

PURPOSE

To provide a report setting out details of all money that Council has invested under section 625 of the *Local Government Act 1993*.

EXECUTIVE SUMMARY

In accordance with section 212 of the Local Government (General) Regulation 2021, a report setting out the details of money invested must be presented to Council on a monthly basis.

The report must also include certification as to whether or not the investments have been made in accordance with the Act, the Regulations and Council's Investment Policy.

The Investment Report shows that Council has total cash and investments of \$207,336,465 comprising:

- Trading Accounts \$6,666,848
- Investments \$200,669,617

The portfolio achieved a return of 0.310% for the month of February which was 0.07% above the benchmark AusBond Bank Bill Index return of 0.24%. For the past 12 months the portfolio achieved a return of 2.306% which was 0.546% above the benchmark AusBond Bank Bill Index return of 1.76%.

The weighted average interest rate of the portfolio is 4.03% compared to 3.85% for the prior month. For the past 12 months the weighted average interest rate of the portfolio was 2.51% compared to the average Ausbond Bank Bill movement of 0.14% and the average Reserve Bank of Australia Cash Rate of 1.83%.

Certification – Responsible Accounting Officer

I hereby certify that the investments listed in the attached reports have been made in accordance with section 625 of the *Local Government Act 1993*, section 212 of the Local Government (General) Regulation 2021 and existing Investment Policies.

RECOMMENDATION OF DIRECTOR CORPORATE AND LEGAL

That Council note the Investment Report as at 28 February 2023, including the certification by the Responsible Accounting Officer.

REPORT

BACKGROUND

In accordance with section 212 of the Local Government (General) Regulation 2021, a report setting out the details of money invested must be presented to Council on a monthly basis.

The report must also include certification as to whether or not the investments have been made in accordance with the Act, the Regulations and Council's Investment Policy.

LINK TO STRATEGY

This report relates to the Community Strategic Plan Outcome of:

- Good governance - Goal 19 Our Council is transparent and trusted to make decisions that reflect the values of the community

FINANCIAL CONSIDERATIONS

Actual investment income for the period from 1 July 2022 to date was \$3,992,915 compared to budgeted income of \$409,500, a positive variance of \$3,583,415.

SOCIAL CONSIDERATIONS

Council's investments are managed in accordance with Council's Investment Policy. Council's Investment Policy requires consideration of social responsibility when making investment decisions.

ENVIRONMENTAL CONSIDERATIONS

Council's investments are managed in accordance with Council's Investment Policy. Council's Investment Policy requires consideration of environmental responsibility when making investment decisions.

GOVERNANCE AND RISK CONSIDERATIONS

A revised Investment Policy was adopted by Council at its meeting on 26 July 2022. The Policy is reviewed annually by the Audit, Risk and Improvement Committee. It was reviewed by the Committee at their meeting in December 2022, and no changes to the Policy were proposed, with the next review by the Committee due by December 2023.

Council's Investment Strategy was reviewed in November 2022 by Council's Investment Advisors, Laminar Capital Pty Ltd, who confirmed that the current policy "remains consistent with the Ministerial Investment Order and guidelines issued by the Chief Executive (Local Government), Department of Premier and Cabinet" and that they "do not recommend any changes to the list of approved investments or credit limit frameworks".

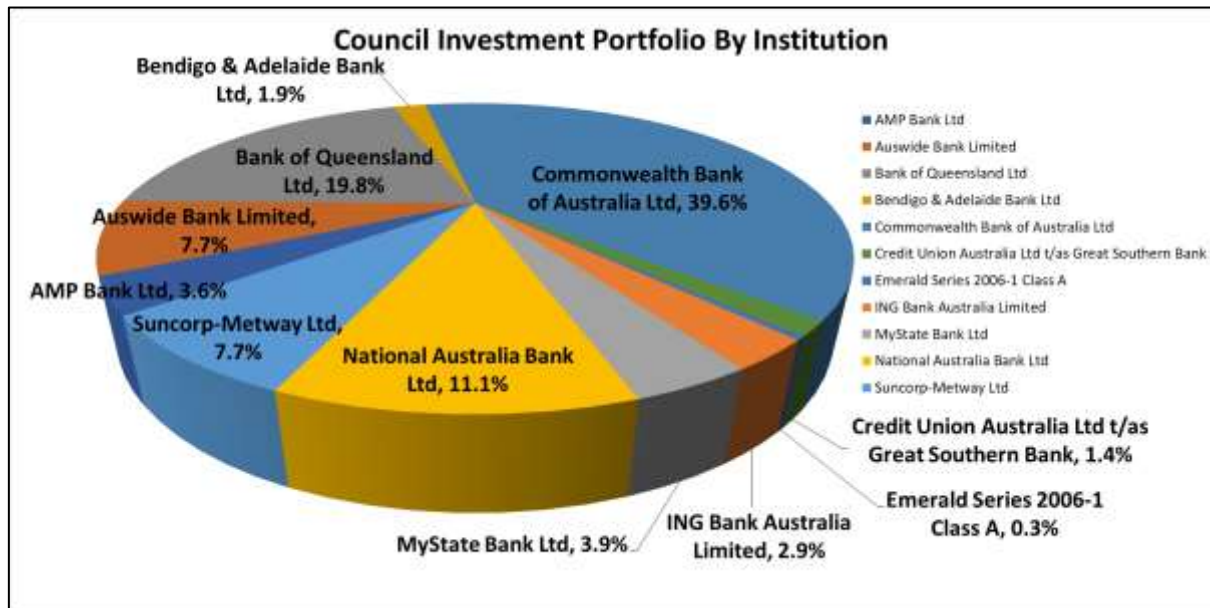
Investment Balances

INVESTMENT BALANCES					
As at 28-Feb-2023					
INSTITUTION	RATING	AMOUNT \$	DATE INVESTED	MATURITY DATE	INTEREST RATE
Trading Accounts					
Commonwealth Bank of Australia Ltd	A1+	5,856,660			3.40%
National Australia Bank Ltd	A1+	11,229			3.35%
		5,867,889			
At Call Accounts					
Commonwealth Bank of Australia Ltd	A1+	5,562,435		At Call	3.45%
		5,562,435			
Mortgage Backed Securities					
Emerald Series 2006-1 Class A	A*	697,241	17-Jul-06	21-Aug-51	3.9494%
		697,241			
Term Deposits					
Commonwealth Bank of Australia Ltd	A1+	2,000,000	16-Aug-22	07-Mar-23	3.47%
Commonwealth Bank of Australia Ltd	A1+	2,000,000	18-Aug-22	09-Mar-23	3.58%
Commonwealth Bank of Australia Ltd	A1+	3,000,000	16-Aug-22	14-Mar-23	3.61%
Commonwealth Bank of Australia Ltd	A1+	2,000,000	18-Aug-22	16-Mar-23	3.62%
Commonwealth Bank of Australia Ltd	A1+	2,000,000	23-Aug-22	21-Mar-23	3.70%
Commonwealth Bank of Australia Ltd	A1+	2,000,000	23-Aug-22	23-Mar-23	3.70%
AMP Bank Ltd	A2	2,000,000	21-Jul-22	28-Mar-23	4.00%
Bank of Queensland Ltd	A2	1,000,000	21-Sep-22	28-Mar-23	4.00%
Commonwealth Bank of Australia Ltd	A1+	2,000,000	23-Aug-22	30-Mar-23	3.73%
Commonwealth Bank of Australia Ltd	A1+	4,000,000	30-Aug-22	04-Apr-23	3.78%
MyState Bank Ltd	A2	2,000,000	29-Sep-22	06-Apr-23	4.20%
Commonwealth Bank of Australia Ltd	A1+	3,000,000	30-Aug-22	11-Apr-23	3.80%
Commonwealth Bank of Australia Ltd	A1+	2,000,000	30-Aug-22	13-Apr-23	3.81%
ING Bank Australia Limited	A1	2,000,000	22-Apr-22	18-Apr-23	2.30%
Commonwealth Bank of Australia Ltd	A1+	3,000,000	20-Apr-22	20-Apr-23	2.22%
Commonwealth Bank of Australia Ltd	A1+	2,000,000	25-Aug-22	26-Apr-23	3.80%
Commonwealth Bank of Australia Ltd	A1+	3,000,000	30-Aug-22	26-Apr-23	3.86%
Bank of Queensland Ltd	A2	2,000,000	31-Aug-22	02-May-23	3.76%
Bank of Queensland Ltd	A2	2,000,000	31-Aug-22	04-May-23	3.76%
Bank of Queensland Ltd	A2	3,000,000	31-Aug-22	09-May-23	3.76%
Bank of Queensland Ltd	A2	2,000,000	21-Sep-22	11-May-23	4.00%
Bendigo & Adelaide Bank Ltd	A2	2,000,000	18-Oct-22	16-May-23	4.10%
Suncorp-Metway Ltd	A1	2,000,000	25-Oct-22	16-May-23	4.26%
Suncorp-Metway Ltd	A1	2,000,000	25-Oct-22	18-May-23	4.26%
Bank of Queensland Ltd	A2	3,000,000	31-Aug-22	23-May-23	3.85%
Bendigo & Adelaide Bank Ltd	A2	2,000,000	18-Oct-22	25-May-23	4.10%
Commonwealth Bank of Australia Ltd	A1+	3,000,000	01-Sep-22	06-Jun-23	3.91%
Suncorp-Metway Ltd	A1	2,000,000	03-Nov-22	08-Jun-23	4.28%
Suncorp-Metway Ltd	A1	2,000,000	03-Nov-22	13-Jun-23	4.28%
MyState Bank Ltd	A2	2,000,000	09-Sep-22	14-Jun-23	3.90%
Suncorp-Metway Ltd	A1	2,000,000	22-Nov-22	15-Jun-23	4.22%
MyState Bank Ltd	A2	3,000,000	09-Sep-22	20-Jun-23	3.90%
National Australia Bank Ltd	A1+	2,000,000	15-Nov-22	22-Jun-23	4.12%
National Australia Bank Ltd	A1+	2,000,000	15-Nov-22	27-Jun-23	4.12%
National Australia Bank Ltd	A1+	2,000,000	15-Nov-22	29-Jun-23	4.13%
AMP Bank Ltd	A2	3,500,000	25-Aug-22	04-Jul-23	4.10%
MyState Bank Ltd	A2	1,000,000	29-Sep-22	06-Jul-23	4.35%
Auswide Bank Limited	A2	2,000,000	07-Dec-22	06-Jul-23	4.40%
Suncorp-Metway Ltd	A1	2,000,000	17-Nov-22	11-Jul-23	4.21%
Suncorp-Metway Ltd	A1	2,000,000	17-Nov-22	13-Jul-23	4.21%
Commonwealth Bank of Australia Ltd	A1+	3,000,000	01-Sep-22	18-Jul-23	4.02%
Suncorp-Metway Ltd	A1	2,000,000	22-Nov-22	20-Jul-23	4.24%

INVESTMENT BALANCES					
As at 28-Feb-2023					
INSTITUTION	RATING	AMOUNT \$	DATE INVESTED	MATURITY DATE	INTEREST RATE
Term Deposits (continued)					
Auswide Bank Limited	A2	3,000,000	30-Nov-22	25-Jul-23	4.40%
Auswide Bank Limited	A2	2,000,000	30-Nov-22	27-Jul-23	4.40%
Bank of Queensland Ltd	A2	3,000,000	30-Aug-22	01-Aug-23	4.05%
Bank of Queensland Ltd	A2	2,000,000	01-Sep-22	03-Aug-23	4.05%
Auswide Bank Limited	A2	2,000,000	30-Nov-22	08-Aug-23	4.40%
Auswide Bank Limited	A2	2,000,000	30-Nov-22	10-Aug-23	4.40%
Auswide Bank Limited	A2	3,000,000	30-Nov-22	15-Aug-23	4.40%
Auswide Bank Limited	A2	2,000,000	07-Dec-22	17-Aug-23	4.40%
Bank of Queensland Ltd	A2	2,000,000	25-Jan-23	22-Aug-23	4.25%
Bank of Queensland Ltd	A2	2,000,000	25-Jan-23	24-Aug-23	4.25%
Bank of Queensland Ltd	A2	3,000,000	25-Jan-23	29-Aug-23	4.25%
Bank of Queensland Ltd	A2	2,000,000	25-Jan-23	05-Sep-23	4.25%
Bank of Queensland Ltd	A2	2,000,000	16-Feb-23	07-Sep-23	4.55%
Bank of Queensland Ltd	A2	3,000,000	16-Feb-23	12-Sep-23	4.55%
Bank of Queensland Ltd	A2	2,000,000	16-Feb-23	14-Sep-23	4.55%
Bank of Queensland Ltd	A2	2,000,000	16-Feb-23	19-Sep-23	4.55%
Commonwealth Bank of Australia Ltd	A1+	2,000,000	21-Sep-22	21-Sep-23	4.32%
Bank of Queensland Ltd	A2	3,000,000	16-Feb-23	26-Sep-23	4.55%
Bank of Queensland Ltd	A2	2,000,000	16-Feb-23	28-Sep-23	4.55%
National Australia Bank Ltd	A1+	2,000,000	23-Feb-23	03-Oct-23	4.59%
National Australia Bank Ltd	A1+	2,000,000	23-Feb-23	05-Oct-23	4.60%
National Australia Bank Ltd	A1+	3,000,000	23-Feb-23	10-Oct-23	4.61%
National Australia Bank Ltd	A1+	2,000,000	28-Feb-23	12-Oct-23	4.67%
National Australia Bank Ltd	A1+	2,000,000	16-Feb-23	17-Oct-23	4.60%
National Australia Bank Ltd	A1+	2,000,000	28-Feb-23	19-Oct-23	4.68%
AMP Bank Ltd	A2	900,000	25-Oct-22	24-Oct-23	4.85%
AMP Bank Ltd	A2	1,100,000	25-Oct-22	24-Oct-23	4.85%
National Australia Bank Ltd	A1+	2,000,000	23-Feb-23	26-Oct-23	4.65%
National Australia Bank Ltd	A1+	2,000,000	28-Feb-23	31-Oct-23	4.71%
Commonwealth Bank of Australia Ltd	A1+	2,000,000	22-Dec-22	21-Nov-23	4.52%
ING Bank Australia Limited	A1	4,000,000	31-Jan-23	05-Dec-23	4.57%
Credit Union Australia Ltd t/as Great Southern Ba	A2	3,000,000	31-Jan-23	30-Jan-24	4.65%
Commonwealth Bank of Australia Ltd	A1+	3,000,000	28-Feb-23	27-Feb-24	5.02%
		169,500,000			
Kimbriki Environmental Enterprises Pty Ltd					
Trading Accounts					
Commonwealth Bank of Australia Ltd	A1+	798,959			3.30%
		798,959			
At Call Accounts					
Commonwealth Bank of Australia Ltd	A1+	263,549		At Call	3.45%
Commonwealth Bank of Australia Ltd	A1+	23,011		At Call	3.45%
		286,560			
Term Deposits					
Commonwealth Bank of Australia Ltd	A1+	2,000,000	01-Aug-22	01-Mar-23	3.38%
Commonwealth Bank of Australia Ltd	A1+	2,000,000	16-Sep-22	14-Apr-23	3.88%
Commonwealth Bank of Australia Ltd	A1+	1,500,000	04-Oct-22	04-May-23	4.07%
Commonwealth Bank of Australia Ltd	A1+	1,000,000	15-Dec-22	01-Jun-23	4.17%
Commonwealth Bank of Australia Ltd	A1+	1,000,000	09-Jan-23	07-Jul-23	4.37%
Commonwealth Bank of Australia Ltd	A1+	1,500,000	01-Feb-23	01-Aug-23	4.37%
Commonwealth Bank of Australia Ltd	A1+	1,000,000	06-Feb-23	01-Aug-23	4.38%
Commonwealth Bank of Australia Ltd	A1+	13,893,187	09-Jan-23	28-Aug-23	4.12%
		24,623,382			
Total Cash and Investments		207,336,465			

*Rating is based on a private rating advised by the issuer to Council's Investment Advisors.

Portfolio Analysis



Institutional Credit Framework – Compliance with Investment Policy Requirements

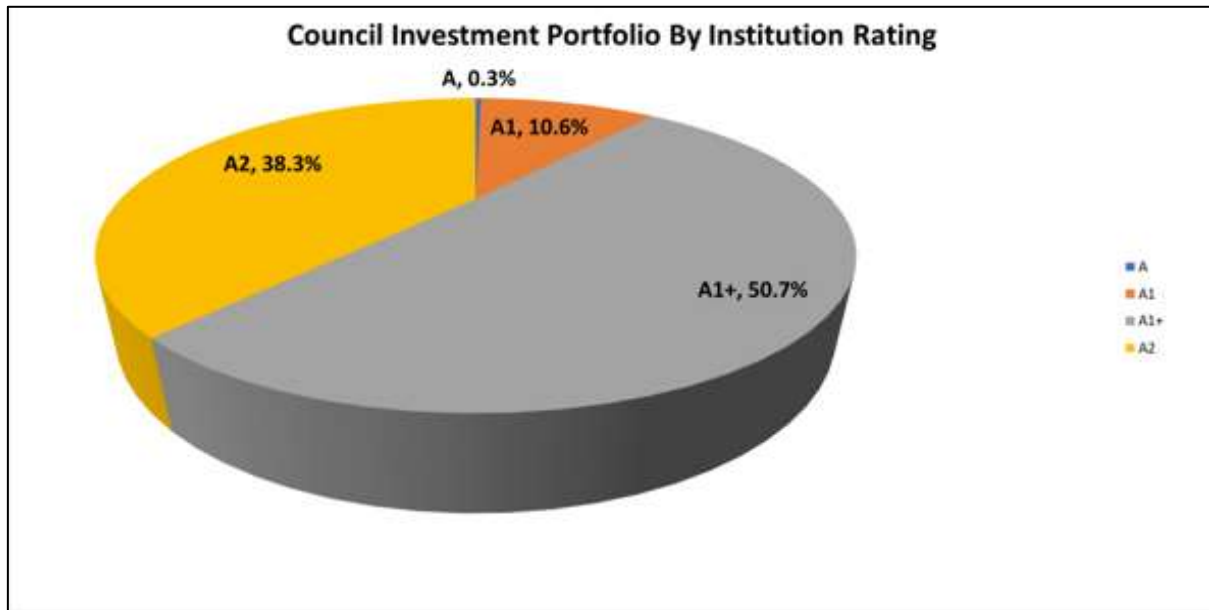
Clause 4.2.2 of Council's Investment Policy requires that the exposure to an individual institution be restricted by their credit rating so that single entity exposure is limited, as detailed in the table below:

S&P Long Term Rating*	S&P Short Term Rating*	Maximum %	Portfolio Complies with Policy?
AAA (incl. government guaranteed deposits)	A-1+	50%	Yes
AA+			
AA			
AA-			
A+	A-1	40%	Yes
A			
A-			
BBB+	A-2	30%	Yes
BBB			
BBB-	A-3	10%	Yes
Unrated**TCorp Funds	Unrated**	5%	Yes (\$Nil)
Unrated***ADIs	Unrated***	\$250,000	Yes (\$Nil)

* Or Moody's / Fitch equivalents

** Unrated Category is restricted to eligible managed funds such as the NSW Treasury Corporation Hour Glass Facilities

*** Unrated ADIs Category is restricted to those ADIs that are under the Australian government guarantee scheme and limited to maximum \$250,000 per unrated ADI.



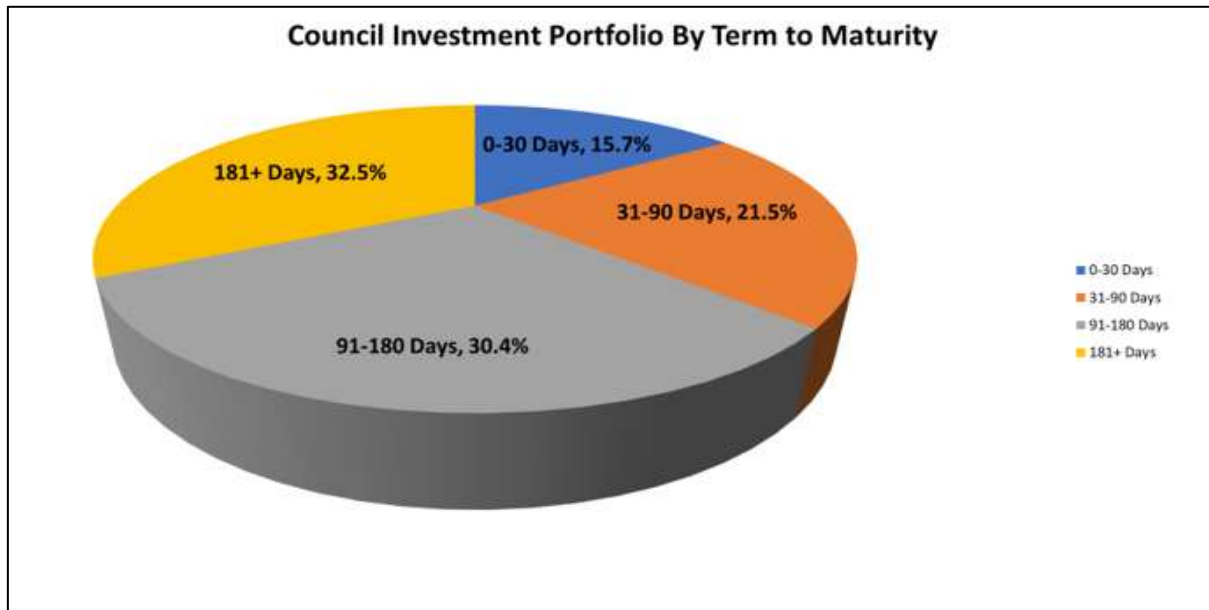
Overall Portfolio Credit Framework – Compliance with Investment Policy Requirements

Clause 4.2.1 of Council's Investment Policy requires that the total percentage exposure within the market to any particular credit rating category be limited, as detailed in the table below:

S&P Long Term Rating*	S&P Short Term Rating*	Maximum %	Portfolio Complies with Policy?
AAA (incl. government guaranteed deposits)	A-1+	100%	Yes
AA+			
AA			
AA-			
A+	A-1	100%	Yes
A			
A-			
BBB+	A-2	80%	Yes
BBB			
BBB-	A-3	30%	Yes
Unrated**	Unrated**	5%	Yes (\$Nil)

* Or Moody's / Fitch equivalents

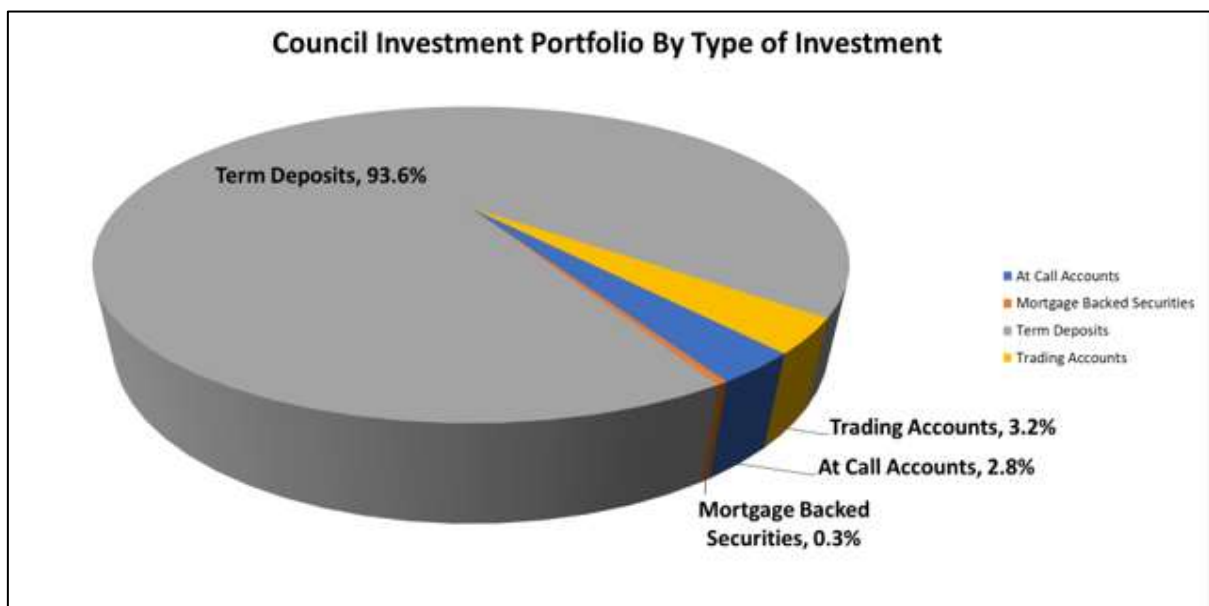
** Unrated Category is restricted to eligible managed funds such as the NSW Treasury Corporation Hour Glass Facilities and ADIs covered by the government guarantee scheme.



Term to Maturity Framework – Compliance with Investment Policy Requirements

Clause 4.2.4 of Council's Investment Policy requires Council's investment portfolio is to be invested within the following maturity constraints:

Overall Portfolio Term to Maturity Limits			Portfolio Complies with Policy?
Portfolio % <1 year	Min 40%	Max 100%	Yes
Portfolio % >1 year ≤3 year	Min 0%	Max 60%	Yes
Portfolio % >3 year ≤5 year	Min 0%	Max 30%	Yes



Investment Performance vs Benchmark

a) Portfolio Return vs Benchmark

	Investment Portfolio Return *	Benchmark: AusBond Bank Bill Index
1 month	0.310%	0.24%
3 Months	0.927%	0.76%
FYTD	2.047%	1.68%
12 Months	2.306%	1.76%

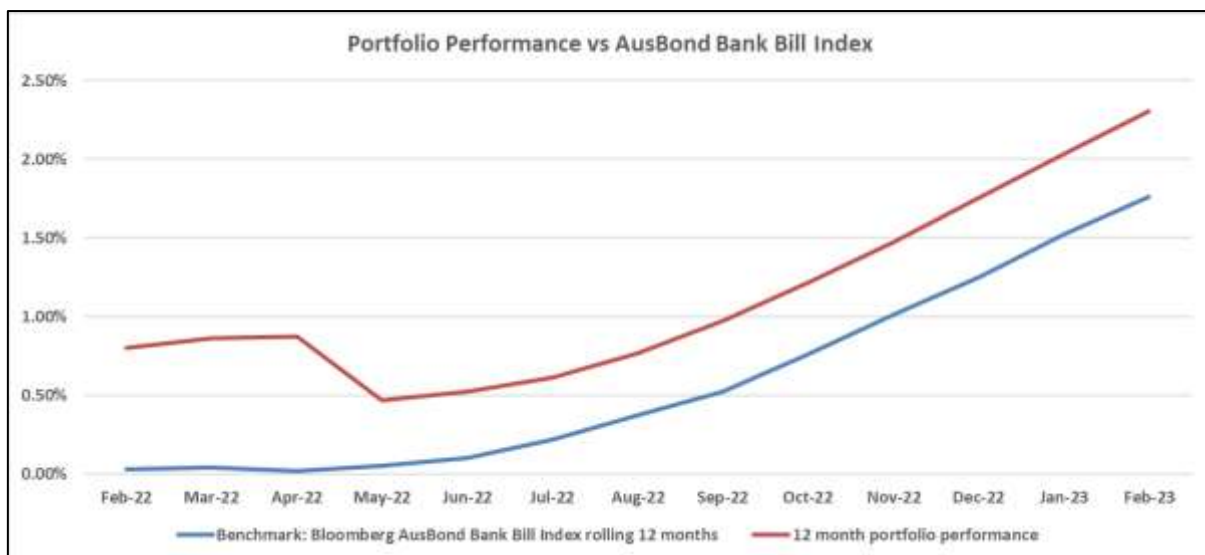
* Excludes trading account balances

Council's Investment Advisors have stated this form of portfolio reporting conforms to global investment performance standards and that these standards say that periods below 12 months should not be annualised.

The above table shows a comparison of Council's investment portfolio return to the benchmark. Council's Investment Advisor, Laminar Capital, has created an accumulation index for the portfolio which increases each month by the portfolio internal rate of return to enable meaningful comparison to the benchmark AusBond Bank Bill index, which is an accumulation index.

The Bloomberg AusBond Bank Bill Index is engineered to measure the Australian money market by representing a passively managed short term money market portfolio. This index is comprised of 13 synthetic instruments defined by rates interpolated from the RBA 24-hour cash rate, 1M BBSW, and 3M BBSW.

The portfolio achieved a return of 0.310% for the month of February which was 0.07% above the benchmark AusBond Bank Bill Index return of 0.24%. For the past 12 months the portfolio achieved a return of 2.306% which was 0.546% above the benchmark AusBond Bank Bill Index return of 1.76%.



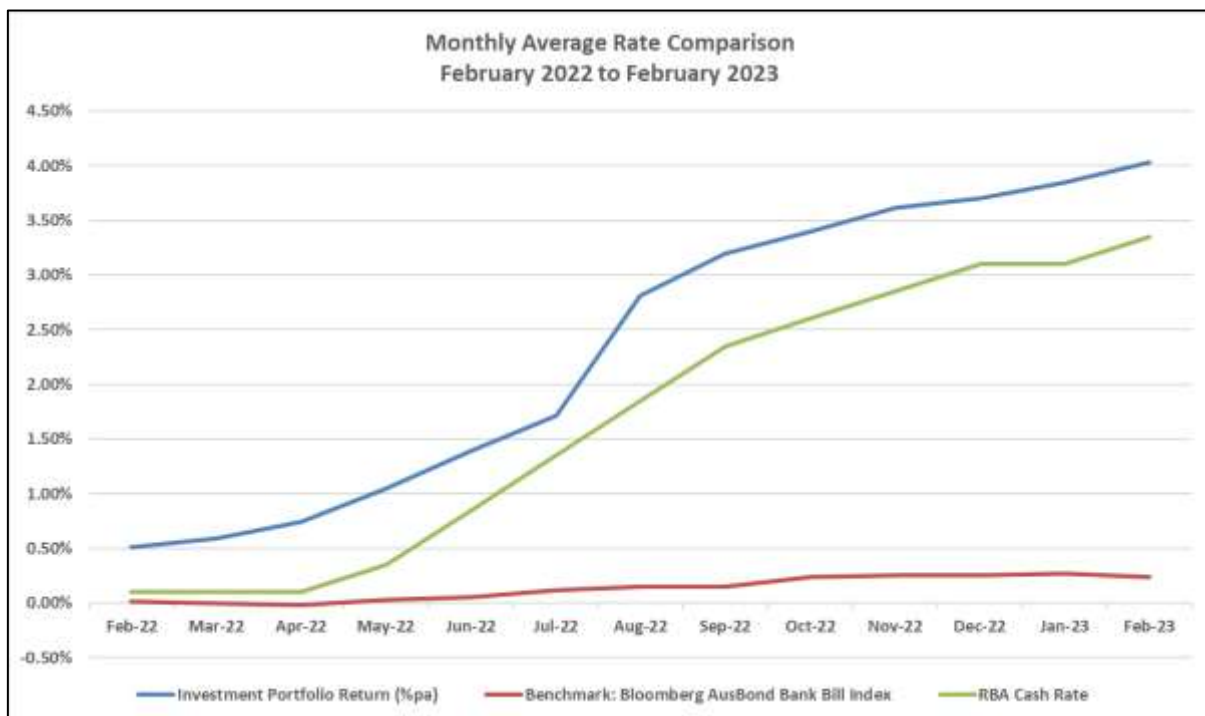
b) Portfolio Interest Rate vs Benchmarks

	Weighted Average Portfolio Interest Rate (%pa) *	Average Benchmark: AusBond Bank Bill Index	Average RBA Cash Rate
1 month	4.03%	0.24%	3.35%
3 Months	3.86%	0.25%	3.18%
6 Months	3.63%	0.23%	2.89%
FYTD	3.29%	0.21%	2.57%
12 Months	2.51%	0.14%	1.83%

* Excludes trading account balances

The above table shows the weighted average interest rate of the portfolio as at month end. This is an average of all the interest rates that each term deposit is earning. It is the current earning rate of the portfolio and this information is useful as it shows how the earning rate is changing each month in line with changes in market interest rates. Each time a term deposit matures during the month it is being reinvested at current interest rates. To facilitate meaningful comparison, the weighted average interest rate of the portfolio is compared to the average AusBond Bank Bill Index and average RBA Cash Rate for the same period.

The weighted average interest rate of the portfolio is 4.03% compared to 3.85% for the prior month. For the past 12 months the weighted average interest rate of the portfolio was 2.51% compared to the average Ausbond Bank Bill movement of 0.14% and the average Reserve bank of Australia Cash Rate of 1.83%.

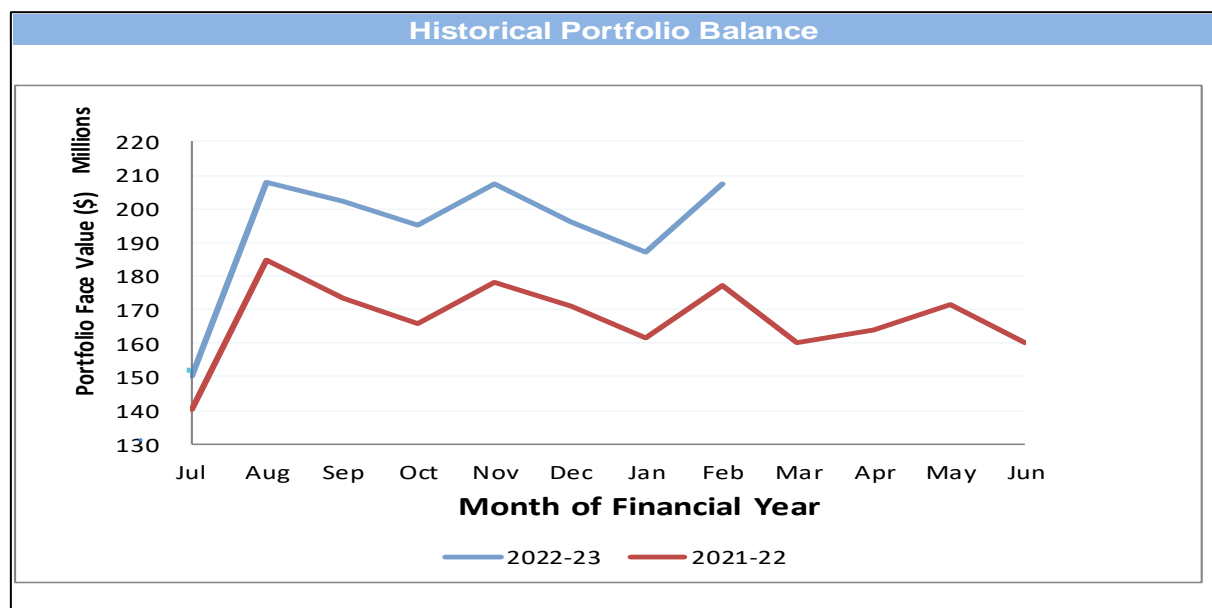


Monthly Investment Income* vs Budget

	February 2023 \$	Year to Date \$
Investment Income	578,526	3,977,170
Adjustment for Fair Value	4,124	15,745
Total Investment Income	582,650	3,992,915
Budgeted Income	50,500	409,500

*Includes all cash and investment holdings

Historical Portfolio Balance		
	2022-23	2021-22
Jul	150,084,380	140,264,007
Aug	207,972,249	184,686,438
Sep	202,385,068	173,325,287
Oct	195,360,642	166,006,688
Nov	207,563,253	178,085,861
Dec	196,306,324	170,911,655
Jan	187,257,340	161,545,259
Feb	207,336,465	176,973,362
Mar		160,133,548
Apr		163,852,294
May		171,636,374
Jun		160,160,643
Average Portfolio Balance	194,283,215	167,298,451



Statement of Compliance

Portfolio Performance vs Bank Bill Index over 12-month period.	✓	Council's investment performance did exceed benchmark.
Monthly Income vs Budget	✓	Council's income from investments did exceed monthly budget.

Investment Policy Compliance

Legislative Requirements	✓	Fully compliant
Portfolio Credit Rating Limit	✓	Fully compliant
Institutional Exposure Limits	✓	Fully compliant
Term to Maturity Limits	✓	Fully compliant

Restricted cash, cash equivalents and investments

The breakdown of restrictions is not available for the current month within the timeframe for the completion of the Monthly Investment Report. Accordingly, the total cash and investments and restrictions related thereto are presented for the previous month.

At the end of January 2023 total cash & investments were \$187,257,340 and were made up of the following reserve allocations.

Allocation of Funds	Amount (\$)	Percentage
Externally Restricted	53,030,140	28.32%
Internally Restricted	81,001,029	43.26%
Total Restricted	134,031,169	71.58%
Unrestricted	53,226,171	28.42%
Total	\$ 187,257,340	100.00%

ECONOMIC NOTES

(Source: Primarily extracted from information supplied by Laminar Capital Pty Ltd)

The global economic growth outlook has brightened in January and February making reducing inflation a more challenging task for central banks. In the US the tight labour market and growth in real household income are priming spending and renewed optimism about the US economic outlook. The pronounced slowing in annual inflation evident in late 2022, however, is showing signs of faltering causing reassessment of how high interest rates may need to be pushed up by the Federal Reserve. The same trade-off between stronger-than-expected growth and less progress reducing high inflation placing pressure on central banks to lift interest rates more is also in play in Europe, parts of Asia and also Australia, notwithstanding recent Australian data pointing to less tight labour market conditions than expected.

The resilient US economy is threatening less reduction in inflation than expected previously. In January, annual CPI inflation decreased only marginally to 6.4% y-o-y from 6.5% in December and with core inflation (excluding food and energy prices) down to 5.6% y-o-y from 5.7% in December. There were also signs of acceleration in the prices of services threatening a slower and longer battle ahead getting inflation down. The Federal Reserve's preferred inflation measure, the core personal consumption expenditure deflator, also showed less deceleration than hoped for in January at 4.3% y-o-y, down from 4.4% in December. All of the inflation measures are still well above the Fed's 2% inflation target and are driving the Fed towards further rate hikes and to possibly a funds rate peak above current market expectation around 5.3%.

In China, Lunar New Year celebrations mean that little economic data have been released in February. At the beginning of the month, January purchasing manager reports show a noticeable improvement in the wake of China's various policy about-turns away from restriction and towards promoting economic growth. The official January manufacturing PMI lifted to 50.1 from 47.0 in December and the non-manufacturing (services) PMI jumped to 54.4 from 41.6. The Caixin PMI's show less pronounced improvement - the manufacturing PMI lifting to 49.2 from 49.0 in December and the Non-manufacturing PMI lifting to 52.9 from 48.0. China still faces significant challenges reviving an over-supplied, over-indebted residential property market and repairing international trading relationships harmed during earlier industry sector crackdowns, but unlike other major economies where monetary policy tightening threaten weaker growth ahead, China's growth rate will lift materially this year on policy reversal.

Perhaps the most pronounced improvement in the near-term economic growth outlook relative to earlier expectations has occurred in Europe. Warm winter weather and bigger than expected energy savings by European businesses blunted feared energy price hikes removing one big constraint on European growth. The EU economy grew 0.1% q-o-q in Q4, 1.9% y-o-y in Q4 2022 and now seems likely to register positive GDP growth again in Q1 2023. The January manufacturing PMI rose to 48.8 from 47.8 in December, while the non-manufacturing (services) sector PMI rose to 50.7 from 49.8 in December. Labour market conditions remain very tight with the unemployment rate holding down near a quarter-century low at 6.6%. Labour disputes pushing for higher wages are widespread and annual CPI inflation, although falling is very high at 8.6% y-o-y in January. The European Central Bank is promising to get inflation down and again hiked by 50bps at its early-February policy meeting taking the deposit rate to 2.50%. It is promising more rate hikes ahead, a reason to believe that the recession threat in Europe has been delayed, but not removed.

In Australia, economic growth has been strong and high annual inflation has not peaked yet in the data. Both strong growth and high inflation predispose the RBA to hiking the cash rate further and reflected in statements in February that it expects more rate hikes over coming months. This week, Q4 GDP data will be released and is expected to show quarter-on-quarter growth of 0.9% compared with 0.6% in Q3 which will leave Q4 annual real GDP around 2.8% y-o-y, strong by international comparison. There are signs in early Q1 2023 economic readings, however, that point to some near-term softening in economic growth.

10.0 COMMUNITY AND BELONGING DIVISION REPORTS

ITEM 10.1	COMMUNITY SAFETY ADVISORY COMMITTEE - CONFIRMED MINUTES OF 24 NOVEMBER 2022 MEETING
REPORTING MANAGER	EXECUTIVE MANAGER COMMUNITY, ARTS & CULTURE
TRIM FILE REF	2022/823012
ATTACHMENTS	1 ⇒ Minutes - Community Safety Advisory Committee - 20221124 - Confirmed (Included In Attachments Booklet)

BRIEF REPORT

PURPOSE

To report the Minutes of the Community Safety Advisory Committee meeting held on 24 November 2022.

REPORT

The Community Safety Advisory Committee is a committee of Council established to provide guidance to Council on community safety issues impacting the Northern Beaches.

The meeting held on 24 November 2022 included discussion on the following items:

- Police Report
- Environmental Compliance Report
- E-cigarettes (Vaping)
- Draft Youth Voice Action Plan
- Confirmation of senior sector representative on the Committee
- Northern Beaches Police and Council Operational Meeting
- Sexual Assault Prevention and Response Working Group update
- Committee membership
- MoWaNa Safe Space

The Minutes of the Community Safety Advisory Committee meeting of 24 November 2022 were confirmed by the Committee at the meeting of 16 February 2023 (Attachment 1).

At Agenda Item 7.0, the Committee proposed that membership be expanded to include all local State and Federal Members of Parliament. This resolution of the committee will be the subject of a separate report to Council.

LINK TO COUNCIL STRATEGY

This report relates to the Community Strategic Plan Outcome of:

Community and belonging - Goal 8 Our community feels safe and supported

FINANCIAL CONSIDERATIONS

The Minutes of the Community Safety Advisory Committee pose no financial impact on Council.

ENVIRONMENTAL CONSIDERATIONS

The Minutes of the Community Safety Advisory Committee do not present matters that will create adverse environmental impacts.

SOCIAL CONSIDERATIONS

The Committee provides valuable advice relating to social and community-based outcomes. It includes involvement and engagement with a broad range of stakeholders.

GOVERNANCE AND RISK CONSIDERATIONS

The Committee is conducted according to Council's governance framework and adopted Terms of Reference.

RECOMMENDATION OF DIRECTOR COMMUNITY AND BELONGING

That Council note the Minutes of the Community Safety Advisory Committee meeting held on 24 November 2022.

ITEM 10.2	FUNDING REVIEW OF THE SOCIAL SERVICES SECTOR
REPORTING MANAGER	MANAGER, SOCIAL PLANNING & SERVICES
TRIM FILE REF	2023/056413
ATTACHMENTS	1 ⇒ Attachment 1 - Outcomes Reports - Social Service Organisations (Included In Attachments Booklet)

SUMMARY

PURPOSE

To review and determine Council financial assistance to the social services sector. This includes a review of funding to Community Northern Beaches, Northern Beaches Women's Shelter and the Avalon Youth Hub through the auspice organisation, The Burdekin Association, and proposed changes to the Community Development Grants Program.

EXECUTIVE SUMMARY

As per Section 356 of the *Local Government Act 1993*, a Council may, in accordance with a resolution of the council, contribute money or otherwise grant financial assistance to persons for the purpose of exercising its functions.

Council has provided financial subsidies to Community Northern Beaches (formerly known as Manly Community Centre) and Northern Beaches Women's Shelter (formerly known as Manly Women's Shelter) since amalgamation in 2016, as a continuation of long-standing funding agreements with the former Manly Council. In 2018, the Burdekin Association was successful in securing \$90,000 in Council funding through an Expression of Interest process, with the proposal of a Youth Wellbeing Hub to act as a triage and assessment facility for young people and their families.

In 2020 the agreements for all three organisations were extended and Council resolved to review the financial assistance prior to the end of the funding period in June 2022. It also resolved that Avalon Youth Hub identify other funding sources prior to June 2022 to become self-sufficient during this period and not reliant on future Council funding.

At the Council meeting on 26 April 2022, it was resolved to extend the agreements for all three organisations and provide an additional 12 months of financial assistance, funding to cease on 30 June 2023. A total of \$252,500 (ex GST) per annum was allocated to these organisations in the 2022/23 financial year. The resolution 106/22 stated:

That Council:

1. *Allocate \$97,000 (ex GST) in the 2022/23 financial year as financial assistance to Community Northern Beaches, in accordance with section 356 of the Local Government Act 1993.*
2. *Allocate \$65,500 (ex GST) in the 2022/23 financial year as financial assistance to Northern Beaches Women's Shelter, in accordance with section 356 of the Local Government Act 1993.*
3. *Allocate \$90,000 (ex GST) in the 2022/23 financial year as financial assistance to Avalon Youth Hub through the auspice organisation The Burdekin Association, in accordance with section 356 of the Local Government Act 1993.*

4. *Delegate authority to the Chief Executive Officer to negotiate service contracts with Community Northern Beaches, Northern Beaches Women's Shelter and Avalon Youth Hub through the Burdekin Association, including reporting on KPIs and service outcomes set by Council, and financial acquittals.*
5. *Provide staff support to Community Northern Beaches, Northern Beaches Women's Shelter and Avalon Youth Hub, through The Burdekin Association, to address financial sustainability and reliance on Council funding in the long term.*
6. *Review the future allocation of financial and in-kind assistance to social service organisations and schedule a Councillor workshop on this matter within the next 6 months.*

To progress this resolution, Councillor briefings were held on 5 September 2022, 29 November 2022 and 14 February 2023 to assist Council in determining a clear long-term plan to support the local social services sector in line with the strategic aims of Council. At these briefings, three options were proposed for Council's consideration:

- Option 1: Continue current financial assistance to the three organisations for three years.
- Option 2: Discontinue current financial assistance incrementally over three years and redirect funds towards a new Community Partnership Grants program.
- Option 3: Discontinue current financial assistance on 30 June 2023 and redirect funds towards a new Community Partnership Grants program.

This review identified the opportunity to broaden Council's support to the social services sector through a new community partnership grants program to support social services delivering focused services on strategic priorities. The review assumed that the total amount of funding currently allocated to direct financial assistance and community grants programs would not be reduced.

This report will outline the three options for Council's consideration.

Financial assistance of \$261,085 (ex GST) indexed by CPI at 3.4% from the 2022/23 financial assistance of \$252,500 (ex GST) has been included in Council's draft 2023/24 Operational Budget.

This funding review also recommended consideration that any existing Community Development Grants Program provide targeted seed funding support towards smaller and emerging community groups. As such it is proposed to introduce a new small grants program to build the capacity of small and emerging community groups and organisations within the existing operational budget funding.

RECOMMENDATION OF DIRECTOR COMMUNITY AND BELONGING

That Council:

1. Consider the options for funding social service organisations and determine the option for implementation.
 2. Delegate authority to the Chief Executive Officer as required to implement the decision of Council including any provision of financial assistance under Section 356 of the Local Government Act, 1993.
 3. Note the proposed change to the annual Community Development Grants Program to include a Small Grants Program within existing operational budget.
-

REPORT

BACKGROUND

Council's Social Sustainability Policy clearly articulates the role of local government and Council in the delivery of community development and services to the community. Key sections of the Policy Statement include:

Northern Beaches Council acts principally as a facilitator and enabler of community development and services, with activities carried out in collaboration with service providers including community groups, charitable organisations, government and non-government agencies, and neighbouring Councils.

It further states:

Through these activities Council will work strategically with local services to maximise the efficiency and quality of service delivery to the Northern Beaches community.

Council encourages, enables and assists local groups and organisations to provide relevant services and activities for residents of the Northern Beaches and will consider providing services directly when there is an identified priority and where no other organisation has the capacity or ability to provide the priority service.

The Policy outlines several of the key activities of Council including:

To maximise the use of community buildings and the sustainability of the social services sector, Council facilitates the colocation of services and the provision of community service hubs (Activity 5. Delivering Infrastructure).

History of current funding model

Former Manly Council had agreed funding arrangements in place with Manly Community Centre & Services Inc. (now named Community Northern Beaches) and Manly Women's Shelter Inc. (now named Northern Beaches Women's Shelter). At the Council meeting on 27 June 2017 a three-year extension of funding was approved for both organisations. An additional \$10,000 was allocated to Manly Community Centre to make up for a shortfall in funding for their Homeless Outreach Service. Since that time both organisations have changed their name to reflect their broader service areas across the Northern Beaches Local Government Area.

An Administrator's Minute at Council's meeting of 27 June 2017 endorsed funding for several new programs that support arts and culture, youth, environmental sustainability, and community events on the Northern Beaches. One of these programs related to a Youth Wellbeing Hub with the following detail:

ii. Youth Wellbeing Hub in the northern part of the local government area (e.g., Mona Vale): seed funding (e.g., rental assistance) for establishment of a space for hosting youth outreach services - \$90,000 per year for two years commencing 2017/18 with an intent to secure long term external funding beyond the seed funding term.

Funding was approved at the Council meeting on 27 February 2018, with the Burdekin Association successful in securing the Council funding through an Expression of Interest process, with the proposal of a Youth Wellbeing Hub to act as a 'triage and assessment facility for young people and their families'. Due to the Covid19 pandemic this funding was extended to 31 December 2020.

At the Council meeting on 27 October 2020, it was resolved to extend the agreements for all three organisations and provide an additional 18 months of financial assistance. This funding was scheduled to cease on 30 June 2022. A total of \$252,500 (ex GST) per annum was allocated to these organisations in the 2021/22 financial year.

Council's decision of 27 October 2020 required staff to review the financial assistance prior to the end of the funding period. It also resolved that Avalon Youth Hub identify other funding sources prior to June 2022 to become self-sufficient during this period and not reliant on future Council funding.

At the Council meeting on 26 April 2022, it was resolved to extend the agreements for all three organisations and provide an additional 12 months of financial assistance with funding to cease on 30 June 2023. A total of \$252,500 (ex GST) per annum was allocated to these organisations in the 2022/23 financial year. This also included a review of the financial assistance prior to the end of the funding period. Councillor briefings were provided on 5 September 2022, 29 November 2022 and 14 February 2023 to assist in determining the desired outcomes and criteria for ongoing use of financial assistance.

The total funding provided to local social services by Council in 2022/23 was \$408,058.60, which included the above \$252,500 to these three organisations and \$155,558.60 towards the annual Community Development Grants Program supporting 22 organisations for grants up to \$10,000. This grants program is highly competitive and since commencing in 2018 an average of 78 applications are received each year, with on average 27 organisations (35%) receiving funding.

Under this grant program, Northern Beaches Women's Shelter was successful in receiving \$7,500 towards a Safety and Wellbeing program in 2021/22 and in receiving \$10,000 towards the Northern Beaches Domestic Violence Response Innovation (in partnership with other providers) in 2022/23. The Burdekin Association received \$10,000 in 2022/23 towards Wellbeing Adventure for young people.

Council funded the fit out of the Community Services Hub at 52 Raglan Street Manly and provides rental subsidies to Community Northern Beaches at this location and Brookvale Community Centre. A rental subsidy is also provided to Women and Children First (formerly Manly Warringah Women's Resource Centre).

Funding Review

In accordance with the Council resolution of 26 April 2022, a full review of the funding provided by Council to social service organisations and activities has been undertaken. Attachment 1 provides Outcomes Reports for each of the funded organisations for Quarter 1 (Jul-Sep) and Quarter 2 (Oct-Dec) of 2022/23 as per their funding agreements.

With around two thirds of Council's total financial assistance towards local social services going towards three services, consideration of redirecting these funds through a community partnership program could increase equity and transparency and provide an opportunity to ensure financial assistance remains in line with the long-term strategic aims of Council and demand for service and support in the community.

This review also recognised the need to provide smaller seed funding grants to support and build the capacity of smaller and emerging community groups with an annual turnover under \$500,000 per annum, as per the small charities' classification provided by the Australian Charities and Not-for-profits Commission.

FUNDING OPTIONS

Three options have been developed and are presented for consideration:

Option 1: Continue current financial assistance to the three organisations for three years.

This option will continue the current commitment of Council into the future, recommending that three-year funding agreements be entered into with Community Northern Beaches, Northern Beaches Women's Shelter and the Avalon Youth Hub through the auspice organisation, The Burdekin Association.

The recommendation for the funding contracts to run for three years is to provide greater service continuity as opposed to shorter term contracts.

Pros	Cons
<ul style="list-style-type: none"> Contributes to the service delivery capacity of these organisations providing support for young people, children and families, women experiencing domestic violence and people experiencing homelessness. 	<ul style="list-style-type: none"> Does not provide opportunities for other not for profit and community organisations to provide targeted community services through financial assistance from Council.
<ul style="list-style-type: none"> Provides continuity of financial assistance to existing organisations and time for them to identify alternative funding sources. 	<ul style="list-style-type: none"> Promotes reliance on ongoing Council funding for sustainability. Does not provide long term strategic direction and process towards Council's support of social services organisations.

Option 2: Decrease financial assistance incrementally over three years and redirect funds towards a new Community Partnership Grants program.

If this option was supported by Council, it is proposed to enter into funding agreements for 3 years to 30 June 2026, at the existing funding level (plus CPI) for the first 12 months in 2023/24, at 75% for the second 12 months in 2024/25 and 50% for the 2025/26 financial year.

From 2025/26 onwards, it is proposed that a Community Partnership Program commence in a staged approach corresponding to the above staged reduction in financial assistance, with a funding pool of \$65,000 in 2025/26 and \$200,000 in 2026/27.

This grant program will be for eligible organisations to apply for grants of up to \$50,000 for up to three years according to strategic outcome areas identified by Council. The current funded organisations will also be eligible to apply for this funding at the completion of their three-year funding agreement.

The proposed Community Partnership Program provides targeted and effective services in line with identified long term outcomes and embeds equity and sustainability into the funding and application process.

Pros	Cons
<ul style="list-style-type: none"> Contributes to the service delivery capacity of the existing organisations, allowing time to develop a new framework and process for continuity of service and to maximise community outcomes. 	<ul style="list-style-type: none"> Community outcomes may be reduced via an extended change process of financial assistance
<ul style="list-style-type: none"> Provides opportunity for Council to set financial assistance according to desired strategic outcomes and for other not for profit and community organisations including the existing organisations to receive larger financial assistance from Council from 2026/27. 	<ul style="list-style-type: none"> Change is incremental over time and may result in some confusion by existing organisations.

<ul style="list-style-type: none"> Provides time for the currently funded services to identify alternative funding sources. 	<ul style="list-style-type: none"> Existing services must identify other funding sources to address discontinuation of financial assistance after three years.
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Option 3: Discontinue financial assistance on 30 June 2023 and redirect funds towards a new Community Partnership Grants program.

In this option Council will cease directly funding Community Northern Beaches, Northern Beaches Women's Shelter and Avalon Youth Hub via The Burdekin Association and redirect all the funds for social service organisations and activities into a new Community Partnership Program. This grant program will be for eligible organisations to apply for grants of up to \$50,000 for up to three years according to strategic outcome areas identified by Council. The current funded organisations will also be eligible to apply for this funding along with all other not for profit organisations. The existing community grants program and a new small grants program would provide varied levels of support to the sector in addition to this new program.

Option 3 can facilitate broader long term community investment with three tiers of funding to the social sector. Outcomes and criteria would need to be developed for the new grants programs that will provide a clearer long-term plan of support that aligns with the strategic aims adopted by Council.

It will provide opportunities for a wider range of service providers and not for profit organisations to establish new programs and activities in line with community priorities.

This option may impact negatively on Community Northern Beaches, Northern Beaches Women's Shelter, the Avalon Youth Hub and their ability to continue to provide the current services to the community if they are unable to source alternative funding. The service outputs delivered by each organisation between July and December 2022 are outlined in the Outcomes Reports provided in Attachment 1. This provides an indication of the potential loss of service for part of the community if the three organisations are not able to continue providing the programs listed without this funding. It is expected that re-direction of funds to other service providers would result in a corresponding increase in community outcomes through all tiers of the proposed grants programs provided funding is maintained at current levels.

Pros	Cons
<ul style="list-style-type: none"> Increased community outcomes aligned with long term identified strategic priorities resulting from open and equitable application process from a greater variety of local organisations. 	<ul style="list-style-type: none"> Current funded organisations may have reduced service delivery capacity.
<ul style="list-style-type: none"> Provides opportunity for Council to set financial assistance according to desired strategic outcomes and for other not for profit and community organisations including the existing organisations to receive larger financial assistance from Council from 2026/27. 	<ul style="list-style-type: none"> Provides limited time for existing organisations to identify alternative funding sources and may impact their service delivery capacity in the short term.
<ul style="list-style-type: none"> Provides for an increase in funds and outcomes towards community grants programs 	<ul style="list-style-type: none"> Existing grant recipients may have reduced service outcomes if maximum grant

	amounts are reduced (eg – establishing a \$5000 cap on a small grant program)
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COMMUNITY DEVELOPMENT GRANTS PROGRAM

This funding review also recommended consideration for the existing Community Development Grants Program to provide targeted seed funding support towards smaller and emerging community groups. As such, it is recommended to continue with existing stream of grants of up to \$10,000 towards larger projects and to introduce a Small Grants Program for grants up to smaller \$5,000 towards eligible organisations with an annual turnover under \$500,000 per annum, as per the small charities' classification provided by the Australian Charities and Not-for-profits Commission.

Funding towards this new Small Grants Program could be taken from the current \$120,000 Community Development Grants Program resulting in a reduced funding pool to \$90,000. The proposed grant program would be open all year round and have a streamlined approval process by a Councillor assessment panel. It is noted that Options 2 and 3 could provide an increase funding to these grant streams if supported.

CONSULTATION

Council staff continue to liaise regularly with management at Community Northern Beaches, Northern Beaches Women's Shelter and Avalon Youth Hub via The Burdekin Association, including quarterly reporting requirements. Council staff provided Councillor briefings on 5 September 2022, 29 November 2022 and 14 February 2023 on this matter.

TIMING

If the option endorsed requires Funding Agreements these will commence on 1 July 2023. The new Small Grants Program if endorsed would commence in the 2023/24 financial year, with advertising to commence in July 2023. The annual Community Development Grants Program will commence advertising in June and recipients determined by Council in October 2023.

LINK TO STRATEGY

This report relates to the Community Strategic Plan Outcome of:

- Community and belonging - Goal 8 Our community feels safe and supported
- Partnership and participation - Goal 22 Our Council builds and maintains strong partnerships and advocates effectively on behalf of the community

This report relates to the Council's Social Sustainability Policy articulating the role of local government and Council in the delivery of community development and services to the community:

Northern Beaches Council acts principally as a facilitator and enabler of community development and services, with activities carried out in collaboration with service providers including community groups, charitable organisations, government and non-government agencies, and neighbouring Councils.

This report relates directly to the Better Together 2040 Social Sustainability Strategy outcome for a resilient and adaptive social service sector on the Northern Beaches to provide support and resources in response to changing community needs.

FINANCIAL CONSIDERATIONS

Financial assistance of \$261,085 (ex GST indexed by CPI at 3.4%) has been included in Council's draft 2023/24 Operational Budget. If Options 1 or 2 are endorsed, Funding Agreements will be entered into which outline the terms and conditions of the approved applicant, including annual reporting and financial acquittal of the funds.

\$120,000 for the Community Development Grants Program is included in the draft 2023/24 Operational Budget. The proposed Small Grants Program for 2023/24 can be met within the existing annual Community Development Grants Program budget. All options outlined in this report can be funded by the amounts included in the draft 2023/24 Operational Budget and the Long-Term Financial Plan.

SOCIAL CONSIDERATIONS

There are positive social impacts for the local community resulting from financial assistance and community grants programs. Allocation of financial assistance through a longer-term strategic framework and process would likely increase community outcomes by social service providers and more broadly community satisfaction.

Option 1 allows for continued support provided to the current three organisations to deliver positive community outcomes, however, does not enable other unfunded services to access similar support.

Options 2 and 3 provide a broader strategic framework for apportioning financial assistance in a fair and equitable manner, enabling access to funding for other eligible and relevant social services and ensuring alignment to defined strategic priorities. These options elevate Council's commitment to social services with a defined community investment program with three tiers of grant funding. Option 2 provides time for these three organisations to adapt to this new framework whilst remaining eligible for funding.

ENVIRONMENTAL CONSIDERATIONS

There are no environmental considerations.

GOVERNANCE AND RISK CONSIDERATIONS

Council may grant financial assistance for the purpose of exercising its functions under Section 356 of the *Local Government Act 1993*, by Council resolution.

Council's role is to ensure any funds allocated to external parties will be spent consistent with the objectives and directions of its' endorsed strategies and plans that have been developed in consultation with the community.

The risk to Council regarding community concern differs with each option presented. There may be some community concerns relating to the reduced or ceasing of funding to these existing services. Risks relating to this have been mitigated in Option 1 and Option 2 through a staged and scaled reduction of financial assistance.

Previous Council resolutions have also noted the intention to assist organisations benefitting from funding to work towards financial sustainability and a lesser reliance on Council funding.

12.0 PLANNING AND PLACE DIVISION REPORTS

ITEM 12.1	PLANNING PROPOSAL 10-12 BOONDAH ROAD, WARRIEWOOD PEX2022/0001
REPORTING MANAGER	EXECUTIVE MANAGER STRATEGIC & PLACE PLANNING
TRIM FILE REF	2023/141328
ATTACHMENTS	<ol style="list-style-type: none"> 1 ⇒ Minutes of Northern Beaches Local Planning Panel Meeting 21 December 2022 (Included In Attachments Booklet) 2 ⇒ NSW State Emergency Service (SES) - Letter of Advice (Included In Attachments Booklet) 3 ⇒ Submissions - Summary of Issues Raised (Included In Attachments Booklet)

SUMMARY

NOTE: *This item was listed on the agenda but not dealt with at the 28 February 2023 Council Meeting*

PURPOSE

To seek Council's approval to reject a Planning Proposal for land at 10-12 Boondah Road, Warriewood, and not forward the Planning Proposal to the Minister for Planning.

EXECUTIVE SUMMARY

Henroth Pty Ltd submitted a Planning Proposal to amend *Pittwater Local Environmental Plan 2014* by rezoning land at 10-12 Boondah Road, Warriewood from RU2 Rural Landscape to R3 Medium Density Residential and C2 Environmental Conservation, along with other amendments, to enable residential development comprising 40 dwellings in a 3-storey townhouse typology and 4 affordable housing dwellings for a 10-year period in a manor home or 2-storey residential flat building typology.

The Planning Proposal has been assessed and found to be inconsistent with the strategic planning framework and fails to demonstrate sufficient strategic and site-specific merit, particularly in relation to flooding, water management, biodiversity impacts, affordable housing, and overall public benefit.

On 21 December 2022, the Northern Beaches Local Planning Panel (the Panel) considered the Planning Proposal and recommended that Council reject the Planning Proposal and not forward it on for a Gateway Determination. The Panel's full recommendation is contained in Attachment 1.

RECOMMENDATION OF ACTING DIRECTOR PLANNING AND PLACE

That:

1. Council reject the proponent's Planning Proposal and not forward it to the Minister for Planning for a Gateway determination for the following reasons:
 - A. The Planning Proposal has not demonstrated sufficient strategic merit or site-specific merit, and is inconsistent with the following elements of the strategic planning framework:
 - i. Greater Sydney Region Plan:

Objective 27: Biodiversity is protected, urban bushland and remnant vegetation is enhanced.

Objective 36: People and places adapt to climate change and future shocks and stresses.

Objective 37: Exposure to natural and urban hazards is reduced.

ii. North District Plan:

Planning Priority N16: Protecting and enhancing bushland and biodiversity

Planning Priority N22: Adapting to the impacts of urban and natural hazards and climate change

iii. Towards 2040 Local Strategic Planning Statement for the Northern Beaches:

Priority 1: Healthy and valued coast and waterways

Priority 2: Protected and enhanced bushland and biodiversity

Priority 8: Adapted to the impacts of natural and urban hazards and climate change

Priority 15: Housing supply, choice, and affordability in the right locations

iv. Warriewood Valley Strategic Review Addendum Report adopted 17 November 2014 and amended 19 December 2017 by Northern Beaches Council and incorporated in Clause 6.1 Warriewood Valley Release Area of the *Pittwater Local Environmental Plan 2014*.

v. Local Planning Directions issued by the Minister for Planning:

Local Planning Direction 4.1: Flood Prone Land

Local Planning Direction 4.2 Coastal Management

Local Planning Direction 4.4: Planning for Bushfire Protection.

- B. The NSW State Emergency Service (SES) has raised significant concerns in relation to flood risk, and has indicated it does not support rezonings to enable development on the floodplain with risk management strategies that rely on early evacuation, private alarm systems, shelter in place, and transfer of residual risk in terms of emergency response to the SES, thereby increasing demands on SES resourcing and capabilities and potentially increasing risk to life, health and property for both existing and future communities.
- C. The Planning Proposal seeks to rezone land within the flood planning area and insufficient information has been provided to demonstrate that the proposed development will not:
- i. result in a net loss of flood storage in the floodplain;
 - ii. result in significant adverse impacts to other properties;
 - iii. result in an increased requirement for government spending on emergency management services, flood mitigation and emergency response measures;
 - iv. adversely affect the safe occupation and efficient evacuation of people; and
 - v. place people and property at unacceptable risk in the event of a major flood.
- D. The Planning Proposal is inconsistent with the objectives of Clause 5.21 Flood Planning of *Pittwater Local Environmental Plan 2014*.
- E. The Planning Proposal is likely to result in unacceptable impacts on biodiversity, particularly in respect of:

- i. failure to site and design development to avoid and minimise impacts to biodiversity;
 - ii. impacts on the remnant Bangalay Sand Forest, an Endangered Ecological Community of significant biodiversity value, as well as impacts to threatened species habitats, reduction in local wildlife connectivity, and potential for altered flow regimes to impact groundwater dependent ecosystems;
 - iii. uncertainty with regards to Biodiversity Certification and, given that offset obligations are not available in the Northern Beaches, the likelihood of a net loss of local biodiversity;
 - iv. failure to exclude from development all the mapped Coastal Wetland;
 - v. failure to provide an adequate 15-metre-wide landscaped buffer, exclusive of the bushfire asset protection zone, to protect the adjacent wetlands; and
 - vi. inadequate groundwater investigation and water quality monitoring to demonstrate adequate management of impacts on the downstream environment and the wetland.
- F. The Planning Proposal does not comply with Council's Affordable Housing Policy as it only offers dwellings as affordable housing for a period of 10 years, and it fails to include a suitable mechanism to include the site in the Northern Beaches Affordable Housing Contributions Scheme.
- G. The proposed C2 zoning of land could trigger acquisition obligations for Council, noting that this matter may be able to be clarified if the Planning Proposal were to progress.
-

REPORT

BACKGROUND

Previous Planning Proposals

The site has been the subject of three previous Planning Proposals which have not proceeded, in summary:

2013 Planning Proposal (PP0007/13)

The 2013 Planning Proposal lodged with the former Pittwater Council, which included the subject site and land at 6 Jacksons Road and 3, 6 and 8 Boondah Road, was for a large mixed use development comprising retail, commercial and residential land uses. The former Pittwater Council resolved to not support this proposal on 17 March 2014. Upon a review sought by the applicant, the Joint Regional Planning Panel's decision on 17 February 2015 was to recommend against the Planning Proposal proceeding to Gateway Determination.

2016 Planning Proposal (PP0005/16)

The 2016 Planning Proposal, which included the subject site and land at 6 Jacksons Road, sought to enable development of a 4-storey residential flat building with a yield of up to 30 dwelling units, and a 2-storey bulky goods retail centre of up to 17,000sqm GFA. Northern Beaches Council resolved not to support this proposal on 28 March 2017. Upon review sought by the applicant, the Sydney North Planning Panel's unanimous decision on 31 May 2017 was that the Planning Proposal should not be submitted for Gateway Determination as it had not demonstrated strategic merit. Subsequent legal challenges by the applicant to the Land & Environment Court and the Court of Appeal were dismissed.

2019 Planning Proposal (PEX2019/0003)

The 2019 Planning Proposal, which included the subject site and land at 6 Jacksons Road, sought to enable development of five 4-storey residential flat buildings with a yield of up to 130 dwelling units, along with an offer to enter into a Planning Agreement to dedicate land at 6 Jacksons Road to Council and facilitate the provision of new and expanded sports fields. Council resolved not to support this proposal on 17 December 2019. Upon review sought by the applicant, the Sydney North Planning Panel's unanimous decision on 8 September 2020 was that the Planning Proposal should not be submitted for Gateway Determination as it had not demonstrated strategic merit.

Pre-Lodgment Meeting

A pre-lodgment meeting was held with Council officers on 22 July 2021 in relation to the current Planning Proposal, and formal notes were issued to the applicant on 27 August 2021. Amongst other things, the notes include specific requirements and considerations in relation to the strategic planning context, flooding, biodiversity, bush fire, riparian values, stormwater quality management, traffic and road design, parks and landscaping, dwelling density, affordable housing, development contributions, and the necessary components of justification for a Planning Proposal.

Revisions to Warriewood Valley Development Contributions Plan

At the time of the pre-lodgement meeting, the Warriewood Valley Development Contributions Plan Amendment 16, Revision 3 June 2018 (2018 Contributions Plan) was under review by the Council. Section 6.2.3 of 2018 Contributions Plan identified the strategy for provision of open space and recreation areas to meet the needs of the anticipated residential population in the release area. Land at 10-12 Boondah Road, Warriewood (the site of the current Planning Proposal), was identified as two of five properties in the Southern Buffer area for purchase for future active open space.

To date, the Council has only been successful in purchasing one of the five properties (3 Boondah Road, Warriewood) identified for future active open space.

The applicant was advised at the pre-lodgement meeting that provision of open space, particularly active open space such as sports fields, remains a key area in which community needs are not adequately met in Warriewood Valley, and that the Council was considering alternatives.

At its meeting on 28 June 2022, the Council resolved to adopt the Warriewood Valley Development Contributions Plan Amendment 16, Revision 4 2022 (2022 Contributions Plan) which came into effect on 1 July 2022. The 2022 Contributions Plan included revised calculations of open space still to be delivered, based on updated assumptions on anticipated development in the release area. Active open space still to be delivered has been revised down from 3.74ha in the 2018 Contributions Plan to 1.31ha in the 2022 Contributions Plan. Section 6.2.3 no longer identifies properties in the Southern Buffer area, including the site, for purchase for future active open space. The 2022 Contributions Plan recognises that opportunities for future land purchase for active open space are limited and focuses instead on satisfying remaining active open space demands through the embellishment of existing sports fields to increase available hours of use through upgrading turf surfaces, improving drainage and providing lighting.

Site Description

The site is located at 10-12 Boondah Road, in Warriewood Valley (see Figure 1).



Figure 1 - Site Location - Aerial Photograph

The site adjoins Warriewood Wetlands to the west, land developed with a 3-storey residential flat building to the north (part of the larger residential complex developed by Meriton at the corner of Boondah Road and Macpherson Street), and a rural property to the south-east with a dwelling.

Warriewood Square shopping centre is further south of the site on Jacksons Road, and to the east on the opposite side of Boondah Road is bushland and a Sydney Water sewerage treatment plant.

The area referred to in planning documents as the Southern Buffer, derived its name from a 400m buffer distance to the sewerage treatment plant which was originally embargoed from the land release area until Sydney Water developed a plan for capping the plant to reduce odour impacts on the surrounding area.

Other land uses along Boondah Road include public sports fields and netball courts, a Council depot, and a community centre.

The site has a total area of 2.044ha, comprising lots described in the table below.

Address	Property Description	Area	Owner
10 Boondah Road	Lot 4 DP 26902	1.027	Henry Fraser Pty Ltd
12 Boondah Road	Lot 3 DP 26902	1.017	Cassius Investments Pty Ltd

The site is used in part for rural and storage purposes, and contains sheds, a small paddock and at least one dwelling. The topography of the site is generally flat and low-lying land, draining to the Warriewood Wetlands adjoining to the west and Narrabeen Creek to the south.

Although parts of the site are cleared, substantial vegetation exists on the site having significant biodiversity and wildlife connectivity value, including Threatened Ecological Communities (TEC) and Threatened Species and their habitats. In particular, the site contains two Endangered Ecological Communities (EEC), being Bangalay Sand Forest an EEC under the NSW Biodiversity Conservation Act 2016 (NSWBC Act) located on 12 Boondah Road, and Swamp Oak Floodplain Forest an EEC within NSWBC Act and Commonwealth Environmental Protection and Biodiversity Conservation Act 1999 (EPBC Act) located on 10 Boondah Road. Vegetation on the site merges with that of the adjacent Warriewood Wetlands and includes intact mature canopy.

The site is in the Flood Planning Area. Council's Flood Hazard Map identifies High, Medium and Low Risk Precinct areas within the site (see Figure 2).

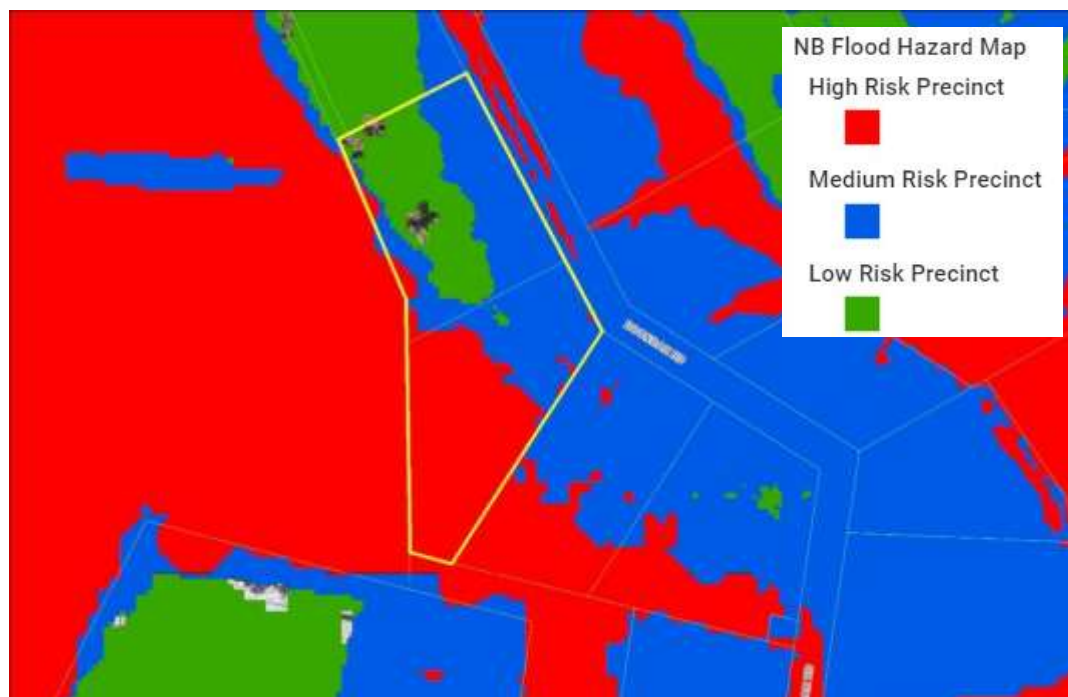


Figure 2 - Flood Hazard Map

The site includes Vegetation Category 1 and Vegetation Buffer on Council's Bushfire Prone Land Map (see Figure 3).

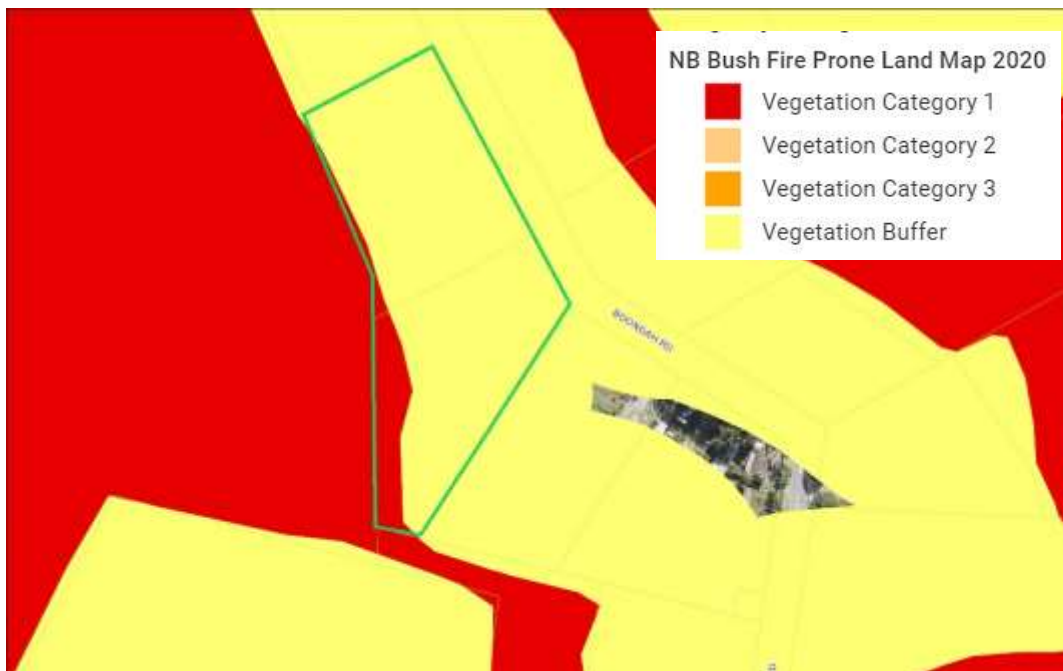


Figure 3 – Bush Fire Prone Land Map

The Proposal

Henroth Pty Ltd lodged a Planning Proposal application via the NSW Government Planning Portal and it was assigned for review by Council on 22 July 2022. Various technical supporting documents were submitted with the application. On several occasions after lodgement, further information was submitted by the proponent, including amendments to the proposal. All additional information and amendments have been considered in the assessment contained in this report. The Planning Proposal and all associated documentation has been made accessible to the Council for its consideration.

The Planning Proposal seeks to amend Pittwater Local Environmental Plan 2014 (LEP) for land at 10-12 Boondah Road, Warriewood to permit future residential development of 44 dwellings, including 40 x three-storey multi-dwelling housing dwellings (townhouses) and four dwellings in a manor house form to be used as affordable housing for a period of 10 years.

A conceptual Site Plan shows six rows of townhouses with internal circulation roads and driveways across much of the site, along with a kids' playground, pedestrian pathway/fire trail, informal open space areas and a riparian corridor in the southern part of the site (see Figure 4). This Site Plan is a revision of an earlier version lodged with the application, in response to some issues raised at a meeting with Council officers. The revision increases, to 15m, the setback of the internal road from the site's boundary to Warriewood Wetland, with the end townhouses in each row re-oriented to achieve suitable road/driveway gradients. The development footprint remains largely unchanged.

The Site Plan indicates a 6m setback of the proposed townhouses from Boondah Road, and a 24m wide bushfire asset protection zone (APZ) between the proposed townhouses and the boundary to the Warriewood Wetland, with roads, paths and parking located within the 24m wide APZ area. The APZ is also intended to overlap a 15m wide ecological buffer to the adjacent Wetland.

Other changes to the Planning Proposal as lodged, include:

- a statement that the proposed C2 zone boundary would be adjusted to include all the mapped Coastal Wetland under State Environmental Planning Policy (Resilience & Hazards)

- an alternative building height limit using maximum RL to AHD (flood planning level plus 9.5m).



Figure 4 - Extract of Site Plan prepared by Buchan Group

The three-storey townhouse designs incorporate garage, living, dining and kitchen at ground level, and bedrooms and bathrooms on the two levels above (see Figures 5 and 6).

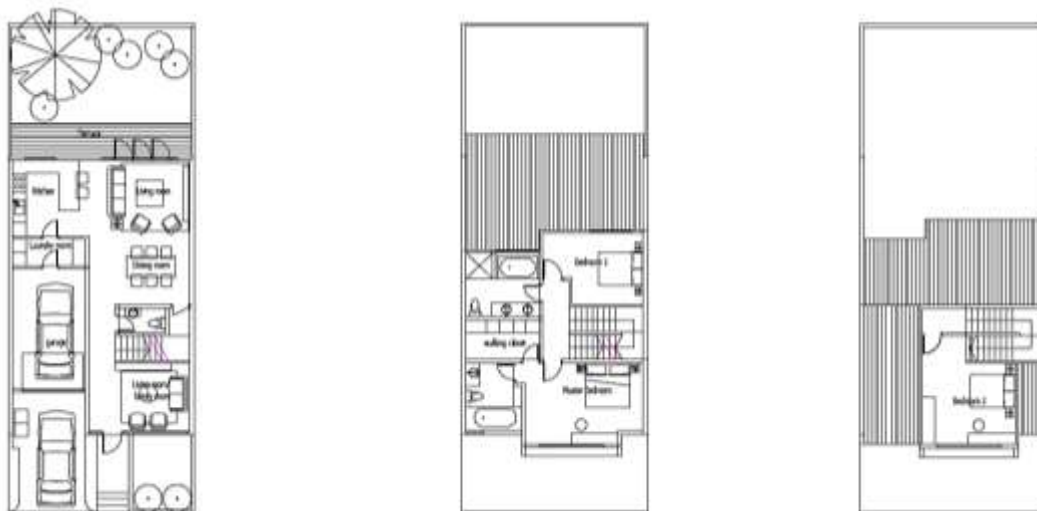


Figure 5 – Standard Housing Type 2 (Extract from Buchan Group report)

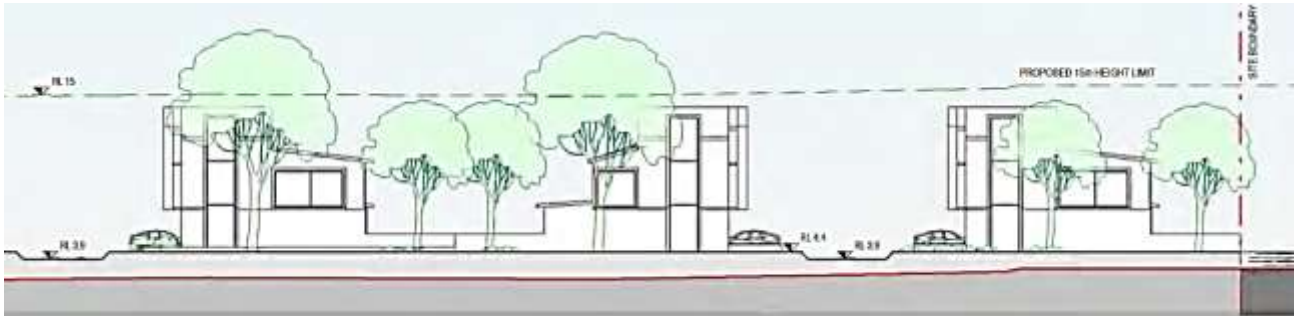


Figure 6 - Elevation to Boondah Rd, north end of site next to Meriton complex (extract Buchan Group report)

Most, if not all the proposed R3 Medium Density Residential zoned land (around 90% of total site area) will be subject to earthworks, mostly filling to raise the land to achieve levels required to meet flood planning criteria, including townhouse ground levels at RL4.4m, road and driveways at RL3.9m, and park and play areas at RL2.5m. Boondah Road along the site's frontage is also to be raised to RL3.9m - which is 1% AEP (previously referred to as 1 in 100-year flood level) plus an allowance for climate change. The earthworks are likely to necessitate removal of most if not all the existing vegetation in the proposed R3 zoned area. No earthworks are proposed for the riparian corridor proposed to be zoned C2 Environmental Conservation.

The applicant has not made an offer to enter into a Planning Agreement. The applicant has stated the intention is for the C2 zoned land to remain in private ownership as part of a Community Title.

Assessment of Planning Proposal

The following assessment is set out in accordance with the relevant NSW Government Local Environmental Plan Making Guideline (Guideline).

Part 1 – Objectives or Intended Outcomes

The stated objectives and intended outcomes of the Planning Proposal are to:

- continue residential development adjoining existing residential development within the Warriewood Valley release area
- provide residential accommodation opportunities responding to identified demand
- optimise the utilisation of existing infrastructure
- preclude from urban development those areas identified through the studies undertaken that are not suited for urban development
- to accommodate approximately 44 dwellings equating to a yield of approximately 22 dwellings per hectare.

The stated objectives rely on the proponent's stated premise that the Planning Proposal responds to the outcomes of the previous Rezoning Review for the 2019 Planning Proposal. The proponent suggests that the SNPP found that the proposed development potentially had site specific merit but not strategic merit, and that changes to the 2018 Warriewood Valley Development Contributions Plan (Contributions Plan) whereby Council is no longer targeting the land for acquisition for open space resolve a key reason for the 2019 Planning Proposal failing to satisfy strategic merit.

Response

This premise is not accepted. Although the quantum of open space still to be delivered in the Release Area has been revised down and the site is no longer identified in the Contributions Plan for purchase for future active open space, this does not mean that the site by default becomes suitable in a strategic planning sense for urban or residential development.

The site's earlier designation for active open space was not based solely on meeting the needs of the anticipated population, but also on the findings of a suite of technical studies that informed the planning strategy for Warriewood Valley Release Area. These studies included land capability mapping based on identified environmental constraints to development such as flooding, bush fire and biodiversity. Strategic Merit is discussed further in Part 3 below.

The current zoning remains strategically appropriate particularly having regard for the constraints of the site and the commentary from the SES.

Part 2 – Explanation of Provisions

The applicant's proposed LEP amendments seek to:

- rezone the site from RU2 Rural Landscape to R3 Medium Density Residential and C2 Environmental Conservation (see Figures 7 and 8)
- increase the maximum building height from 8.5m to 15m over the proposed R3 zoned land, or an alternative approach that imposes an RL to AHD limit based on flood planning level plus 9.5m
- remove the minimum subdivision lot size
- amend the Urban Release Area Map and clause 6.1(3) to apply a dwelling yield range of 40-45 dwellings.



Figure 7 – Existing Zoning

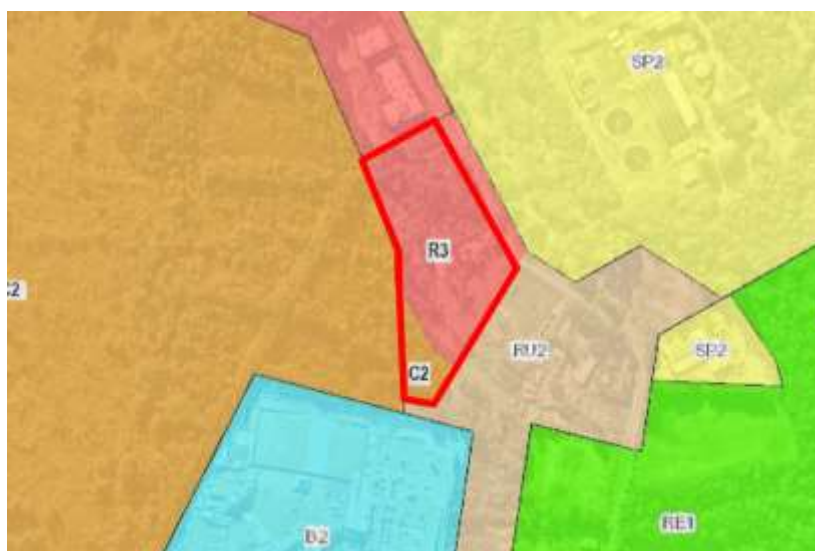


Figure 8 – Proposed Zoning

Response – Proposed Zoning

The proposed R3 zoning may be a suitable zoning to accommodate residential development at the density that is proposed. However, the extent of development proposed is not appropriate having regard to flooding, biodiversity, and water quality. These issues are discussed further in Part 3. As discussed above, the current zoning remains strategically appropriate particularly having regard for the constraints of the site and the commentary from the SES.

The proposed C2 Environmental zoning is not acceptable, for the following reasons:

- It has not been demonstrated that the extent of the proposed C2 zoning adequately aligns with the biodiversity values of the land and the conservation requirements to protect these values.
- While the applicant has stated that the proposed C2 zoning boundary will encompass all the mapped Coastal Wetland under State Environmental Planning Policy (Resilience and Hazards) 2021, the Site Plan has not been revised to reflect this. Although conceptual in nature, the Site Plan and plans included in a supporting memo by Calibre dated 14 October 2022 show roads, earthworks, asset protection zones, and indicative locations of bioretention basins, stormwater filters and discharge points within areas of mapped Coastal Wetland.

- While the applicant has stated that the proposed C2 zoned land is intended to remain in private ownership under a Community Title scheme, without confirmation to indicate otherwise, it is possible that the C2 zoning could trigger an obligation for Council to acquire the land under the owner-initiated hardship provisions of the Land Acquisition (Just Terms Compensation) Act 1991, if the C2 zoning is deemed to be reserving the land for use for a public purpose. Despite enquiries made by Council planners, the Department of Planning and Environment (DPE) was unable to clarify the operation of the relevant legislation in this instance due to legal complexity. While this remains uncertain, it represents a financial risk for Council.
- While the proposed C2 zoning may offer better protection of biodiversity values than the current RU2 Rural Landscape zoning, there is uncertainty over responsibility for implementing the proposed conservation measures, and the prospects of Biodiversity Certification.

If the Planning Proposal were to proceed, the above issues could be investigated further, and potentially resolved through suitable detailed information and amendments to the proposal. Amongst other things, to allay concerns about an acquisition obligation, Council would need confirmation from the DPE that it would not require the proposed C2 zoned land to be included on the Land Reservation Acquisition Map in Pittwater LEP and assurance from a legal perspective that the proposed C2 zoned land would not be subject to owner-initiated acquisition provisions of the Land Acquisition (Just Terms Compensation) Act 1991.

If the Planning Proposal were to proceed, the precise boundaries of the new zones would need to be determined through resolution of the relationship of the proposed C2 zone boundary to mapped Coastal Wetland under SEPP (R&H) and ground-truthing of vegetation and biodiversity mapping.

Response – Building Height

In response to concerns about the proposed 15m building height limit, the applicant suggested an alternative building height limit using a maximum RL based on flood planning level plus 9.5m.

No ground survey information has been submitted to indicate the maximum level of fill necessary to achieve flood planning levels. The onus is on the applicant to satisfy Council that future buildings would not be excessive in scale or out of character with the area. Nevertheless, while precise LEP provisions or maps have not been provided, the applicant has indicated the intended outcome is for future buildings be limited to two-storeys plus attic with a maximum height above filled ground levels of 9.5m. This is sufficient explanation to assist in legal drafting of a suitable LEP amendment if the Planning Proposal were to proceed. As such, building height is no longer considered to be a reason to reject the proposal and has been deleted from the recommendation since reporting to the Local Planning Panel.

Response – Dwelling Yield Range

Part 6.1 of the LEP implements the adopted planning strategy for Warriewood Valley Release Area contained in the Warriewood Valley Strategic Review (WVSR) adopted by former Pittwater Council and endorsed by NSW Director of Planning in 2013 and the Warriewood Valley Strategic Review Addendum (WVSR Addendum) adopted in 2014 and amended in 2017 (WVSR Addendum).

Clause 6.1(3) of the LEP specifies dwelling yield ranges to control the density of residential development. The dwelling yield ranges are based on densities adopted through the WVSR and WVSR Addendum for individual residential sectors, with density calculated on the 'developable area' – that is, the total site area excluding land identified as environmentally sensitive, creek line corridor and/or having no potential for development due to a prevailing condition/hazard.

32 dwellings per developable hectare is the maximum density that has been planned and applied generally across most of the undeveloped release land in Warriewood Valley through the WVSR and WVSR Addendum.

The Planning Proposal seeks a dwelling yield range of 40-45 dwellings which equates to a density of approximately 22 dwellings/ha. However, this calculation is not appropriate as not all of the site can reasonably be considered 'developable' given significant environmental constraints associated with flooding and riparian and biodiversity values, especially in the southern half of the site.

The Water Management Report by Calibre nominates at page 37 that the 'developable land' is a minimum of 1.32ha, defined as the land within the low and medium flood hazard zones. 1.32ha at a density of 32 dwellings per hectare will permit 42 dwellings.

On this basis, the proposed dwelling yield range is generally consistent with the density limit of 32 dwellings/ha applied by the planning strategy for Warriewood Valley.

Affordable Housing

Council's stated policy is that it is committed to a 10% affordable rental housing target for all planning proposals for urban renewal or greenfield development, and the Contributions Scheme and related LEP provisions are the mechanism by which affordable housing is to be secured.

The proposed LEP amendments do not include any amendments to give effect to an affordable housing contribution in accordance with Council's Affordable Housing Policy and its Affordable Housing Contributions Scheme. Such amendments would include a new LEP clause and map, and a new section in the Contributions Scheme applying to the subject land, to specify the proportion of total residential gross floor area to be dedicated as affordable housing or provided as a monetary contribution in lieu of dedication as a condition of a future development consent.

The Planning Proposal includes an offer to provide four dwellings as affordable housing for a period of 10 years, managed during that time by a registered community housing provider. Affordable housing for a time limited period is not acceptable, nor is it in accordance with Council's Policy. Dwellings secured for affordable housing are required to be in Council ownership in perpetuity.

Part 3 – Justification

Strategic Merit

Section A – Need for the Planning Proposal

Q1. Is the planning proposal a result of an endorsed LSPS, strategic study or report?

The applicant's report states the site has been part of the Warriewood Valley Release Area since its inception and is identified in the WVSR and WVSR Addendum as land having development capability ranging from Least to More.

The case for need put forward by the applicant is based on housing need, in particular that the proposal responds to a shortfall of 275 dwellings identified in Council's Local Housing Strategy (LHS), a shortfall of 251 dwellings from the original forecasts for the Release Area, and the exacerbation of any shortfall resulting from the abandonment of the Ingleside Place Strategy.

The proposal also relies on the provision of four dwellings for a period of 10 years as affordable housing which is stated to maximum opportunities for affordable housing dwellings.

Response

The applicant's justification with regards to need is not supported.

The LHS forecasts housing demand to the year 2036 and identifies a deficit in capacity under the current planning controls of 275 dwellings across the entire Northern Beaches local government area. The LHS estimates of capacity to meet housing demand factored in 1000 new dwellings in Ingleside. In response to the State Government's decision last year to not proceed with Ingleside Place Strategy, Council's strategic planning team is actively investigating alternative locations.

The LHS builds on the strategy for housing identified in Council's Towards 2040 Local Strategic Planning Statement (LSPS) of focusing new housing in and around centres with good transport. Centre Investigation Areas are the cornerstone of Council's adopted approach to meeting housing targets and the LHS identifies Brookvale, Dee Why, Mona Vale, Manly Vale and Narrabeen as priorities for urban renewal in the short-medium term. Medium density residential development is to be concentrated in strategic and selected town centres on the current and future B-line routes, and these centres will be the subject of detailed planning to identify opportunities for renewal and respond to the unique circumstances and character of each centre. As discussed further under Q.4 below, Warriewood was not identified as a viable option for a Centre Investigation Area in the LHS.

Planning for Brookvale to deliver on housing targets is well advanced. Brookvale strategic centre has potential to meet the 275 dwellings deficit identified in the LHS and a major portion of the 1000 dwellings no longer being planned in Ingleside, in a location having significant advantages in terms of existing infrastructure, proximity to employment and services, and an efficient, transit-supportive urban structure that can promote less reliance on private vehicles and less impact on traffic congestion. Forward planning for growth and development in Brookvale began in 2016 and a revised Draft Structure Plan was endorsed by Council in November 2022 and is undergoing a final phase of public exhibition until 28 February 2023. The plan envisages an additional 1300 apartment-style dwellings in and around Brookvale centre, which will add to housing diversity.

Given the progress made to date and the ability for Council to meet its housing targets through a methodical, strategic, principles-based approach to increasing housing capacity in and around its most accessible centres, there is no need for the subject Planning Proposal to rezone land in Warriewood, especially given the site-specific constraints and potential environmental, social, and economic impacts which are discussed in the section on Site-Specific Merit later in this report.

Q2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

The applicant's report suggests the site is a logical extension of existing urban zoned lands and the Planning Proposal is a logical infill development opportunity that does not face the infrastructure delivery constraints that pose challenges to the Ingleside and Frenchs Forest release areas.

Response

As discussed under Q1. above, Council is on track to meet the housing targets identified in its' LHS and detailed planning is underway for Centre Investigation Areas, including Brookvale. Phase 1 of the Frenchs Forest Precinct is being implemented through new planning controls that came into effect on 1 June 2022 and is scaled to ensure growth and development is in line with infrastructure.

The subject site faces other challenges that Frenchs Forest and Brookvale are not so affected by, for example flooding, bushfire and biodiversity. There are better ways to achieve the objectives or intended outcomes, as discussed further below.

Section B – Relationship to strategic planning framework

Q3. Will the planning proposal give effect to the objectives and actions of the applicable regional, or district plan or strategy?

The applicant's report states that the Planning Proposal is consistent with Greater Sydney Region Plan and North District Plan.

Response

The proposed development involves significant issues associated with flood risk and the SES has raised significant concerns. Shelter in place is not an acceptable strategy to manage flood risk for future development of housing on land not currently zoned for housing. The proposed development will result in unacceptable impacts on biodiversity, fails to provide an adequate buffer to adjacent

wetland, and insufficient information has been submitted in relation to water quality management and impacts on groundwater dependent ecosystems. For these reasons, the Planning Proposal is inconsistent with:

Greater Sydney Region Plan

- Objective 27: Biodiversity is protected, urban bushland and remnant vegetation is enhanced
- Objective 36: People and places adapt to climate change and future shocks and stresses
- Objective 37: Exposure to natural and urban hazards is reduced.

North District Plan:

- Planning Priority N16: Protecting and enhancing bushland and biodiversity
- Planning Priority N22: Adapting to the impacts of urban and natural hazards and climate change

Q4. Is the planning proposal consistent with a council LSPS that has been endorsed by the Planning Secretary or GSC, or another endorsed local strategy or strategic plan?

The applicant's report states that the Planning Proposal is consistent with the endorsed LSPS and the endorsed LHS.

Response - Towards 2040 Local Strategic Planning Statement

The proposed development involves significant issues associated with flood risk and the SES has raised significant concerns. Shelter in place is not an acceptable strategy to manage flood risk for future development of housing on land not currently zoned for housing. The proposed development will result in unacceptable impacts on biodiversity, fails to provide an adequate buffer to adjacent wetland, and insufficient information has been submitted in relation to water quality management and impacts on groundwater dependent ecosystems.

With good progress made to date and the ability for Council to meet its housing targets through a methodical, principles-based approach to increasing housing capacity and diversity in and around its most accessible centres, there is no need to rezone the subject site to allow housing, especially given the flooding constraints and potential environmental impacts.

The proposal fails to incorporate appropriate provision for contributing affordable housing dwellings in perpetuity in accordance with the relevant policy and scheme.

The proposed C2 zoned land presents uncertainty for Council with regards to potential acquisition triggers and responsibility for ongoing implementation of conservation measures.

For these reasons, the Planning Proposal is inconsistent with the following Priorities of the LSPS:

- Priority 1: Healthy and valued coast and waterways
- Priority 2: Protected and enhanced bushland and biodiversity
- Priority 8: Adapted to the impacts of natural and urban hazards and climate change
- Priority 15: Housing supply, choice and affordability in the right locations
- Priority 16: Access to quality social and affordable housing

It is furthermore inconsistent with the following Housing Principle adopted in the LSPS:

- Limit development where there are unacceptable risks from natural and urban hazards, or impact on tree canopy.

Response – Northern Beaches Local Housing Strategy

Council's ongoing forward planning for centres will address the shortfall of 275 dwellings identified in the LHS and find alternatives for the 1000 dwellings previously envisaged for Ingleside.

The Centre Investigation Areas earmarked in the LHS for investigation for renewal will be the key locations for delivering new housing with detailed planning for these centres looking to provide a variety of housing types including medium to higher density housing in highly accessible locations.

The second approach outlined in the LHS, Low-rise Housing Diversity Areas, identifies Warriewood as one of several local centres potentially suited to low to medium density typologies within 400m of centres. This approach is explicitly subject to environmental and other constraints, which means the site's flooding, bushfire and biodiversity constraints would need to be properly considered and addressed.

Warriewood's disjointed layout, with the shopping centre being more than 350m from the B-line stop, does not lend itself to a decision on balance where the benefits of providing more housing would outweigh the disbenefits associated with flood risk and impacts on biodiversity.

These issues with the location of the B-line stop, the layout of the wider centre, and the local environmental and flooding constraints, are the reason Warriewood did not present as a viable option for a Centre Investigation Area in the LHS.

As the Planning Proposal does not adequately address the site's environmental constraints, it is inconsistent with the LHS.

Warriewood Valley Strategic Review and Warriewood Valley Strategic Review Addendum

Assessment of Strategic Merit should also consider the adopted planning strategy for Warriewood Valley Release Area contained in the Warriewood Valley Strategic Review Report adopted by the former Pittwater Council and endorsed by the NSW Director of Planning in 2013 (WVSR) and the Warriewood Valley Strategic Review Addendum Report adopted in 2014 and amended in 2017 (WVSR Addendum). Clause 6.1(3) of the LEP, which implements the planning strategy for Warriewood Valley Release Area, includes the objectives:

- (a) *to permit development in the Warriewood Valley Release Area in accordance with the Warriewood Valley Strategic Review Report and the Warriewood Valley Strategic Review Addendum Report, and*
- (b) *to ensure that development in that area does not adversely impact on waterways and creek line corridors, protects existing native riparian vegetation and rehabilitates the creek line corridors.*

The catalyst for WVSR was an approval in 2011 by the Planning Assessment Commission (PAC), under its now repealed Part 3A powers, of the Meriton development at the corner of Macpherson Street and Boondah Road, comprising multiple 3-4 storey residential flat buildings with a total of approximately 450 dwellings. Part of this development adjoins the subject site's northern boundary. The PAC called for a comprehensive strategic study for all undeveloped land in Warriewood Valley, including for the first time the Southern Buffer area, which includes the subject site.

The WVSR investigated the remaining undeveloped lands, first utilising composite land capability mapping of a range of environmental, economic, and social characteristics to classify land into categories of capability for development ranging from Least to Most developable. It then drew on a major hydrology study to inform developable land classifications, and used independent urban design, strategic transport, and economic feasibility studies to determine the recommended density and dwelling yield ranges for specific residential sectors. These were incorporated into the controls in clause 6.1 of the LEP, and such provisions required endorsement by the State Government.

The WVSR explored development opportunities for the Southern Buffer, including the potential for a mixed-use centre. It recognised that under existing conditions, flood depths exceed 1m across most of the Southern Buffer in a 1% AEP event and that a significant amount of compensatory cut and fill would be required to create two developable areas; one being 0.87ha at the northern end of the Southern Buffer (i.e., part of 10 Boondah Road), the other at the corner of Pittwater and Jacksons Rds. It also recognised the high biodiversity values of some of the Southern Buffer land. Although a draft concept plan and design principles were publicly exhibited, due to community opposition and a reluctance amongst landowners to collaborate, the concept did not progress any further. No future land use or dwelling yield was recommended for the Southern Buffer.

The WVSR Addendum was prepared to identify a forward path for remaining sectors which were not considered or not identified with a forward path by the WVSR. The WVSR Addendum utilised updated information on bushfire, flooding, biodiversity, and slope to produce new land capability mapping. It re-evaluated sector boundaries and recommended dwelling densities with dwelling yield ranges that were once again incorporated into subsequent amendments to LEP clause 6.1.

The WVSR Addendum was also informed by the Pittwater Open Space and Recreation Strategy in 2014, which highlighted a significant undersupply of active recreation areas in the Pittwater LGA and the importance of Release Areas providing places and facilities for recreation to meet the needs of their incoming populations. The estimated remaining open space to be provided in Warriewood Valley Release Area was identified as 6.32ha, comprising 1.69ha of linear open space and 4.63ha of active open space.

For the Southern Buffer, based on updated flood and bushfire information, biodiversity values, and the findings of the Open Space and Recreation Strategy, no residential potential was identified. Most of the Southern Buffer, including the subject site was given a land use designation of 'Active Recreation'. This outcome is reflected in the absence of any Southern Buffer land from the table in Clause 6.1(3) of the LEP which specifies the number of dwellings to be erected on specified land areas in the Release Area. It was also later reflected in the Warriewood Valley Development Contributions Plan which specifically identified 5 properties along Boondah Road, including the subject site, for purchase for active open space.

Following years of unsuccessful attempts to purchase this land, revisions to the Contributions Plan which came into effect on 1 July 2022 reflect a change in strategy to focus on embellishment of existing sports fields instead of purchasing of additional land to meet the needs of the population for active open space. While the subject site is no longer identified for purchase for active open space, this does not mean that site by default becomes suitable in a strategic planning sense for residential development. The planning strategy for Warriewood Valley set out in the WVSR and the WVSR Addendum was informed by land capability mapping and a suite of technical studies that recognised constraints to development such as flooding, bush fire and biodiversity. The site has never been allocated an endorsed forward path for residential development because of these characteristics. Any Planning Proposal to enable residential development would need to demonstrate that these characteristics can be properly managed through a design and impact assessment process that achieves a site that is suitable for the intended uses, without significant adverse economic, social, or environmental impact. This has not been demonstrated in this case.

Q5. Is the planning proposal consistent with any other applicable State and regional studies or strategies?

See earlier comments under Question 3.

Q6. Is the planning proposal consistent with applicable SEPPs?

The applicant's report states that the Planning Proposal does not conflict with any of the SEPPs.

Response - SEPP (Resilience and Hazards)

In relation to Chapter 2 Coastal Management of the SEPP (R&H), the site is mapped as Coastal Wetlands and Proximity Area for Coastal Wetlands (see Figure 9).

In accordance with Part 2.2 of the SEPP (R&H), Council must not grant consent for development unless it is satisfied that:

- for Coastal Wetlands, “sufficient measures have been, or will be, taken to protect, and where possible enhance, the biophysical, hydrological and ecological integrity of the coastal wetland or littoral rainforest”; and
- for Proximity Areas, “the proposed development will not significantly impact on -
 - (a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or
 - (b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland...”

The Planning Proposal has not demonstrated that a future development application will be able to satisfy Council in accordance with these requirements.



Figure 9 Coastal Wetlands and Littoral Rainforest Area Map

Part of the mapped Coastal Wetland falls within the proposed R3 zoned area that is intended to be developed, including areas subject to proposed earthworks, roads, parking, bioretention basins, stormwater filters and outlets, and management as a bushfire APZ. Wetland vegetation will necessarily be removed and altered stormwater flow regimes could have detrimental impacts on groundwater dependent ecosystems both within the site and the adjacent Warriewood Wetlands.

All of the site that is mapped Proximity Area will be subject to major earthworks to raise the land above flood planning levels which will significantly alter flows to and from the site. The applicant has not submitted information regarding the potential impact of the altered flow regimes on the Wetland or undertaken adequate groundwater investigation and water quality monitoring.

The Planning Proposal fails to provide a 15m wide extensively landscaped buffer to protect the adjacent wetlands in accordance with clause 6.6 of the Pittwater DCP (DCP) due to management requirements of the overlapping bushfire Asset Protection Zone (APZ). In order to function as an effective ecological buffer to the wetland, the DCP requires a 15m buffer consisting of landscaped

mounds with mass planting of native trees and shrubs. The buffer should be exclusive of any APZ, and not overlap with it as is proposed. This is consistent with conditions of approval set by the PAC for the adjacent Meriton development, requiring a 25m wide APZ outside of a 10m wide Vegetated Wetland Buffer Zone and no excavation works in the Wetland Buffer Zone.

The Planning Proposal does not take adequate measures to protect or enhance the hydrological and ecological integrity of the mapped Coastal Wetland or to minimise impact on the quantity and quality of surface and ground water flows to and from the adjacent Coastal Wetland.

Furthermore, any development within the mapped Coastal Wetland area would be Designated Development requiring an Environmental Impact Statement under the SEPP (R&H) provisions.

Having regard for deficiencies associated with the proponent's Strategic Bushfire Study, as discussed further under Q.7 below, concern exists in relation to the ability for a future development application to satisfy section 4.14 of the Environmental Planning and Assessment Act 1979.

Q7. Is the planning proposal consistent with applicable Ministerial Directions (s.9.1 directions)?

The applicant's report states the Planning Proposal would be consistent with all relevant Directions.

Response - Local Planning Direction 4.1 Flooding

The Planning Proposal is not consistent with clause 4.1(2) of Direction 4.1 as it seeks to rezone land within the flood planning area from a Rural zone to a Residential zone.

The Planning Proposal is not consistent with clause 4.1(3) of Direction 4.1 as it will:

- permit development that will result in significant flood impacts to other properties,
- permit a significant increase in the development and/or dwelling density of that land; and
- is likely to result in a significantly increased requirement for government spending on emergency management services, flood mitigation and emergency response measures.

Direction 4.1 requires planning proposals to give effect to and be consistent with the principles of the Floodplain Development Manual 2005 (the Manual), any flood study prepared by Council in accordance with the Manual, and the Considering Flooding in Land Use Planning Guidelines which introduced Standard Instrument LEP clauses related to Flooding.

The Manual promotes a merit approach to development decisions in the floodplain, taking into account social, economic, and ecological factors as well as flooding considerations. Its primary objective is to reduce the impact of private and public losses resulting from floods, and it looks to containing the potential for flood losses through application of planning and development controls and enabling councils to be responsible for determining the appropriate planning and development controls to manage future flood risk.

The Pittwater Development Control Plan (DCP) includes flood-related controls in section B3.11 Flood Prone Land. For land affected by flooding in High and Medium Risk Flood Precincts, the controls require that development must demonstrate, amongst other things, for all flood events up to the 1% AEP event: no adverse impacts on flood levels or velocities caused by alterations to the flood conveyance, no adverse impacts on surrounding properties, and no net loss of flood storage.

The Planning Proposal involves filling of most of the proposed R3 zoned land and the amount of fill is substantial to achieve flood planning levels for the townhouses of RL4.4m, well above existing ground levels of around 2-4m AHD. Without compensatory cut, this will result in a sizeable net loss of flood storage from the site which will need to be absorbed by other properties in the floodplain. The proponent has not demonstrated no net loss of flood storage. No volumetric calculations indicating the balance of cut and fill have been provided. The proponent has instead focused on modelling to demonstrate no adverse impacts on surrounding properties and compliance with specific DCP controls for Warriewood Valley Release Area under C6.1.

Development that results in a net loss of flood storage is contrary to specific controls established by Council to manage flood risk.

Cumulative loss of floodplain storage is an important consideration, particularly where land is not currently zoned for the type and intensity of development proposed. Any net loss of flood storage from the site, as a result of filling to achieve adequate levels for new houses and roads, requires other properties to absorb the storage lost. Flood levels and flows can increase on other properties and the combined, cumulative effects may be excessive if other sites in the catchment are similarly rezoned and filled for housing following any precedent set by this Planning Proposal.

Risks to life and property are critical considerations under Direction 4.1.

The results of Calibre's flood modelling of the Probable Maximum Flood (PMF) event indicate that at 195 minutes into a PMF storm event, internal driveways and Boondah Road become unsafe for small vehicles, and at 210 minutes into a PMF storm event water levels on the site have risen to 4.54m and will enter the ground floors of the townhouses, and anyone who has not evacuated will need to shelter in place on the first floor above. The applicant proposes a private evacuation alarm system (light and siren) set to trigger at a flood level 90 minutes into the PMF storm event allowing 75 minutes for people to pack and leave, and another sensor set to trigger at 180 minutes (different light and siren) indicating it is too late to leave and residents must shelter in place.

Evacuation will add pressure on a road system that is restricted in major flood events, and the efficacy of a private alarm system is questionable in terms of who maintains it in working order and how future residents will understand and respond to alarms when activated.

The NSW State Emergency Service (SES) provided advice (Attachment 2) on the Planning Proposal. The SES advice refers to the Ministerial Direction for Flooding and the NSW Floodplain Development Manual and identifies the following issues with Planning Proposal:

- zoning should not enable development that will result in an increase in risk to life, health or property of people living on the floodplain
- warning technology cannot be relied on to guarantee a faster response from the community and any advantage gained by the application of warning technology should be considered as a safety factor, not a potential for increasing development
- evacuation must not require people to drive or walk through flood water
- development strategies relying on deliberate isolation or sheltering in buildings surrounded by flood water are not equivalent, in risk management terms, to evacuation
- shelter in place is not a flood management strategy endorsed by the SES for future development, such an approach is only suitable to allow existing dwellings that are currently at risk to reduce their risk, without increasing the number of people subject to such risk
- SES is opposed to imposition of development consent conditions requiring private flood evacuation plans rather than application of sound land use planning and risk management
- SES is opposed to development strategies that transfer residual risk, in terms of emergency response activities, to the SES and/or increase capability requirements of the SES
- consent authorities should consider the cumulative impacts any development will have on risk to life and the existing and future community and emergency service resources.

The views of the SES, as the lead agency in NSW for planning for, responding to, and coordinating recovery from floods, should be paramount in land use decisions for flood-prone land. The agency has expressed a view that it does not support future development (i.e. new residential development enabled by rezoning) on flood prone land where early evacuation, private alarm systems and shelter in place strategies are necessary to manage flood risk. In other words, the Council should not support rezonings which place new communities in locations that expose people and property to risks associated with major floods and increase the potential burden on emergency services.

The proponent submitted a memorandum by Calibre dated 16 September 2022 in response to issues raised by the SES in its preliminary advice. Upon review of this further information, the SES advised it does not have any further comment.

The proponent further submitted a letter by SJB Planning dated 20 December 2022 and a letter by Calibre dated 20 December 2022, in which points were raised about the consistency of the flood risk assessment and evacuation requirements of the proposal with DPE's Flood Risk Management Manual and associated Flood Risk Management Guide EM01 (Guide EM01) published in February 2022, in particular the flow charts for rezoning and greenfield developments.

The SES confirmed that Guide EM01 is a draft, and the proposal has not satisfied the conditions outlined in Guide EM01, in particular:

- Noting that Boondah Road will be raised to the level of 1% AEP plus climate change, this area will still be a Low Flood Island. Low Flood Islands represent the highest risk to life.
- The proposed development does not have sufficient time to evacuate.
- The proposed modifications do not address the evacuation constraints.
- The flood evacuation constraints in an area should not be used as a reason to justify new development by requiring the new development to have a suitable refuge above the PMF. Allowing such development will increase the number of people exposed to the effects of flooding.

Since the release in draft of the abovementioned Guide EM01, catastrophic floods have occurred in NSW, and it is understood that the Department of Planning and Environment is giving further thought to the ways in which natural hazards can be better managed early in the strategic planning process.

The NSW government has explicitly recognised the important role of the planning system in supporting resilience in places and communities, and its' commitment to continuous improvement to the planning system to create greater resilience to chronic stresses and episodic shocks such as floods and bushfires.

Effective planning can and should reduce exposure to natural hazards. The Planning Proposal is fundamentally contrary to planning for resilience, as it will increase the number of people exposed to flood risk on the Northern Beaches.

Council's Floodplain Planning unit does not support the Planning Proposal and has indicated the proposal is not compliant with Local Planning Direction 4.1, identifying the following issues:

- the applicant has not demonstrated that the proposed development will not result in significant adverse impacts to other properties.
- land filling to raise the roads and building platforms appears to result in a net loss of flood storage in the mainstream flood lagoon floodplain.
- no volumetric figures showing the cut and fill balance have been provided.
- Council must be satisfied that the proposed development will convey water and have the same flood storage function as existing.
- it is not appropriate for Council to support future development (via rezoning) that uses shelter in place as a management strategy that will increase the flood risk and the number of people exposed to flooding.
- the applicant has not demonstrated that the proposed development will not result in a significantly increase requirement for government spending on emergency management services, flood mitigation or emergency response measures.

Council's Floodplain Planning unit also identified inconsistencies with:

- principles of the NSW Floodplain Development Manual 2005
- the Australian Disaster Resilience Handbook Collection
- Pittwater LEP Clause 5.21 Flood Planning

Given the level of filling proposed, loss of flood storage, exposure of people and property to flood risk, and the reliance on a shelter in place strategy with a private alarm system, the Planning Proposal is inconsistent with Pittwater Local Environmental Plan (LEP) clause 5.21 in that it will:

- result in significant adverse impacts to other properties or adverse cumulative impacts on flood behaviour in a way that results in detrimental increases in the potential flood affectation of other properties;
- adversely affect the safe occupation and efficient evacuation of people; and
- place people and property at risk or in intolerable conditions in the event of a major flood.

With regards to assessing flood risk for this proposal, Council's floodplain engineers have advised:

- when assessing flood risk, Council considers the full range of flood events up to the PMF
- during a PMF event, the roads will be cut off and evacuation will not be possible
- for events larger than 1% AEP + CC and up to the PMF event the proposal relies on shelter in place as the strategy to manage flood risk
- the DCP does allow for shelter in place when flood free evacuation during a PMF event is not possible, however as this is a rezoning application and not a development application, Council needs to consider SES's concerns and other relevant policies and guidelines. Shelter in place is generally only suitable for existing dwellings that are currently at risk to reduce their risk.

The imperative for Council to carefully consider the risks associated with development on flood prone land has increased markedly in recent years on account of extreme weather and flood events on the Northern Beaches and elsewhere in NSW and Queensland. On 28 June 2022, Council adopted the Northern Beaches Resilience Strategy, with a key priority and associated action being:

Priority 1. Avoid intensification of development, inappropriate development and incompatible land uses in areas exposed to natural and urban hazards.

Action 1a. Establish planning controls that limit intensification, inappropriate development and incompatible land uses to reduce or avoid risks from natural hazards.

This is a logical shift in policy toward a more considered and cautious approach to managing the risk posed by natural hazards, particularly in the context of climate change.

Response - Local Planning Direction 4.3 Planning for Bushfire Protection (Direction 4.3)

The referral response from Council's Bush Fire Management Coordinator highlights the following deficiencies in the Strategic Bush Fire Study submitted with the Planning Proposal:

- *"There is minimal consideration of the likelihood of a bush fire impacting the site and its potential severity on a landscape scale.*
- *The study relies on site specific protection measures rather than assessing the appropriateness of the proposal in the context of the surrounding landscape.*
- *The suitability of the proposal on the landscape should have stronger logical connections to informing the siting and layout of the proposed development.*
- *There is no assessment on the capacity of the road network either internally or externally to sufficiently handle evacuating residents and responding emergency services to/from the*

proposal; nor identification of evacuation routes or assessment of the potential for the development to become isolated during a fire event.

- *There is no assessment of the development impact on the provision or capacity of emergency services, other than minor references to the proximity of surrounding fire stations.*
- *There is no assessment of the provision of infrastructure services to the proposal as the study suggests that this should be the subject of a separate study.*
- *There is limited assessment of the impact of the proposal on neighbouring lands, and no consideration for managed lands to the south of the proposal to remain such in perpetuity.*
- *Site specific APZs are not contained within the development relying on adjoining road verges. Should any land with the proposal be vested to Council, Council may be burdened with the ongoing APZ management of these and/or adjoining road verges.*
- *The study indicates that perimeter roads within the proposal rely on a performance solution. Performance solutions should be accompanied with the appropriate Bush Fire Design Brief and/or Bush Fire Management Plan which has not been supplied."*

If the Planning Proposal proceeds through Gateway Determination, it will be formally referred to the Rural Fire Service for comment.

Site-Specific Merit

Section C – Environmental, social, and economic impact

Q8. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected because of the proposal?

The Applicant's report states that the Biodiversity Certification process will manage the potential impacts on identified threatened species, habitat, ecological communities, and that the masterplan for the proposal has been guided by the site's ecological constraints and bush fire management requirements with the perimeter road network providing a managed edge to the ecological values of the adjacent Wetland and a defensible perimeter for the development.

Response

The site contains significant biodiversity values including Threatened Ecological Communities, mapped Coastal Wetland and Proximity Area for Coastal Wetland, records of threatened species, threatened species habitats and fauna connectivity.

Areas along the site's western boundary and the south-western corner of the site are mapped on the Department of Planning and Environment's Biodiversity Values map which identifies land with high biodiversity value that is particularly sensitive to impacts from development and clearing. The mapping is part of the Biodiversity Offsets Scheme (BOS) thresholds and any vegetation clearing as part of future development will trigger entry into the BOS. The applicant has made application for BioCertification to the State Government and the Biodiversity Certification Assessment Report and accompanying Conservation and Vegetation Management Plans have been formally submitted to Council for comment.

The two identified Endangered Ecological Communities (EEC) on the site are:

- Bangalay Sand Forest
- Swamp Oak Floodplain Forest

The six identified threatened fauna species are:

- Grey-headed Flying-fox (*Pteropus poliocephalus*)

- Large Bent-winged Bat (*Miniopterus orianae oceanensis*)
- Eastern Cave Bat (*Vespadelus troughtoni*)
- Southern Myotis (*Myotis macropus*)
- Little Bent-winged Bat (*Miniopterus australis*)
- Powerful Owl (*Ninox strenua*).

Earthworks and clearing for the proposed development will directly impact all the Bangalay Sand Forest which covers around 0.23ha and is entirely within the proposed R3 zone residential area. The complete removal of this vegetation represents the loss of approximately 50% of the mapped extent of this EEC on the Northern Beaches. Nine hollow-bearing trees, some with hollows suitable for the recorded Southern Myotis will be removed. Whilst this vegetation is degraded, intact mature canopy remains. The layout of the proposed development fails to avoid or minimise impacts to this EEC. The BioCertification application recommends retirement of biodiversity credits or more likely payment into the State Government's Biodiversity Conservation Fund to offset the impact.

The Swamp Oak Floodplain Forest (SOFF) covers 0.44ha of the site and 0.18ha would be directly impacted by the proposed development. The remainder is located within the portion of the site proposed to be zoned C2 Environmental Conservation.

The six recorded threatened fauna species and their habitats will be significantly impacted and clearing will remove existing wildlife corridors through the site between core habitats in Warriewood Wetlands to the west and corridors along Narrabeen Creek to the east of the site.

In addition to the direct removal of vegetation, altered surface and groundwater flow regimes have potential to adversely impact ground water dependent ecosystems on the site and in the wetland.

Other potential impacts relate to 'edge effects' to the wetland and remaining SOFF associated with maintaining a 24m wide Bushfire APZ along the site's western boundary. The required 15m wide extensively landscaped buffer to the wetland should be outside of the APZ.

The referral response from Council's Biodiversity and Planning unit states:

"...the Planning Proposal is not supported for the following reasons:

- *Lack of measures to avoid and minimise impacts to threatened biodiversity, including the complete removal of Bangalay Sand Forest. It is noted that the BCAR states that the proposal will lead to the avoidance of the majority of mapped biodiversity values within the subject lots, however this is not correct as the full extent of BSF on site will be directly impacted, as well as impacts to six threatened fauna species and other native flora and fauna species.*
- *Regardless of the reduced development footprint, it appears that the development within the proposed R3 zone intersects the BV map / Coastal Wetland and as such, the current concept proposal for 10 & 12 Boondah Road would require an EIS.*
- *The current design is not sited and designed to avoid and minimise impacts to biodiversity. The proposal would result in a direct net loss of biodiversity. Potential impacts that would result from the proposal include locating dwellings, associated infrastructure, excavation and filling, and APZs within the mapped coastal wetland. Further impacts to biodiversity include the clearing of native vegetation and endangered ecological communities, impacts to threatened species habitats, reduction in local wildlife connectivity, indirect impacts associated within increased light and noise pollution, and impacts to ground water dependent ecosystems within the site and adjoining Warriewood wetlands.*
- *The requirement for the retention and enhancement of an ecological buffer to protect the mapped coastal wetland on site and to the adjoining Warriewood Wetlands needs*

amendment to achieve a suitable biodiversity outcome and reduce potential impacts to the adjoining wetland;

- *The lack of a 15 metre wide extensively landscaped buffer strip adjoining Warriewood Wetlands, exclusive of bushfire asset protection zone, and consisting of landscaped mounds with mass plantings of native trees and shrubs, locally indigenous canopy trees with native shrubs, locally indigenous canopy trees with native shrubs and groundcovers as required by the P21 DCP control 6.6 Landscape treatment of the Buffer Strip. ...*
- *Flooding, flood storage and water flows are of concern, and the areas of significant vegetation (trees), fauna habitats and wetland buffers should be retained must not be subject to any excavation / filling.*
- *The removal of wildlife corridors through and surrounding the site including direct connection to core habitats within Warriewood Wetlands, as well as connections to the east that form part of a wildlife corridor that extends further north along the Narrabeen Creek catchment. It is recommended that a corridor is provided in the northern boundary of the site, thereby retaining, enhancing and protecting areas of the TEC BSF.*
- *Potential for indirect and prescribed impacts to TECs, threatened species and their habitats*
- *Likelihood of altered surface and groundwater flow regimes, and therefore potential direct and indirect impacts to Groundwater Dependent Ecosystems (GDE) on the subject site and in the locality.*
- *A reliance within the BCAR that an appropriate storm water management plan will be prepared to avoid impacts on the TEC, and is not expected to impact on groundwater resources or groundwater dependent ecosystems.*

Therefore, the range of issues described above, as well as the loss of native tree canopy, will result in a future development that does not satisfy the applicable planning controls, and is not supported by Council's Biodiversity Planning section.

In addition, the offset obligations calculated as part of the Biodiversity Certification Assessment Report for the TECs and threatened species are not available on the Northern Beaches, and therefore will result in net loss of biodiversity within the Northern Beaches LGA."

Council's Catchments unit also raised concerns in relation to impacts on groundwater dependent ecosystems, earthworks in the buffer to the wetland, and the need for water quality monitoring and further groundwater and hydrological investigations to demonstrate that impacts on the downstream environment and the wetland can be suitably managed. The Catchments unit does not support the Planning Proposal as it is not in accordance with Local Planning Direction 4.2 Coastal Management or SEPP (Resilience and Hazards) 2021.

Q9. *Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?*

The proponent's report identifies potential impacts associated with flood and bushfire hazard, acid sulphate soils and contamination, and makes reference to various aspects of the design and layout of the proposed development and studies undertaken for the Planning Proposal as evidence that these potential impacts can be minimised and are within acceptable levels.

Response

As discussed earlier, in relation to flood hazard, the SES has raised significant concerns and does not support shelter in place or private alarm systems as a strategy to manage flood risk for future development on land not currently zoned for housing. Extensive filling of the site to achieve flood planning levels will result in net loss of flood storage in the floodplain and insufficient information has been provided to demonstrate that the proposed development will not result in adverse impacts to other properties, place people and property at risk or in intolerable conditions in the

event of a major flood, adversely affect the safe occupation and efficient evacuation of people, or significantly increase the requirement for government spending on emergency management, flood mitigation and emergency response measures.

As discussed earlier, in relation to bushfire hazard, Council's Bush Fire Management Coordinator has identified deficiencies in the Strategic Bush Fire Study submitted by the proponent.

The applicant's submissions in relation to acid sulphate soils and contamination are accepted.

Q10. Has the planning proposal adequately addressed any social and economic effects?

The applicant's report describes the proposed affordable housing, traffic impact assessment and access road network, and provision of open space with a playground and pedestrian link between Boondah Road and Warriewood Wetlands in relation to addressing social and economic effects.

Response

As discussed earlier, the Planning Proposal fails to include a suitable mechanism to give effect to an affordable housing contribution in accordance with Council's Policy and Contributions Scheme. These documents contemplate that dwellings secured for affordable housing are meant to come into Council ownership in perpetuity. Any residential uplift will require 10% of the dwellings to be affordable housing stock transferred into Council ownership. Amendments to Council's Affordable Housing Scheme and to Pittwater LEP to secure this contribution would need to be made in conjunction with a Planning Proposal being progressed to Gateway Determination, and eventually published as part of the rezoning.

Council's Transport Network Manager has provided a referral response on the Planning Proposal which indicates that the road design is acceptable subject to certain requirements which can be resolved at the more detailed application stage. Although the impact on the local road network is acceptable, the applicant is still required to provide confirmation that the modelling requirements of the RMS (now Transport for NSW) have been met, particularly with regards to potential impacts on the intersections of Mona Vale Road/ Pittwater Road and Pittwater Road/Warriewood Road. If the Planning Proposal proceeds through Gateway Determination, it will be formally referred to Transport for NSW for comment.

The proposed open space area including the playground will provide for the recreation needs of the new resident population. The playground and open space would form part of a community title and be constructed and maintained by the landholders. The playground and open space are not suitable for Council ownership as a park asset.

The proposed pedestrian pathway connection between Boondah Road and Warriewood Wetlands would be required to be constructed by the developer and dedicated to Council to ensure public access. The location of the pathway through the southern end of the site is potentially acceptable, however it should be separate to the internal road network and not cross any internal roads.

There are potential economic effects associated with the proposed C2 zoned land. While the applicant has stated that the proposed C2 zoned land is intended to remain in private ownership, without confirmation to indicate otherwise, there is a possibility that the C2 zoning could trigger acquisition and there is no funding mechanism for Council to purchase the land.

There is also no certainty as to who will be responsible for any ongoing supervision and/or maintenance of this land, or bushfire APZs and the buffer to the wetland, and it may be a further economic burden placed upon the Council.

Additionally, as discussed earlier in relation to flood hazard, the proposed flood responses are insufficient and transfer residual risk in terms of emergency response to the SES, thereby increasing demands on SES resourcing and capabilities and potentially increasing risk to life, health and property for both existing and future communities.

Section D – Infrastructure (Local, State and Commonwealth)

Q11. Is there adequate public infrastructure for the planning proposal?

The referral response from Council's Infrastructure unit identifies the following local infrastructure requirements if a rezoning to permit an additional 45 dwellings on the site were to proceed:

- Reconstruction of Boondah Road

The applicant's report acknowledges the requirement for raising of Boondah Road to the level of 1% AED plus climate change. If the Planning Proposal is to proceed, the full width of Boondah Road for the entire length of the site's frontage would need to be constructed up to the level required for flood evacuation (1% AED plus climate change) including suitable transitions to the existing carriageway alignments.

- Payment of development contributions towards open space infrastructure and community facilities in accordance with the applicable Development Contributions Plan.

An additional 45 dwellings will represent around 120 additional residents, or an increase of around 2.2% in the total population forecast for Warriewood Valley. Council's Parks unit has advised that this will place additional pressure on active recreation facilities, but in and of itself does not justify further augmentation of existing facilities in Warriewood Valley or the acquisition of additional ones.

The approved design of a new community facility in Warriewood Valley will once constructed provide sufficient floorspace to accommodate the additional resident population if the Planning Proposal were to proceed.

Section E - State and Commonwealth interests

Q12. What are the views of state and federal public authorities and government agencies consulted in order to inform the Gateway determination?

The NSW SES was the only agency consulted and their advice is not supportive of the Planning Proposal.

CONSULTATION

A non-statutory (Pre-Gateway) public exhibition of the Planning Proposal was undertaken from 29 July 2022 to 12 August 2022.

A total of eight submissions (one late) were received. The issues raised are summarised in Attachment 3. Two of the submissions indicated support for the proposal. The issues raised relate to:

- loss of green space;
- impact on wildlife and environment, including wetland;
- traffic and road safety;
- building height out of character;
- potential increase in run-off and flooding of nearby properties;
- negative impact on property values;
- need for master planning for development of other properties along Boondah Road;
- disruption from construction;
- opposition to affordable housing; and
- flooding impact, roads out being cut off by floodwater.

TIMING

The Planning Proposal was lodged via the NSW Government's Planning Portal. The applicant is able to request a rezoning review if Council has not indicated support for the proposal within a certain timeframe, which in this case is 115 days for a planning proposal categorised as Complex due to its inconsistency with Council's endorsed LSPS and the relevant regional and district plans.

The proponent paid the application fees on 18 July 2022 and Council completed its initial check of on 22 July 2022. Based on that date, the 115 day deadline passed 14 November 2022.

The Northern Beaches Planning Panel (the Panel) first considered the proposal at its meeting on 16 November 2022 and agreed to defer its decision at the request of the applicant. At its meeting on 21 December 2022, the Panel determined its advice to Council to reject the proposal.

At the time of writing this report, the proponent had not sought a rezoning review.

LINK TO STRATEGY

The assessment in this report relates to the Community Strategic Plan Outcomes of:

- Protection of the environment - Goal 1 Our bushland, coast and waterways are protected for their intrinsic value
- Protection of the environment - Goal 2 Our environment is resilient to natural hazards and climate change
- Housing, places and spaces - Goal 10 Our community has access to diverse and affordable housing options to meet their current and evolving needs

FINANCIAL CONSIDERATIONS

If Council resolves to reject the Planning Proposal and the development does not proceed, there will be minimal financial impact on Council, with the possible exception of costs associated with any review. If the proposal were to proceed, financial considerations for Council include potential costs associated with flood mitigation and emergency management, response and recovery after flood events, possible acquisition obligations for the C2 zoned land, and ongoing supervision and/or maintenance of bushfire APZs and the buffer to the wetland. Any future development consent would require a contribution in accordance with the Warriewood Valley Development Contributions Plan. The developer would be responsible for works to raise and widen Boondah Road and construct the children's playground.

SOCIAL CONSIDERATIONS

There is potential for significant adverse social impacts as a result of flooding. The proposal relies on a private alarm system for early evacuation in the event of a major flood. For those unable to evacuate in time, when the evacuation route becomes impassable in floods above 1% + climate change, the proposal relies on shelter in place. In a PMF event this would involve sheltering on the upper levels of the proposed townhouses. At a fundamental level, rezoning land to allow housing in a location that exposes people and property to flood hazards represents increased risk for the community and potentially increases the burden on emergency services. The SES has raised significant concerns about the proposal.

There is no overriding social benefit in terms of housing provision. Council is readily able to meet its housing targets through a methodical, strategic, principles-based approach to increasing housing capacity in and around its most accessible centres, including an additional 1300 dwellings in Brookvale. There is no need to rezone the subject land in Warriewood, especially given the site-specific constraints and potential environmental, social, and economic impacts.

The proposal fails to provide for the required affordable housing contribution, dedicated to Council in perpetuity.

ENVIRONMENTAL CONSIDERATIONS

The likely environmental impacts of the proposed development include loss of EEC vegetation and associated impacts on threatened species, habitat and wildlife corridors, altered groundwater flow regimes with potential impacts on groundwater-dependent ecosystems both on the site and in the adjacent wetland, and potential edge effects on the wetland and remaining EEC vegetation on the site due to failure to provide adequate vegetated buffers.

The proposal does not take adequate measures to protect or enhance the hydrological and ecological integrity of the mapped Coastal Wetland or to minimise impact on the quantity and quality of surface and ground water flows to and from the adjacent Coastal Wetland.

Extensive filling of the site to achieve flood planning levels will result in net loss of flood storage in the floodplain, and it has not been demonstrated that the proposed development will not result in adverse flood impacts to other properties or contribute to significant cumulative impacts.

GOVERNANCE AND RISK CONSIDERATIONS

By far the most significant risk consideration for Council is the increased exposure to flood hazard for the community, and for emergency services.

Other risks considerations if the proposal were to proceed relate to biodiversity and water quality impacts, and the ongoing conservation management of the C2 zoned land.

If Council decides to reject the Planning Proposal, it is possible that the applicant will request a rezoning review. If that occurs, the decision as to whether the Planning Proposal can proceed will rest with the Sydney North Planning Panel.

ITEM 12.2	PLANNING PROPOSAL FOR 6 MITCHELL ROAD, PALM BEACH - PEX2022/0003
REPORTING MANAGER	EXECUTIVE MANAGER STRATEGIC & PLACE PLANNING
TRIM FILE REF	2023/141344
ATTACHMENTS	<ol style="list-style-type: none"> 1 ⇒ Planning Proposal - 6 Mitchell Road, Palm Beach (Included In Attachments Booklet) 2 ⇒ Heads of Agreement between Pittwater Council and Trustees of the Bible Garden (Included In Attachments Booklet) 3 ⇒ Submissions Response Table (Included In Attachments Booklet) 4 ⇒ Local Planning Panel - Minutes, 14 December 2022 (Included In Attachments Booklet) 5 ⇒ Probity Audit Report (Included In Attachments Booklet)

SUMMARY

NOTE: *This item was listed on the agenda but not dealt with at the 28 February 2023 Council Meeting*

PURPOSE

To seek endorsement to submit a Planning Proposal for land at 6 Mitchell Road, Palm Beach to the Department of Planning and Environment for a Gateway Determination.

EXECUTIVE SUMMARY

On 12 September 2022, Council received a proponent-initiated Planning Proposal for 6 Mitchell Road, Palm Beach (Lot 1, DP 1086858). The application was submitted by Planning Hub.

6 Mitchell Road is a privately-owned property and is adjacent to 6A Mitchell Road which is known as the 'Bible Garden' and is owned by Council. The 'Bible Garden' is a garden containing plants mentioned in the bible which has been open to the public since it was established in the 1960s. The land had previously been settled in a charitable trust. In 2004, the trustees of the Bible Garden sought to subdivide the land to create separate lots for the existing Bible Garden at the front (southern portion) of the site and the residential use at the rear (northern portion) of the site such that:

- The Bible Garden area was to be vested in Council as community land and zoned as a public reserve.
- The balance of the land would continue to be used for residential purposes.

This land is naturally subdivided by a cliff. The rear of the land is traversed diagonally by a right of way and driveway. Over the cliff section, the right of way is provided by an elevated concrete driveway. The driveway provides residences to the east of the site with access to Mitchell Road. A cottage exists under the elevated section of driveway. A viewing platform exists above the existing house/parking space for the house.

The steep topography and the overhanging viewing platform create challenges in relation to a two-dimensional subdivision. When the land was subdivided, the viewing platform for the Bible Garden (that overhangs the existing house/parking space for the house) was included in the front lot (6A Mitchell Road) and the house and parking space underneath the viewing platform was included in the rear lot (now 6 Mitchell Road and the subject of the Planning Proposal) via stratum subdivision.

On 30 March 2007, 6A Mitchell Road was rezoned under the Pittwater Local Environmental Plan 1993, from Zone No. 2 (a) (Residential "A") to Zone No 6 (a) (Existing Recreation "A"). This included the land above 74.5AHD.

The lower allotment containing the dwelling house, 6 Mitchell Road, remained Zone No. 2 (a) (Residential "A"). This includes the portion of 6 Mitchell Road below 74.5 AHD.

On 26 June 2014, Pittwater Local Environmental Plan 2014 (Pittwater LEP 2014), prepared under the Standard LEP Template, came into effect, repealing Pittwater LEP 1993.

The provisions in the Standard Instrument LEP didn't allow for as much flexibility in the zoning of this unique site. This resulted in the properties being zoned as follows:

- 6 Mitchell Road, Palm Beach (the subject of this Planning Proposal application) – The land was rezoned from Zone No. 2 (a) (Residential "A") as follows:
 - majority of the site zoned C4 Environmental Living; and
 - the portion of the site below 74.5AHD, directly underneath the Bible Garden's viewing platform, became zoned RE1 Public Recreation.

Under the RE1 Zone, 'dwelling house' is prohibited.

- 6a Mitchell Road, Palm Beach was rezoned from Zone No 6 (a) (Existing Recreation "A") to RE1 Public Recreation.

On 25 January 2021, a Development Application (DA2020/1596) was lodged to construct a dwelling house, including a swimming pool, driveway, and garage on 6 Mitchell Road. Components of the dwelling house, primarily the garage and lift were proposed to be sited on that portion of land zoned RE1 Public Recreation.

On 18 August 2021, the DA2020/1596 was refused. The primary reason for refusal was that the residential development proposed to be built on that portion of the site zoned RE1 Public Recreation is prohibited under the zone.

On 12 September 2022, Planning Hub submitted Planning Proposal application (PEX2022/0003) for 6 Mitchell Road Palm Beach. The application seeks to amend the Pittwater Local Environmental Plan 2014 (PLEP 2014) to include as an additional permitted use, "dwelling house" on that portion of the site zoned RE1 Public Recreation and to restrict any future residential development on 6 Mitchell Road to a height of 74.5AHD.

Allowing a "dwelling house", as an additional permitted use, on a minor portion of the site that is zoned RE1 Public Recreation due to it being underneath the Bible Garden's overhang will not result in any of the following:

- a practical reduction of land that is to be used for public open space or recreational purposes;
- endangering or weakening the natural environment for recreational purposes; or
- diminishing public use of, or access to, public open space resources.

The application was placed on non-statutory exhibition for three weeks, from 28 September 2022 to 21 October 2022 inclusive. Six submissions were received.

Council staff have considered the request, prepared a Planning Proposal and conducted an assessment of the Planning Proposal against the Department of Planning & Environment's (the 'Department') *Planning Proposals: A Guide to Preparing Planning Proposals* which confirms that the proposal provides sufficient strategic merit and overall demonstrates site-specific merit.

On 14 December 2022, the Northern Beaches Local Planning Panel considered the Planning Proposal and supporting documentation. The Local Planning Panel has recommended that Council support the Planning Proposal.

The Planning Proposal prepared by staff is now provided to Council for consideration (Attachment 1). If supported, the Planning Proposal will be forwarded to the Department of Planning and Environment for Gateway Determination. The Planning Proposal will be placed on statutory public exhibition in accordance with any Gateway approval. The outcomes of the statutory public exhibition will be reported to Council for consideration.

RECOMMENDATION OF ACTING DIRECTOR PLANNING AND PLACE

That Council:

1. Submit the Planning Proposal for 6 Mitchell Road, Palm Beach to the Minister for Planning for Gateway Determination.
 2. Publicly exhibit the Planning Proposal in accordance with any Gateway determination by the Minister for Planning.
-

REPORT

BACKGROUND

6 Mitchell Road (the subject of the Planning Proposal) and 6A Mitchell Road were previously one residential allotment (known as 6 Mitchell Road, Lot 2 DP 213975) with a total site area of 1,196m².

The land is naturally bisected by a cliff. The lower level of the property contained a dwelling house, and the upper level contained a garden. This garden, known as the Bible Garden, was established in 1962 and was so named as the garden contains plants mentioned in the bible. It has been open to the public for weddings, baptisms, and informal visits since it was established in the 1960s. The land had previously been settled in a charitable trust.

From 1972 to 1994, Deaconess Beatrice Violet Robinson, as curator of the garden and Trustee of the Bible Garden Memorial Trust, maintained the Bible Garden for the public's enjoyment.

Heads of Agreement

Following the death of Beatrice Robinson in 1994, the Trustees of the Bible Garden approached the then Pittwater Council seeking advice regarding the retention of the Bible Garden curtilage whilst excising the remaining portion of land containing the dwelling house.

As a result, a Heads of Agreement (Attachment 2) was signed by Pittwater Council and the Trustees of the Bible Garden on 9 February 2004 to investigate opportunities to subdivide the property as follows:

- Excise the portion of land containing the existing dwelling from the lot containing the Bible Garden curtilage.
- The new lot containing the existing dwelling being sold as a residential allotment.
- Retain the lot containing the Bible Garden curtilage.

The Heads of Agreement included concept sketches to identify the future intent and vision of the land. The portion of land between the two allotments had been identified as the location of a potential future garage for the dwelling. A restrictive covenant would control the height of the garage and require the roof to be of load-bearing capacity suitable for use as a potential future viewing platform from the Bible Garden. A concept sketch from the Heads of Agreement is in Figure 1. The garage and potential viewing platform are identified in the red bubble.

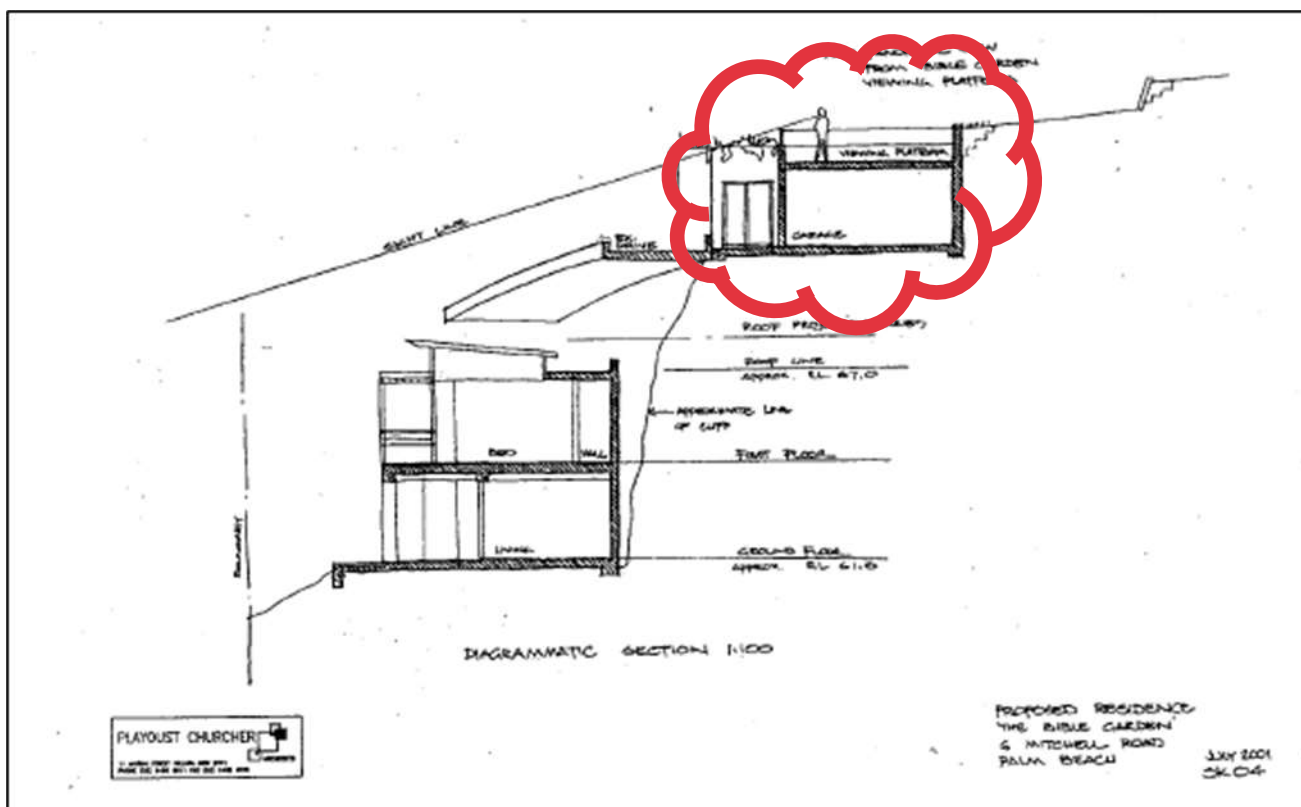


Figure 1: Concept Sketch from Heads of Agreement

Development Consent for Subdivision of Land

On 11 November 2004, a Development Application (N0824/04) to subdivide the land into two allotments was lodged with Council. This application was consistent with the signed Heads of Agreement. On 4 April 2005, Council consented to the subdivision into two allotments subject to conditions.

The steep topography of the site and the need to maintain the viewing platform created challenges in relation to a two-dimensional subdivision, resulting in the creation of the two properties via stratum subdivision. A stratum subdivision creates allotments which are limited in height or depth, allowing properties to be effectively created on top of each other. The subdivision created the following allotments:

- Lot 1 DP1086858, now known as 6 Mitchell Road – Containing the existing dwelling and parking space underneath the viewing platform at the rear of the lot.
- Lot 2 DP1086858, now known as 6A Mitchell Road – Containing the Bible Garden and the viewing platform above the parking space on Lot 1.

A location map of 6 Mitchell Road (the subject of the Planning Proposal) and 6A Mitchell Road (the Bible Garden) is in Figure 2. The portion of land between the two allotments, identified in the Heads of Agreement for the garage and viewing platform, is subdivided in stratum, and is split between both allotments. This land is identified with the white bubble. In relation to this part of the land, the Deposited Plan and registered easements stipulate:

- Lot 1 (6 Mitchell Road) is limited in title to a height of 74.5 AHD.
- Lot 2 (6A Mitchell Road) is limited in title to a depth of 74.5 AHD.



Figure 2: Location Map of 6 and 6A Mitchell Road, Palm Beach

6A Mitchell Road was transferred into Council ownership on 7 February 2006 and classified as community land under Council's Land Register in accordance with the *Local Government Act 1993*. Although Council owns this land, it is managed by the Friends of the Bible Garden Memorial via a Management Deed signed by Council, The Trustees of the Bible Garden and then owner of 6 Mitchell Road on 23 March 2006.

On 18 December 2006, Council adopted the Bible Garden - Palm Beach Plan of Management, which lists what land uses are permissible (as exempt development or with consent) under this adopted plan. A copy of the signed Management Deed is also appended to the adopted Plan of Management.

Figure 3 is an excerpt from the Planning Proposal and is a picture taken from 6A Mitchell Road (the Bible Gardens) looking north over 6 Mitchell Road. The red string (shown in the white bubble) identifies the stratum boundary between the properties at a height of 74.5 AHD. The yellow string represents the existing ground level (76.3 AHD) of the viewing platform on the Bible Gardens.



Figure 3: Extract from Planning Proposal - Site picture with height poles

Pittwater Local Environmental Plan 1993

On 30 March 2007, 6A Mitchell Road was rezoned under the Pittwater Local Environmental Plan 1993, from Zone No. 2 (a) (Residential "A") to Zone No 6 (a) (Existing Recreation "A"). This included the viewing platform land above 74.5 AHD.

The lower allotment containing the dwelling house, 6 Mitchell Road, remained Zone No. 2 (a) (Residential "A"). This includes the portion of land below 74.5 AHD.

An extract of the zoning map, obtained from the adopted Bible Garden Plan of Management, is in Figure 4.



Figure 4: Zoning under Pittwater LEP 1993

Pittwater Local Environmental Plan 2014

On 26 June 2014, the Pittwater Local Environmental Plan 2014 (Pittwater LEP 2014), prepared under the Standard LEP Template, came into effect, repealing Pittwater LEP 1993.

This resulted in the properties being zoned as follows:

- 6 Mitchell Road, Palm Beach (the subject of the Planning Proposal) – The land was rezoned from Zone No. 2 (a) (Residential “A”) as follows:
 - majority of the site is zoned C4 Environmental Living; and
 - the portion of the site directly underneath the Bible Garden’s viewing platform (below 74.5 AHD) became zoned RE1 Public Recreation.
- 6A Mitchell Road, Palm Beach was rezoned from Zone No 6 (a) (Existing Recreation “A”) to RE1 Public Recreation.

An extract of the Pittwater LEP 2014 zoning map is in Figure 5.

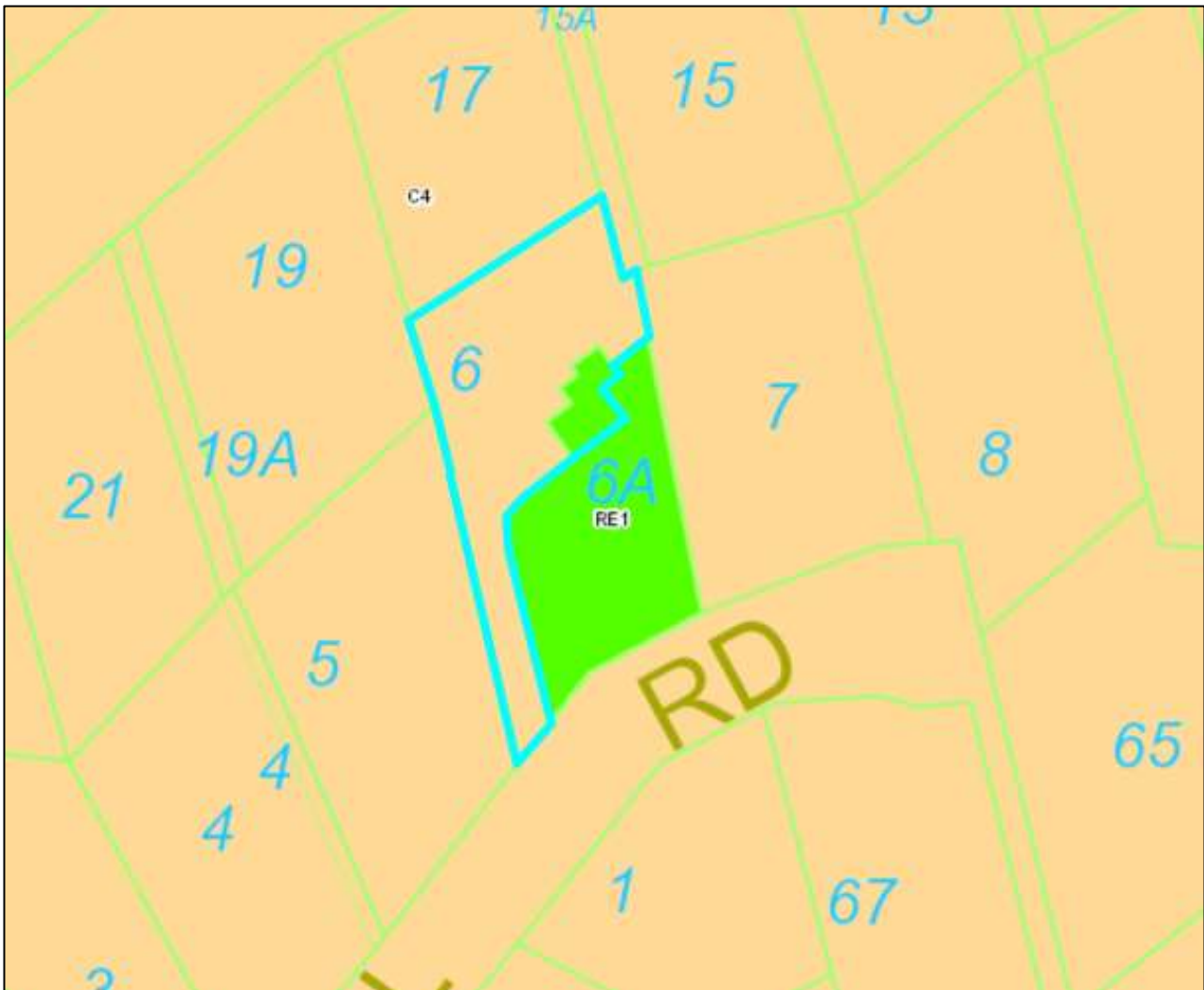


Figure 5: Zoning Map Pittwater LEP 2014

Recent Development Application

On 25 January 2021, Council received a Development Application (DA2020/1596) for 6 Mitchell Road to construct a dwelling house including a swimming pool, driveway, and garage.

Components of the dwelling house, primarily the garage and lift were proposed to be sited on that portion of land zoned RE1 Public Recreation.

On 18 August 2021, the DA2020/1596 was refused. The primary reason for refusal was that the residential development proposed to be built on that portion of the site zoned RE1 Public Recreation is prohibited under the zone.

Pre-Lodgment Meeting

Following refusal of DA2020/1596, pre-lodgement meetings were held between the landowner's legal representatives and Council on 19 August and 14 December 2021 to discuss the RE1 zoning on the portion of the land.

Site Description

The subject site, known as 6 Mitchell Road, Palm Beach (Lot 1, DP 1086858), is a battle axe shaped lot located on the northern side of Mitchell Road. Access to this property is provided via an elevated driveway from Mitchell Road along the western (side) boundary. This elevated driveway also provides access to 15 Florida Road, located north-east of the subject site (see Figure 6).

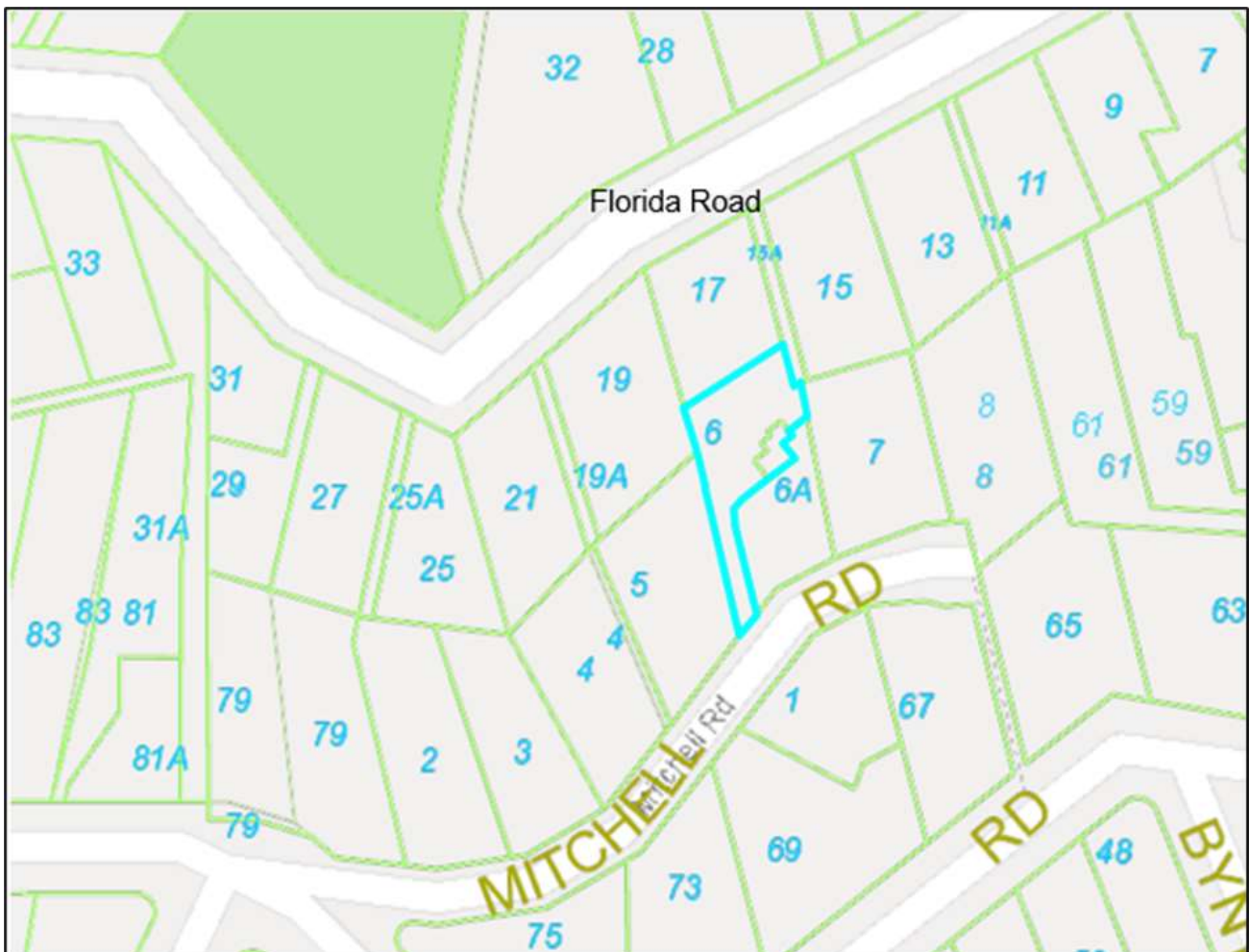


Figure 6: Locality Map

An existing dwelling is located on the lower portion of the subject site. Pedestrian access into the dwelling from Mitchell Road is via stairs sited beside the elevated driveway.

6 Mitchell Road is Zoned C4 Environmental Living and RE1 Public Recreation under the Pittwater LEP 2014. The surrounding Properties are a mix of established low density residential areas zoned C4 Environmental Living.

The Bible Garden at 6A Mitchell Road not only abuts this land but overhangs directly above a portion of the subject site from a depth of 74.5 AHD. 6A Mitchell Road (inclusive of the overhang) is a locally listed heritage item. Due to the nature of the stratum subdivision, the portion of the subject site underneath the Bible Garden overhang is also listed as a heritage item. A picture showing the relationship between the Bible Garden overhang and the portion of 6 Mitchell Road underneath is in Figure 7 (shown in the white bubble).



Figure 7: Location of Bible Garden overhang between 6 and 6A Mitchell Road

The Proposal

On 12 September 2022, Council received a proponent-initiated Planning Proposal for 6 Mitchell Road, Palm Beach (Lot 1, DP 1086858), submitted by Planning Hub.

The intent of the Planning Proposal is to amend the Pittwater LEP 2014 to include an additional permitted use of a 'dwelling house' on the RE1 zoned portion of the site (being the land below the Bible Garden viewing platform) to facilitate future residential development in line with the intended use of the site as outlined in the Heads of Agreement, signed 9 February 2004, between the Trustees of the Bible Garden and Pittwater Council.

A provision is also proposed restricting the building height of any future residential development on the site to 74.5 AHD, ensuring that the views of Palm Beach from the Bible Gardens are preserved.

Assessment Of Planning Proposal

An assessment of the Planning Proposal was undertaken in accordance with the Department of Planning and Environment's Local Environmental Plan Making Guideline 2022, as follows.

Part 1- Objectives or Intended Outcomes

The objectives and intended outcomes of the Planning Proposal are to seek an amendment to PLEP 2014 to allow a section of the subject site, zoned RE1 Public Recreation, to permit development for the purposes of a dwelling house; and to seek that residential development on the site cannot exceed a height of 74.5 AHD.

Applying the rules of the Standard LEP Template required that land, including land beneath 74.5 AHD under the Bible Garden overhang was zoned RE1 Public Recreation under Pittwater LEP 2014.

This change in zoning under Pittwater LEP 2014 resulted in the prohibition of a dwelling house on that portion of site zoned RE1, contrary to the signed Heads of Agreement.

The Planning Proposal seeks to rectify this zoning prohibition, to permit a dwelling house on a small portion of the land. This is considered reasonable and in keeping with the signed Heads of Agreement upon which Council received dedication of the Bible Garden land.

Imposing a building height of 74.5 AHD for any future residential development on the subject site is also appropriate and is consistent with the signed Heads of Agreement.

The Planning Proposal is site-specific and can only be applied to 6 Mitchell Road, Palm Beach.

Part 2 – Explanation of Provisions

The Planning Proposal amends the following provisions of the Pittwater LEP 2014:

- Additional Permitted Uses Map for the subject site (Sheet APU_015) to identify the portion of the site zoned RE1 Public Recreation for additional permitted uses referenced in Schedule 1 of LEP.
- Schedule 1 to include a provision relating to the subject site that would permit development for the purposes of a dwelling house. Schedule 1 is to also detail that any future residential development on the site cannot exceed a height of 74.5 AHD.

The amendments support the creation of an additional permitted use for a dwelling house on that portion of the land currently zoned RE1. This is best served by amending the Additional Permitted Uses Map, to identify 6 Mitchell Road as referenced in Schedule 1 of Pittwater LEP 2014.

Currently, the Height of Building Map and Clause 4.3 Height of Buildings under Pittwater LEP 2014 applies to the land. The proposal to require that any future residential development on the site cannot exceed a height of 74.5 AHD by way of Schedule 1 is appropriate. This will apply to all of 6 Mitchell Road and not just the portion of the site zoned RE1. This restriction will apply in addition to the existing height provisions of the Pittwater LEP 2014 which will remain unchanged.

The measurement of 74.5 AHD ensures that any future development is below the level of the Bible Gardens and thus retains significant and important views to the ocean, Pittwater and beyond.

Accordingly, it is proposed to amend the Explanation of Provisions to read as follows:

- a) Amend the Pittwater LEP 2014 Additional Permitted Uses Map for the subject site 6 Mitchell Road, Palm Beach (Sheet APU_015) to identify the site for additional permitted uses referenced in Schedule 1 of Pittwater LEP 2014.

- b) Amend Schedule 1 of the Pittwater LEP 2014 to include a provision for 6 Mitchell Road, Palm Beach:
- Permit development for the purposes of a dwelling house on that portion of the land zoned RE1 Public Recreation.
 - In addition to any other provision in this Plan, any future residential development on 6 Mitchell Road, Palm Beach cannot exceed a height of 74.5 AHD.

Part 3 – Justification

Strategic Merit

Section A – Need for the Planning Proposal

Q1. Is the Planning Proposal a result of an endorsed Local Strategic Planning Statement, Strategic Study or report?

The Planning Proposal is not the result of the Northern Beaches Local Strategic Planning Statement, strategic study, or report.

The proposal is consistent with the Heads of Agreement signed in 2004 by Pittwater Council and the then owners of the land. It is also consistent with several objectives and priorities within the Northern Beaches Local Strategic Planning Statement - Towards 2040 (detailed in Q4 below).

The proposal will enable appropriate residential development that recognises the heritage significance of the site and surrounding area, and will not adversely impact on the ecological, cultural, or scenic significance of the site and surrounding area.

Q2. Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Yes, a Planning Proposal is the only way of achieving the objectives and intended outcomes for this site that is also consistent with the signed Heads of Agreement.

The signed Heads of Agreement included a condition that any future residential development cannot exceed 74.5 AHD.

Allowing a 'dwelling house' as an additional permitted use, on a minor portion of the site that is zoned RE1 Public Recreation will not result in any of the following:

- a practical reduction of land that is to be used for public open space or recreational purposes;
- endangering and weaken the natural environment for recreational purposes; and
- diminishing public use of, or access to, public open space resources.

Section B - Relationship to Strategic Planning Framework

Q3. Will the Planning Proposal give effect to the objectives and actions of the applicable regional, or district plan or strategy (including any exhibited draft plans or strategies)?

The Planning Proposal is consistent with both the Greater Sydney Region Plan and the North District Plan.

The Planning Proposal will also achieve the following objectives under the Greater Sydney Region Plan:

- Objective 7: Communities are healthy, resilient and socially connected

- Objective 13: Environmental Heritage is identified, conserved and enhanced
- Objective 28: Scenic and cultural landscapes are protected
- Objective 31: Public Open Space is accessible, protected and enhanced

Q4. Is the planning proposal consistent with a council's local Strategy or other local strategic plans?

The Planning Proposal is consistent with the Northern Beaches Local Strategic Planning Statement (LSPS). The additional height restriction will ensure that views to Palm Beach from the Bible Garden are preserved and there is minimal impact on the heritage significance of the Bible Garden.

The Planning Proposal is most consistent with the following priorities of the LSPS:

- Priority 6 - High quality open space for recreation
- Priority 11 - Community facilities and services that meet the changing community needs
- Priority 18 - Protected, conserve and celebrated heritage.
- Priority 29 - A thriving, sustainable tourism economy

Q5. Is the planning proposal consistent with applicable State Environmental Planning Policies (SEPPs)?

The Planning Proposal is not inconsistent with the State Environmental Planning Policies (SEPP) as listed in the Table below:

SEPPs (as at March 2022)			
Focus Areas	State Environmental Planning Proposal	Applicable	Is the Planning Proposal consistent with SEPP?
Housing	Housing SEPP	N/A	N/A
Transport and Infrastructure	Transport and Infrastructure SEPP	N/A	N/A
Primary Production	Primary Production SEPP	N/A	N/A
Biodiversity and Conservation	Biodiversity and Conservation SEPP	YES	YES
Resilience and Hazards	Resilience and Hazards SEPP	YES	YES
Industry and Employment	Industry and Employment SEPP	N/A	N/A
Resources and Energy	Resources and Energy SEPP	N/A	N/A
Planning Systems	Design Quality of Residential Apartment Development	N/A	N/A
	Precinct SEPPs		
	<ul style="list-style-type: none"> • Eastern Harbour City SEPP 	N/A	N/A

	• Western Parkland City SEPP	N/A	N/A
	• Central River City SEPP	N/A	N/A
	• Regional SEPP	N/A	N/A
	Codes SEPP	N/A	N/A
No.65	Design Quality of Residential Apartment Development	N/A	N/A
	State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004	YES	YES
	(State Environmental Planning Policy (Exempt and Complying Development Codes) 2008	YES	YES

Q6. Is the Planning Proposal Consistent with Applicable Ministerial Directions (Section 9.1 Directions)?

Apart from the Ministerial Direction 1.4 Site Specific Provisions, the Planning Proposal is consistent with the applicable Local Ministerial Directions. Direction 1.4 Site Specific Provisions, reads as follows:

- (1) *A planning proposal that will amend another environmental planning instrument in order to allow particular development to be carried out must either:*
- (a) *allow that land use to be carried out in the zone the land is situated on, or*
 - (b) *rezone the site to an existing zone already in the environmental planning instrument that allows that land use without imposing any development standards or requirements in addition to those already contained in that zone, or*
 - (c) *allow 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.*

A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Planning Secretary (or an officer of the Department nominated by the Secretary) that the provisions of the planning proposal that are inconsistent are of minor significance.

The Planning Proposal seeks to allow an additional permitted use of 'dwelling house' on that part of the land zoned RE1 Public Recreation and add an additional height restriction to the land.

The proposed amendments are consistent with the Heads of Agreement and the inconsistency with Direction 1.4 Site Specific Provisions is of minor significance and limited to this property.

Site-Specific Merit

Section C- Environmental, Social and Economic Impact

Q7. 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?

6 Mitchell Road Palm Beach is identified on the Pittwater LEP 2014 Biodiversity Map - Sheet BIO_015, and as a result calls up Clause 7.6 Biodiversity under the LEP.

A Flora and Fauna Assessment by EcoLogical Australia (May 2022) and an Arborist Report by Arbosaw (June 2022) accompanied the Planning Proposal application.

The Flora and Fauna Assessment undertook a threatened species 'test of significance' assessment incorporating the following:

- On ground surveys on 18 August and 3 September 2019, and 14 May 2022.
- Bionet searches for flora, fauna and endangered populations to identify if there were previous records of threatened species occurring within the local area using a 10km radius around the site.
- A review of the Planning Proposal and the proposed development it seeks to enable was evaluated for potential environmental impacts.

No threatened plant or animal species were found on and within immediate vicinity of this property.

Council's Senior Environment Officer - Biodiversity advised as follows:

The Biodiversity Planning team do not raise any other issues or concerns in relation to the current Planning Proposal.

I note the updated Flora & Fauna Assessment which has assessed the biodiversity values of the portion of the site zoned RE1 Public Recreation, and generally agree with the report findings, namely that a significant impact to the environment is unlikely and the NSW biodiversity Offset Scheme is not triggered. A range of suitable management and mitigation measures are also detailed within the Report that could be applied to any future development of the site.

The Planning Proposed is not likely to adversely impact on critical habitat, threatened species, populations, or ecological communities.

The Arborist Report concluded that the Planning Proposal is suitable from a tree impact perspective provided the recommendations are implemented during the approval of any future Development Application.

Q8. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

Geotechnical

The subject site is identified as being a Geotechnical Hazard H1 on the Geotechnical Hazard Map. A Geotechnical Report prepared by Davies Geotechnical Consulting Engineers (July 2022) accompanied the Planning Proposal application.

This report concludes that the geotechnical conditions of the site will not affect consideration of the Planning Proposal.

Heritage

A Heritage report by Weir Phillips (21 July 2022) accompanied the Planning Proposal application. The report concluded that the proposed additional permitted use within the small portion of land zoned RE1-Public Recreation will have no impact on the significance of the adjoining heritage item (Bible Garden) for the following reasons:

- *The proposed additional permitted use is in character with the original concept scheme envisaged when the site was subdivided and sold as part of the Heads of Agreement between Pittwater Council and the Trustees of the Bible Garden.*
- *The steep topography of the northern portion of the subject site is unusable by patrons of the Bible Garden. An additional permitted use in this portion of the site allows for a construction of a dwelling with a flat top structure (potential garage).*
- *Additional permitted use within the RE1 zoning will not result in a built form that when viewed from the most significant points at Mitchell Road and from within the Bible Gardens the dwelling will be concealed by the existing topography. There will be no visual impact from this perspective.*
- *The character of the Bible Garden, as a site enjoyed for quiet contemplation and appreciation of the magnificent outlook towards Palm Beach will be unaffected by the proposed additional permitted use within the RE1 zoning.*
- *The proposed additional permitted use within the RE1 zoning is unlikely to reduce the user's ability to interpret the cultural landscape of the Bible Garden within its context.*
- *From Palm Beach and surrounds, a new dwelling built as a result of the additional permitted use in RE1 would be visible as one of a number of residential developments within the escarpment behind Palm Beach as a result of the proposed additional permitted use. Any new dwelling constructed would be visible in the landscape from these viewpoints but will have a lessened visual impact due to the scale and constrained nature of the site in comparison to other nearby residential developments. The visual impact from this perspective is considered to be minor.*
- *No other heritage items in the vicinity will be affected by future built form constructed as part of the planning proposal owing to the separation of these items from the subject site.*

Council's Heritage Officer concurs with the report's conclusions and supports the Planning Proposal from a heritage perspective as it will:

- Enable a dwelling to be constructed as envisaged by the Heads of Agreement between Council and the Bible Garden Trust; and
- Not impact upon the heritage significance of The Bible Garden; and
- Not impact upon important significant views from the garden out to Pittwater, Palm Beach and beyond.

View Loss

The proposal provided a detailed account of a study conducted in consultation with the Committee of the Friends of the Palm Beach Bible Garden. Height poles were installed to determine the potential impact of any future development on the RE1 zoned land. The study concluded that no portion of future residential development on this land will impede on existing views from the Bible Garden based on topography of the site and the existing covenants over the land.

The Planning Proposal seeks to add a height restriction for any future residential development on 6 Mitchell Road. This is in addition to the existing height provisions in the Pittwater LEP 2014 and will ensure that views from the Bible Garden are preserved and consistent with the signed Heads of Agreement.

Q9. Has the Planning Proposal adequately addressed any social and economic effects?

The Planning Proposal will facilitate residential development on the whole of 6 Mitchell Road, consistent with the signed Heads of Agreement.

The proposal will not result in additional dwellings being permitted on the land. It will facilitate a dwelling house, and development ancillary to a dwelling (e.g., a garage), to be permissible on that part of the land zoned RE1.

Limiting the height of future residential development on the land ensures no obstruction of views from the Bible Garden. This allows the land to be used and enjoyed by the owners and the community.

Section D - State and Commonwealth Interests

Q10. Is there adequate public infrastructure for the Planning Proposal?

6 Mitchell Road is an existing serviced property within an established neighborhood. The Planning Proposal will not result in additional dwellings being permitted on the land and will not require additional public infrastructure.

Q11. What are the views of state and Commonwealth public authorities consulted in accordance with Gateway determination?

If the Planning Proposal progresses and receives a Gateway Determination, the following public authorities will be consulted:

- Sydney Water
- Ausgrid, and
- NSW Office of Environment and Heritage.

CONSULTATION

The Planning Proposal submitted by the proponent was initially placed on non-statutory public exhibition for 14 days, from 28 September to 13 October 2022, in accordance with the Northern Beaches Community Participation Plan. Following a request from a submitter, the public exhibition period was extended to 21 October 2022. The public exhibition comprised:

- Notification letters to adjoining landowners and occupiers
- Email to community members who had registered their interest in the project
- An updated Council 'Your Say' page with relevant information; and
- Inclusion in Council's Community News email.

Six (6) submissions were received. The issues raised in submissions included:

- Request for the garage to be lowered
- Vegetation that will feature on garage roof should be at maximum development height
- New structure will obscure view
- Unlawful public exhibition and Planning Proposal

- The proposed amendments are unclear
- Extension of public exhibition
- Planning Proposal is unlawful.

Issues relating to landscaping and the potential design of the garage are not relevant to the Planning Proposal and will be considered in any future Development Application. The Planning Proposal has been lawfully prepared and considered in accordance with all statutory requirements.

A summary of the submissions and responses to the issues raised is in Attachment 3. These issues do not warrant the rejection of the Planning Proposal.

Local Planning Panel

On 14 December 2022, an assessment of the Planning Proposal was presented to the Northern Beaches Local Planning Panel. The proceedings in Brief from the meeting included the following comments:

At the public meeting Counsel for an objector submitted that: (a) there were two planning proposals before the Panel, one by The Planning Hub on behalf of the applicant and the other by Council as set out in Attachment 2 to the Council assessment report; (b) that the former was beyond power under the Environmental Planning and Assessment Act 1979 but that the latter was within power and the Panel could advise in respect of the latter; (c) that the Panel should reject the former and advise Council only in respect to the latter. The Panel considers that there is only one planning proposal before it, namely the Council's planning proposal set out in Attachment 2 to the Council assessment report. The Panel will advise Council only in respect of that planning proposal.

Subsequently, the Planning Panel recommended:

That the Northern Beaches Local Planning Panel recommends that Council support the planning proposal set out in Attachment 2 to the Council assessment report to permit a dwelling house limited to a building height of RL 74.5 AHD as an additional permitted use on 6 Mitchell Road Palm Beach, for the reasons presented in the assessment report, subject to the following:

The Panel suggests that the additional clauses in Schedule 1 of the Pittwater Local Environment Plan should read to the following effect:

Use of certain land at 6 Mitchell Road, Palm Beach

- (1) This clause applies to land at 6 Mitchell Road, Palm Beach, being Lot 1. DP1086858 and identified as on the Additional Permitted Uses Map.*
- (2) Development on the part of 6 Mitchell Road, Palm Beach zoned RE1 for the purposes of a dwelling house, not exceeding RL 74.5AHD in height, is permitted with development consent.*
- (3) The height limit restriction of RL 74.5AHD also applies to the remainder of 6 Mitchell Road, Palm Beach, currently zoned C4.*
- (4) Subject to the restriction imposed by clause 3, the remainder of 6 Mitchell Road, Palm Beach continues to be subject to the development height controls in clause 4.3 of the Pittwater Local Environmental Plan.*

Vote: 4/0

The Planning Proposal has been amended in line with the suggestion provided by the Local Planning Panel.

The minutes of the Local Planning Panel meeting are in Attachment 4.

External Probity Adviser

On 24 October 2022, Council engaged the services of external probity adviser Charles Kendall Australia to oversee Council's assessment of the Planning Proposal. Probity advice was sought to manage any potential or perceived conflict of interest arising from the assessment of a Planning Proposal on land adjacent to the Council-owned Bible Gardens.

Charles Kendall Australia has undertaken an audit of the assessment process. The audit report is provided in Attachment 5. The audit report concluded that there were no probity concerns with the assessment of the Planning Proposal.

TIMING

It is anticipated that the timeframe for completion of the Planning Proposal is approximately 12-18 months from the date of Council's approval.

Following the issue of a Gateway Determination, Council will be required to formally exhibit the Planning Proposal for 28 days. The outcomes of this exhibition will be reported back to Council for consideration.

LINK TO STRATEGY

The Planning Proposal relates to the following goals of the Northern Beaches Community Strategic Plan 2040 outcome of:

- Community and belonging - Goal 7 Our diverse community is supported to participate in their chosen cultural life
- Community and belonging - Goal 8 Our community feels safe and supported
- Community and belonging - Goal 9 Our community is inclusive and connected
- Housing, places and spaces - Goal 11 Our local centres are vibrant and healthy, catering for diverse economic and social needs
- Partnership and participation - Goal 22 Our Council builds and maintains strong partnerships and advocates effectively on behalf of the community

FINANCIAL CONSIDERATIONS

The Planning Proposal is a proponent-initiated application. The proponent has paid the assessment fees stipulated in Council's Fees and Charges 2022/23.

The recommendations of this report pose no financial impact on Council.

SOCIAL CONSIDERATIONS

The proposal seeks to rectify an anomaly unique to this site and is consistent with the signed Heads of Agreement.

The Planning Proposal will maintain the existing views from the Bible Garden and is not anticipated to have any adverse social impacts.

ENVIRONMENTAL CONSIDERATIONS

An assessment of the Planning Proposal has determined that it is unlikely to have any adverse environmental impacts on the subject site or surrounding land.

GOVERNANCE AND RISK CONSIDERATIONS

The Planning Proposal has been assessed in accordance with all statutory requirements.

Independent probity advice was sought to manage any potential or perceived conflict of interest arising from the assessment of the Planning Proposal. The audit report concluded that there were no probity concerns with the assessment of the Planning Proposal.

ITEM 12.3	PUBLIC EXHIBITION OF DRAFT PLANNING AGREEMENT AT 321-331 CONDAMINE STREET, MANLY VALE
REPORTING MANAGER	EXECUTIVE MANAGER STRATEGIC & PLACE PLANNING
TRIM FILE REF	2022/658140
ATTACHMENTS	1 ⇒ Offer to Enter into Planning Agreement (Included In Attachments Booklet) 2 ⇒ Draft Planning Agreement (Included In Attachments Booklet)

PURPOSE

To seek Council's endorsement to publicly exhibit the draft Planning Agreement at 321-331 Condamine Street, Manly Vale.

EXECUTIVE SUMMARY

On 22 December 2021, Manly Vale Developments No. 2 Pty Ltd submitted an offer to enter into a Planning Agreement (the 'Offer') with Northern Beaches Council for 321-331 Condamine Street, Manly Vale to dedicate land and construct and widen a laneway at the rear of the site (Somerville Place).

The Offer was associated with a development application which subsequently received a deferred commencement development consent from the Land & Environment Court on 11 February 2022 for demolition works and the construction of a four-storey shop-top housing development consisting of four (4) retail tenancies on the ground floor, twenty-six (26) residential apartments over three levels and a basement carpark for forty-three (43) vehicles.

Clarification was subsequently sought from Manly Vale Developments in relation to several details associated with the Offer.

An updated Offer was received on 12 August 2022, involving:

- Dedication of land 54.6m² in area (1.435m wide x 38.075m long) to Council free of charge for the Somerville Place road widening. The dedication will result in a 6m-wide road reserve.
- The dedication will occur via a Plan of Subdivision which will be registered once all building and civil works are complete and prior to issue of any Occupation Certificate.
- A right of footway on privately owned land will be created as an easement in gross (limited in height) in favour of Council.

Council's Development Contributions Panel has considered the Offer and determined there is a public benefit arising from the Offer.

A draft Planning Agreement has been prepared and is provided to Council for consideration.

If Council agrees, the draft Planning Agreement and supporting documentation will be publicly exhibited for 28 days in accordance with statutory requirements. The outcomes of the public exhibition will be reported to Council.

RECOMMENDATION OF ACTING DIRECTOR PLANNING AND PLACE

That:

1. Council place the draft Planning Agreement and supporting documentation on public exhibition for a minimum of 28 days.
 2. The outcomes of the public exhibition of the draft Planning Agreement be reported to Council.
-

REPORT

BACKGROUND

Planning Agreements are a legal arrangement made between a developer and Council to facilitate the delivery of a public benefit. Public benefits may include the dedication of land at no cost to Council, the payment of a monetary contribution, and/or the provision of infrastructure works.

Planning Agreements are voluntary and initiated by the developer. The current legal and procedural framework for Planning Agreements is set out in Division 7.1 of Part 7 of the Environmental Planning and Assessment Act 1979 (the 'Act') and Division 1 of Part 9 of the Environmental Planning and Assessment Regulation 2021.

In June 2022, Council adopted a Planning Agreements Policy (Council's Policy) and accompanying Guidelines to help guide developers on Council's preferred approach to Planning Agreements. It identifies legal and procedural obligations to be satisfied by the developer, and details the criteria Council uses to assess an Offer.

Council's assessment of an Offer and progression of a Planning Agreement to execution will be in accordance with Council's Policy and the Planning Agreements Practice Note (Department of Planning, Industry and Environment, February 2021).

The Site

The land that is the subject of the Offer is known as 321-331 Condamine Street, Manly Vale (the 'subject site') and comprises five (5) allotments:

- Lots 20, 21, 22 and 25 in Deposited Plan 11320, and
- Lot 123 in Deposited Plan 737259.

The subject site is located on the western side of Condamine Street and is at the north-western corner of the Condamine Street-Sunshine Street intersection.

The subject site is regular in shape with a frontage of 36m to Condamine Street, a frontage of 31m to Sunshine Street, a frontage of 38m to Somerville Place, and a depth of 34m. This land has a total surveyed area of 1,274m².

All land within the subject site is zoned B2 Local Centre under the Warringah Local Environmental Plan 2011.

Access into the subject site comprises pedestrian access from Condamine Street and vehicular access is from the rear lane by entering Somerville Place.



Figure 1: Location Map, 321-331 Condamine Street, Manly Vale

Vehicular Access to Somerville Place

Somerville Place is a one-way laneway that runs parallel to Condamine Street and provides rear lane access to the properties fronting Condamine Street. Access into Somerville Place can only be gained via King Street, with vehicles travelling in a southbound direction to exit onto Sunshine Street.

Somerville Place is a public road and has a varied width. Currently, the section of Somerville Place immediately abutting the rear of the subject site is approximately 4.56m wide. Adjacent to 339 Condamine Street, Somerville Place is only 3m wide. Some sections of Somerville Place are already 6 metres wide, including:

- 341-343 Condamine Street – the subject of a Planning Agreement between the former Warringah Council and Joesandra Pty Ltd and CES Developments Pty Ltd. This agreement was executed on 30 June 2016. A 2.34m-wide section of land for road widening was transferred to Council on 17 May 2016.
- 333 Condamine Street, which is the property immediately north of the subject properties.

The land dedication proposed as part of the Offer will result in an increased road reserve width of 6m adjacent to the subject site.

The Approved Development (DA2020/0824)

On 11 February 2022, the Land & Environment Court approved a development application (DA2020/0824) on the subject site, subject to a deferred commencement condition. The deferred commencement consent is for demolition works and the construction of a four-storey shop-top housing development consisting of four (4) retail tenancies on the ground floor, twenty-six (26) residential apartments over three levels and a basement carpark for forty-three (43) vehicles.

The development consent also includes the reconstruction and widening of Somerville Place to provide a 6m-wide road reserve adjacent to the subject site. A Planning Agreement is the legal mechanism required to facilitate the dedication of land containing the widened road to Council.

The deferred commencement condition reads as follows:

“1 Planning Agreement for the Dedication of Land

The developer shall enter into a Planning Agreement (PA) with Northern Beaches Council pursuant to section 7.4 of the Environmental Planning and Assessment Act, 1979 to dedicate a 1.4m wide x 38.075m long strip of land adjacent to Somerville Place for the purpose of road widening and consistent with the developer's offer dated 22 December 2021.

The Executed Planning Agreement is to be in place before this condition is satisfied.

Note: Please be advised that no decision as to whether Council will enter into a Planning Agreement has been made and there is no representation that such a decision will be made until the draft Planning Agreement has been exhibited, assessed and determined by Council in accordance with the Environmental Planning and Assessment Act, 1979.

Evidence required to satisfy the deferred commencement condition must be submitted to Council within two (2) years of the date of this consent, or the consent will lapse in accordance with Section 95 of the Environmental Planning and Assessment Regulation 2000.

This evidence is to be submitted along with a completed 'Deferred Commencement Review Form' (available on Council's website) and the application fee, as per Council's Schedule of Fees and Charges.”

Offer to Enter into a Planning Agreement

On 22 December 2021, Manly Vale Developments No. 2 Pty Ltd (the 'Developer') lodged an Offer to Enter into a Planning Agreement (the 'Offer'). On initial review of the Offer, several inconsistencies were identified. The Developer was requested to address the following deficiencies:

1. Insufficient details on the proposed land to be dedicated particularly regarding dimensions.
2. Inconsistencies between engineering plans and the plan of land dedication.
3. Clarification on intent to dedicate footpath which is on private land.

On 12 August 2022, an updated Offer was received. The Offer (Attachment 1) proposes:

- Dedication of land 54.6m² in area (1.435m wide x 38.075m long) to Council free of charge for Somerville Place road widening. The dedication of land will occur by registration of the Plan of Subdivision once the Developer has reconstructed Somerville Place and prior to issue of any Occupation Certificate.
- A right of footway will be created as an easement in gross (limited in height) on the footpath located adjacent to the road reserve of Somerville place, on land that will remain in private ownership.

The land to be dedicated to Council is shown by notation (R) in Figure 2. The easement is identified by notation (A).

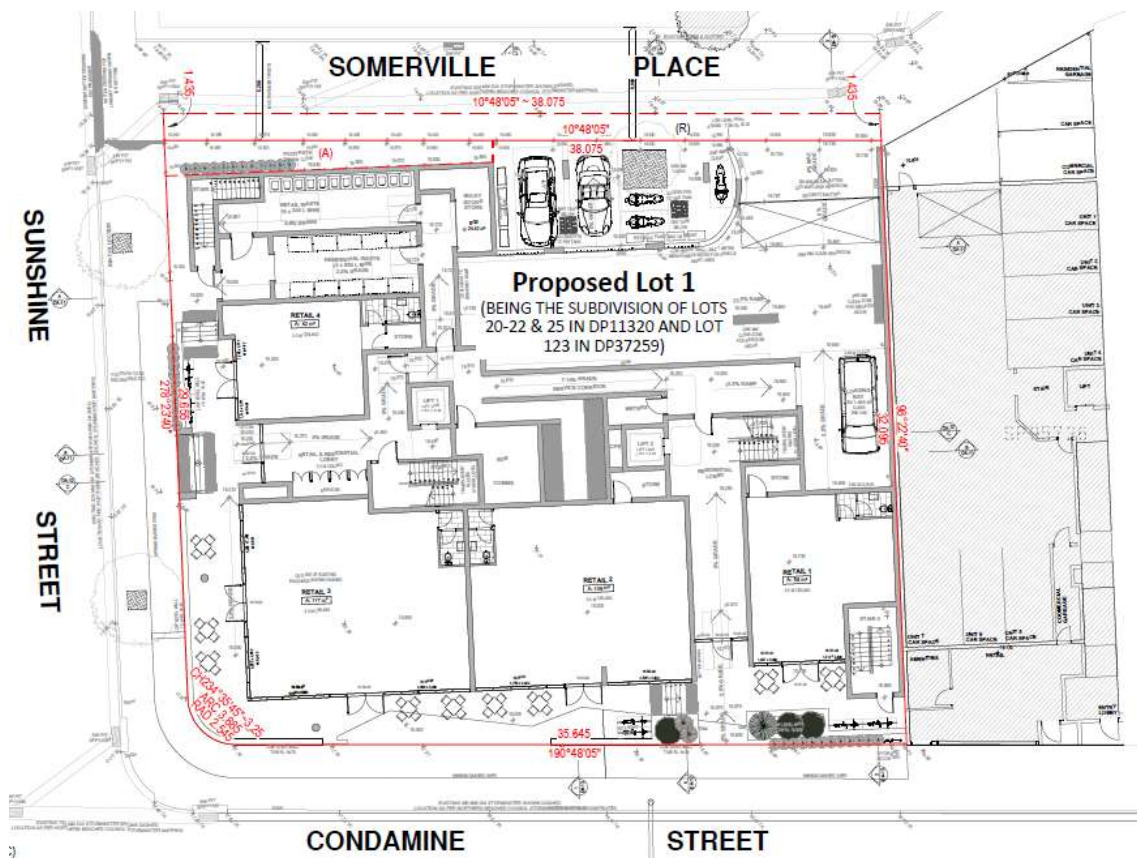


Figure 2: Land to be dedicated to Council

The Public Benefit of the Offer

In accordance with its charter, Council's Development Contributions Panel (the 'Panel') has considered an assessment of the Offer and determined there is public benefit arising from the Offer, being:

- The Somerville Place road reserve adjacent to the site is currently 4.56m wide. Dedication of land and road widening will result in a 6m-wide reserve that will improve the efficiency of the existing road and will contribute to the future anticipated two-way operation, improving traffic movements. The road will be constructed by the Developer to Council's standards and will help improve the road conditions in that section of Somerville Place.
- An easement will be provided that will allow public access over privately owned property. Currently, there is no footpath along this section of the Somerville Place road reserve. Public access, by way of a registered easement over the privately-owned land (that will contain a footpath constructed under DA2020/0824) provides a safe pedestrian access to the local road network. Construction of the footpath will be as per Council approved standards and will provide appropriate stormwater management.

At its meeting of 20 September 2022, the Panel agreed in-principle to support the Offer and to allow the negotiation and preparation of the draft Planning Agreement. At this meeting the Panel recommended:

"That:

1. *The Development Infrastructure Contributions Panel (the 'Panel') give in-principle support to the Offer to Enter into a Planning Agreement subject to:*
 - A. *The terms for the draft Planning Agreement being negotiated with the developer, being:*
 - i. *Council staff inspect the civil works – road reserve and footpath – during and at final stage/completion and are duly satisfied before the land dedication is effected and easement registered.*
 - ii. *An application for Subdivision Certificate is lodged with Council in regard to the land dedication – public road reserve – and the easement for public access in regard to the private land containing a section of footpath.*
 - B. *Council's Principal Development Infrastructure Officer be nominated as Council's Responsible Officer in negotiating the terms of obligations listed in recommendation 1A, in accordance with Council's Planning Agreements Policy.*
 - C. *Legal Counsel is instructed to prepare the draft Planning Agreement in accordance with the terms negotiated by Council's Responsible Officer.*
 - D. *The draft Planning Agreement is to be distributed to the Panel ahead of the matter being reported to Council, with the view to recommending it be placed on public exhibition.*
2. *The Development Contributions Working Group be advised of the Panel decision."*

The Draft Planning Agreement

The draft Planning Agreement (Attachment 2) was prepared by Council and has been reviewed and agreed by the Developer. The draft Planning Agreement encompasses the following elements:

1. Dedication of land to Council free of charge
2. Easement for public access over private land
3. Timing of the Developer's obligations, including appropriate inspections by Council staff.

CONSULTATION

The Development Infrastructure Contributions Panel has reviewed the draft Planning Agreement to ensure it is consistent with its recommendations of 20 September 2022.

If the Council agrees, the draft Planning Agreement and supporting documents will be publicly exhibited for 28 days in accordance with statutory requirements.

TIMING

If the Council agrees, the public exhibition will commence following the Council's decision. The outcomes of the public exhibition will be reported back to Council for consideration.

LINK TO STRATEGY

This report relates to the Community Strategic Plan outcomes of:

- Places for People - Goal 8: Our neighbourhoods inspire social interaction, inclusion and support health and wellbeing.
- Transport and Infrastructure - Goal 16: Our integrated transport networks meet the needs of our community.
- Good Governance - Goal 19: Our Council is transparent and trusted to make decisions that reflect the values of the community.
- Participation and Partnership - Goal 22: Our Council builds and maintains strong partnerships and advocates effectively on behalf of the community.

FINANCIAL CONSIDERATIONS

The draft Planning Agreement facilitates the dedication of land and an easement for public access at no cost to Council. The Developer has provided a valuation report for the land to be dedicated. The report identifies that this land is valued at \$491,400.

All costs associated with the preparation and execution of this Planning Agreement will be borne by the Developer.

The draft Planning Agreement does not exclude the Developer from paying the development contributions imposed under Condition 7 of the development consent for the subject properties.

SOCIAL CONSIDERATIONS

The draft Planning Agreement facilitates the dedication of 54.6m² of land to Council for the purpose of road widening at Somerville Place. The dedication of land and provision of a footpath on private land adjacent to Somerville Place facilitates a safe and accessible pathway which is a social benefit for future users of this footpath and road.

ENVIRONMENTAL CONSIDERATIONS

The road widening works on the land to be dedicated to Council provides for appropriate management of stormwater and the improved efficiency of the existing road condition.

GOVERNANCE AND RISK CONSIDERATIONS

An assessment of the Offer and preparation of the draft Planning Agreement has occurred in accordance with Council Policy and the Planning Agreements Practice Note (Department of Planning, Industry and Environment, February 2021).

The draft Planning Agreement has been prepared in accordance with the legislative requirements of Division 7.1 of Part 7 of Environmental Planning and Assessment Act 1979 and Division 1 of Part 9 of the Environmental Planning and Assessment Regulation 2021.

The Panel has reviewed the draft Planning Agreement to ensure it is consistent with the Panel's recommendations of 20 September 2022.

ITEM 12.4	ADOPTION OF DRAFT COUNCIL- RELATED DEVELOPMENT APPLICATIONS POLICY
REPORTING MANAGER	ACTING DIRECTOR PLANNING & PLACE
TRIM FILE REF	2022/750933
ATTACHMENTS	1 Draft Council-related Development Applications Policy 2 Council-Related Development Application Conflict Of Interest Guidelines - DPIE

SUMMARY

PURPOSE

To adopt the draft Council-related Development Applications Policy which has been developed in accordance with the *Environmental Planning and Assessment Amendment (Conflict of Interest) Regulation 2022*.

EXECUTIVE SUMMARY

The *Environmental Planning and Assessment Amendment (Conflict of Interest) Regulation 2022* (the Amending Regulation) will commence on 3 April 2023 and will amend the Environmental Planning and Assessment Act 1979 and *Environmental Planning and Assessment Regulation 2021 (Regulation)*.

The Amending Regulation will amend the Act and the Regulation so that, among other things:

- All 'council-related development applications' are required to be publicly exhibited for a minimum of 28 days.
- A 'council-related development application' must not be determined by the consent authority unless the council has adopted a conflict of interest policy, and the council considers the policy in determining the application.

A draft conflict of interest policy entitled 'Council-related Development Applications Policy' has been prepared to set out how Council will manage council-related development applications. This policy is required to comply with the 'Council-related Development Application Conflict of Interest Guidelines' published by the Department of Planning and Environment.

Council-related development applications cannot be determined after 3 April 2023 unless the Council has a conflict of interest policy in place and has considered the policy in determining the application.

The term 'council-related development application' is defined in the Amending Regulation to mean a development application, for which a council is the consent authority, that is—

- (a) made by or on behalf of the council, or
- (b) for development on land –
 - (i) of which the council is an owner, a lessee or a licensee, or
 - (ii) otherwise vested in or under the control of the council.

The policy has been prepared to ensure Council complies with the requirements of the Amending Regulation and can determine impacted applications after 3 April 2023. The draft policy broadly

reflects current Council practices in managing conflict of interests for council-related development applications.

RECOMMENDATION OF ACTING DIRECTOR PLANNING AND PLACE

That:

1. Council adopt the draft Council-related Development Applications Policy, to commence on 3 April 2023.
 2. The implementation of the new policy be monitored for 6 months with feedback sought from the community, and a report on the implementation and review presented to Council in October 2023.
-

REPORT

BACKGROUND

The *Environmental Planning and Assessment Amendment (Conflict of Interest) Regulation 2022* (Amending Regulation) will commence on 3 April 2023. Upon the commencement of the Amending Regulation, a 'council-related development application' must not be determined unless:

- (a) the council has adopted a conflict of interest policy; and
- (b) the council considers the policy in determining the application,

Accordingly, Council is required to have in place a conflict of interest policy that sets out how council-related development applications will be managed. The policy is required to comply with the 'Council-related Development Application Conflict of Interest Guidelines' prepared by the Department of Planning and Environment (Department).

The term 'council-related development application' is defined in the Amending Regulation as follows:

"council-related development application" means a development application, for which a council is the consent authority, that is:

- (a) made by or on behalf of the council, or
- (b) for development on land –
 - (ii) of which the council is an owner, a lessee or a licensee, or
 - (ii) otherwise vested in or under the control of the council.

Note— Land vested in or under the control of the council includes public land within the meaning of the Local Government Act 1993."

All council-related development applications will be required to be publicly exhibited for a minimum of 28 days.

A draft conflict of interest policy titled 'Council-related Development Applications Policy' has been prepared to ensure Council complies with the requirements of the Regulation and that Council can determine impacted applications after 3 April 2023.

This draft policy has been prepared using the Department of Planning and Environment's template policy. In this template policy the above definition in the Regulation is not used, and a different definition for the purposes of the policy is used which defines:

Council related development means development for which the council is the applicant developer (whether lodged by or on behalf of council), landowner, or has a commercial interest in the land the subject of the application, where it will also be the regulator or consent authority.

The draft policy complies with the 'Council-related Development Application Conflict of Interest Guidelines' published by the Department. It sets out:

- (a) The process Council will follow to identify whether a particular development application is a council-related development application.
- (b) The risk assessment process, specific categories of application and management strategies in relation to those different categories.

- (c) Which council-related development applications are of such minor risk that they do not require a specific management response.
- (d) Management strategies in relation to the undertaking of enforcement and compliance activities related to council-related development.

In essence, the draft policy proposes that any council-related development will be assessed independently (as per the current practice) and that construction certificates in respect of council-related development be certified by Private Accredited Certifiers. All council-related development will continue to be referred to either the Northern Beaches Local Planning Panel or the Sydney North Planning Panel for determination as per Ministerial Directions and legislation.

CONSULTATION

Unless Council has adopted a conflict of interest policy which complies with the 'Council-related Development Application Conflict of Interest Guidelines' published by the Department, Council may not determine a council-related development application after 3 April 2023. These guidelines do not require public consultation in relation to the adoption of a conflict of interest policy by councils. Upon the commencement of the Amending Regulation, all council-related development applications will be required to be publicly exhibited for a minimum of 28 days.

TIMING

The policy must be in place by 3 April 2023, otherwise Council may not determine a council-related development application.

LINK TO STRATEGY

This report relates to the Community Strategic Plan Outcome of:

- Good governance - Goal 19 Our Council is transparent and trusted to make decisions that reflect the values of the community

FINANCIAL CONSIDERATIONS

The administration of this policy will have a minor financial impact on the cost of lodgement, assessment, determination, and enforcement in respect of council-related development. Currently most council-related development applications are already externally assessed, and all are determined by the Northern Beaches Local Planning Panel or the Sydney North Planning Panel in accordance with Ministerial Directions and legislation.

SOCIAL CONSIDERATIONS

There will no social impacts resulting from this policy.

ENVIRONMENTAL CONSIDERATIONS

The policy will guide the determination of council-related development applications under the *Environmental Planning and Assessment Act 1979*.

GOVERNANCE AND RISK CONSIDERATIONS

This policy is designed to manage conflicts of interest associated with council-related development. The policy reflects Council's existing processes and provides a clear policy statement as to the

approach that will be adopted regarding conflict management in relation to the assessment, determination, and construction of council-related development.

If the policy is not adopted, council-related development applications may not be determined from 3 April 2023.

Council Policy

Council-related Development Applications Policy

Policy Statement

Northern Beaches Council operates as a consent authority and development regulator for most development within the Northern Beaches local government area. In some circumstances, council is also the owner of land to which an application relates, is the applicant/developer or has a commercial interest in the land. Where council has this dual role, a potential conflict can arise between the council's interest in the development and its duty as a regulator.

This policy explains how council will identify matters in which these potential conflicts arise and address them throughout the development process.

Principles

This policy aims to manage potential conflicts of interest and increase transparency at all stages of the development process for council-related development.

Scope and application

This policy applies to council-related development. It regulates all council-related development from 3 April 2023.

This policy has been prepared in accordance with the requirements of s66A of the Regulation which is to commence on 3 April 2023 and the 'Council-related Development Application Conflict of Interest Guidelines' issued by the Department of Planning and Environment.

This policy does not apply to an activity under Part 5 of the Act.

Identifying whether a potential conflict of interest exists

Where a preliminary meeting is held prior to the lodgement of an application which may involve council-related development, the matter should be referred to the Executive Manager Development Assessment (or delegate) and the issue of appropriate management controls should be an agenda item for discussion at the meeting, with the proposed approach recorded as part of the minutes of the meeting.

Development applications lodged with council that are for council-related development are to be referred to the Executive Manager Development Assessment (or delegate) for an initial conflict-of-interest risk assessment and preparation of a management statement in accordance with the requirements of the Regulation.

The Executive Manager Development Assessment (or delegate) is to:

- i. Assess whether the application is one in which a potential conflict of interest exists,
- ii. Identify the phase(s) of the development process at which the identified conflict of interest arises,
- iii. Assess the level of risk involved at each phase of the development process,
- iv. Determine what (if any) additional management controls should be implemented to address the identified conflict of interest (in each phase of the development process if necessary) having regard to any Management Controls and Strategies outlined this policy, and
- v. Document the proposed management strategy for the proposal in a statement that is published/uploaded on the NSW Planning Portal and council's application webpage.

Assessing level of risk

Council-related development is to be assigned a level of risk in accordance with the following categories:

Low Risk

- Advertising signage on council properties.
- Internal fit outs and minor changes to the building façade.
- Internal alterations or additions to buildings that are not a heritage item.
- Council-related development in respect of which council may receive a small fee for the use of their land (such as outdoor dining areas for which fees are or may be payable under legislation).
- Alterations and additions to minor structures in parks and other public spaces (such as shade structures in playgrounds).
- Minor building structures projecting from a building façade over public land (such as awnings, verandas, bay windows, flagpoles, pipes and services).

Medium Risk

- Any council-related development for which the Northern Beaches Local Planning Panel is the consent authority.
- Any council-related development in relation to which council has resolved to provide a grant.

High Risk

- Any council-related development for which the Sydney North Planning Panel is the consent authority.
- Any council-related development which is assessed as being high risk by the CEO, due to the circumstances of the application.

Management controls and strategies

- (a) For all council-related development, other than low risk applications, council staff will ensure that written records are kept of all communications with applicant staff and applicant representatives (whether council staff or external consultants). Substantial discussions should occur only in the context of a formal meeting and written records of such meetings are to be kept. Directors are responsible for ensuring that staff follow strict communication protocols in relation to council-related development.
- (b) All council-related development applications will be publicly exhibited for a minimum of 28 days. The management strategy for the proposal will be publicly exhibited with the application and will remain publicly available on the NSW Planning Portal and council's website.
- (c) The management strategy in relation to the assessment and determination of applications for council-related development is to be in accordance with the level of risk identified in accordance with this policy. In general, the following management strategies are to be implemented:



- Low risk – application assessed by council staff and referred to the Northern Beaches Local Planning Panel for determination if required by Ministerial Direction.
 - Medium risk – application assessed by external independent planner and referred to the Northern Beaches Local Planning Panel for determination.
 - High risk – application assessed by external independent planner and referred to the Sydney North Planning Panel for determination.
- (d) Where a council-related development becomes the subject of any proceeding before the Land and Environment Court, external legal representatives and consultants will be engaged to conduct the matter.
- (e) The management strategy in relation to the regulation of council-related development (other than low risk) is that all certification, including the issue of construction certificates and occupation certificates, will be undertaken by a private certifier.
- (f) The management strategy in relation to the undertaking of enforcement and compliance activities in relation to all council-related development is as follows:
- (i) The Executive Manager Environmental Compliance will oversee all compliance and enforcement activities related to council-related development and will provide regular updates on these activities to the Chief Executive Officer and Chief Executive Team.
 - (ii) Where a non-compliance is identified (for example, a breach of a development consent condition or failure to comply with the terms of a development control order), the matter will be escalated to the Director Corporate & Legal for review and consideration of appropriate action. This may include engaging external consultants in order to undertake investigations and/or peer review recommendations of council staff.
 - (iii) Where a matter is considered a significant breach of any law, the non-compliance will be referred by the Director Corporate & Legal to the compliance staff of the Department of Planning and Environment for advice and action as appropriate.
 - (iv) Any legal proceedings in relation to enforcement and compliance matters for council-related development will be conducted by external legal providers, who are to engage third party consultants to provide expert advice if required.

References and related documents

- *Environmental Planning and Assessment Act 1979*
- *Environmental Planning and Assessment Regulation 2021*

Definitions and Interpretation

In this policy:

application means an application for consent under Part 4 of the Act to carry out development and includes an application to modify a development consent but it does not include an application for a complying development certificate.

council means Northern Beaches Council.

council-related development means development for which the council is the applicant developer (whether lodged by or on behalf of council), landowner, or has a commercial interest in the land the subject of the application, where it will also be the regulator or consent authority

development process means application, assessment, determination, and enforcement.

the Act means the *Environmental Planning and Assessment Act 1979*.

the Regulation means the *Environmental Planning and Assessment Regulation 2021*

A word or expression used in this policy has the same meaning as it has in the Act, and any instruments made under the Act, unless it is otherwise defined in this policy.

Responsible Officer

Executive Manager Development Assessment

Review Date

To be reviewed after 6 months of implementation following consultation with the community then every 4 years or sooner as required

Revision History

Revision	Date	Status	TRIM Ref
1	28 March 2023	Adopted by Council	

Department of Planning and Environment



Council-related Development Application Conflict of Interest Guidelines

Introduction

Councils are development regulators. But they also can be the developer, landowner or hold a commercial interest in the land they regulate. Where councils have this dual role, an inherent conflict can arise between their interests in the development and their duty as regulator.

Identifying these conflicts of interest early and finding ways to address them is crucial to good governance and allows councils to strengthen their relationship with communities and build and enhance trust.

The following requirements have been introduced into the *Environmental Planning and Assessment Regulation 2021* to address conflicts of interest in council related development:

- Councils must adopt and have a policy that specifies how conflicts of interest in connection with council-related development applications will be handled. The policy must comply with the requirements in these Guidelines (section 66A).
- Council-related development applications must now be accompanied by either a management strategy statement, which explains how the council will manage potential conflicts of interest, or a statement that the council has no management strategy for the application (section 36A).
- Councils must record conflicts of interest in connection with each council-related development application, and the measures taken to manage the conflicts, in their existing DA register (section 242A).
- Council-related development applications must be exhibited for a minimum of 28 days to ensure transparency during the assessment process (*Environmental Planning and Assessment Act 1979*, schedule 1, clause 9B).

While the regulation changes do not mandate the use of the framework once a development consent is issued, it is best practice when developing their policies for councils to also address conflicts that may occur after development consent has been granted. This could be as simple as stating in the policy that the council will seek to enter a shared services arrangement with a neighbouring council about this phase of the development process, for any development that is the subject of the policy.

Purpose of these Guidelines

These Guidelines are intended to:

- set out the requirements for the council conflict of interest policy required under section 66A,



- assist councils in meeting these requirements by providing a sample policy and management strategy statement that can be used as a template when developing their policies
- provide general information and guidance about the policy.

Flexibility

In some circumstances, council may determine the risks associated with a council-related development are sufficiently low and no specific controls are warranted. Where this is the case, council should still publicly communicate that fact to ensure transparency.

Where a council determines for a particular class of development that the risks of a conflict of interest are very low, it may decide to not have any management controls for a specified type of development unless there is some direct involvement of a councillor or a council staff member in their private capacity.

This can happen, for instance, where the council is the owner of a large commercial building that has a range of shops within it, for which it receives many development applications for commercial fit outs and minor changes to the building facade. In those circumstances, the council's policy could outline that its management strategy for this class of development does not apply additional controls for conflicts of interest.

Other examples where this approach might be appropriate include development for internal alterations or additions to buildings that are not a heritage item, advertising signage, minor building structures projecting from a building façade over public land (such as awnings, verandas, bay windows, flagpoles, pipes and services), and development where the council might receive a small fee for the use of their land.

Sample policy

The sample policy below is to help councils develop their conflict of interest policies for council-related development. It provides practical solutions for developing and implementing ways to manage potential conflicts at all stages of the development process.

For councils that have local planning panels, the council's policy only needs to deal with a subset of this development, as a range of development to which the policy would otherwise apply will already be referred to local planning panels.

Using the sample policy is optional. Each council and local government area is different and has unique local settings, therefore, councils should decide what is appropriate in their circumstances and develop a policy for managing conflicts of interest about council-related development that is suitable for their local area.

An example management strategy statement is also included below.

Requirements for conflict-of-interest policies

Any policy prepared and adopted by a council must:



- establish management controls and/or a management strategy to address potential conflicts of interest at the different phases of the development process for the types of council-related development that the council could be involved in,
- outline the process through which potential conflicts of interest will be identified, the risks assessed and appropriate management controls determined, and
- outline the process that will be followed to publicly communicate the management approaches for each development subject to the policy.

Sample policy

Part 1 Preliminary

(1) Name of policy

This policy is the [insert name of policy].

Note: For example, Conflicts of interest policy – dealing with council-related development throughout the development process.

(2) Aim of policy

This policy aims to manage potential conflicts of interest and increase transparency at all stages of the development process for council-related development.

(3) Scope

This policy applies to council-related development.

(4) Definitions

(1) In this policy:

application means an application for consent under Part 4 of the Act to carry out development and includes an application to modify a development consent it does not include an application for a complying development certificate.

council means [insert name of the council]

council-related development means development for which the council is the applicant developer (whether lodged by or on behalf of council), landowner, or has a commercial interest in the land the subject of the application, where it will also be the regulator or consent authority

development process means application, assessment, determination, and enforcement

the Act means the *Environmental Planning and Assessment Act 1979*.

(2) A word or expression used in this policy has the same meaning as it has in the Act, and any instruments made under the Act, unless it is otherwise defined in this policy.

(3) Notes included in this policy do not form part of the policy.

Note: Other definitions can be inserted.

Part 2 Process for identifying and managing potential conflicts of interest

(5) Management controls and strategies

(1) The following management controls may be applied to:

- a. the **assessment** of an application for council-related development
 - *insert control(s)*
- b. the **determination** of an application for council-related development
 - *insert control(s)*
- c. the **regulation and enforcement** of approved council-related development
 - *insert control(s).*

Note: For example, council will enter into a shared services arrangement with a neighbouring council.

(2) The management strategy for the following kinds of development is that no management controls need to be applied:

- a. commercial fit outs and minor changes to the building façade
- b. internal alterations or additions to buildings that are not a heritage item
- c. advertising signage
- d. minor building structures projecting from a building facade over public land (such as awnings, verandas, bay windows, flagpoles, pipes, and services)
- e. development where the council might receive a small fee for the use of their land.

Notes:

1. *While councils must have a policy that sets out how they propose to deal with potential conflicts of interest for council-related development, it could implement different controls for dealing with them based on the level of risk. For example, councils could set their controls based on:*
 - a. *risk category – low, moderate, high, very high*
 - b. *types of development – non-controversial small-scale development, development of a certain value with/without a commercial interest, controversial development, or even*
 - c. *capital investment value of the proposed development.*
2. *There is a range of management controls that could be applied in particular circumstances. The following are some examples that councils could use. Note that councils are not limited to one approach and could specify more than one approach if appropriate in their local settings:*
 - a. *Assessment and determination*
 - i. *The assessment and/or determination of an application are to be undertaken by council staff under delegation – this might be appropriate if the proposal is considered to be a low-level risk or non-controversial. For more controversial projects, this might only be effective if strict role separation controls are imposed.*
 - ii. *The application could also be referred for external assessment and/or determination to either:*

1. another council
2. a local planning panel if one is in place
3. a regional planning panel (may require negotiation – RPPs are not required to accept referrals)
4. a consultant.

The involvement of an external third party might be appropriate for development where council has a commercial interest in the land, or the development is seen to be a political priority for the council.

b. Regulation and enforcement

- i. Engagement of a private certifier
- ii. Publication of certificates issued under Part 6 of the Act on the NSW Planning Portal
- iii. Peer review by a neighbouring council and/or entering into a shared services arrangement with a neighbouring council
- iv. Reporting of key milestones to the full council.

3. Councils may also wish to take advantage of their audit and risk committee to provide guidance for the types of controls that could be applied in specific circumstances.

(6) Identifying whether a potential conflict of interest exists, assessment of level risk and determination of appropriate management controls

- (1) Development applications lodged with the council that are council-related development are to be referred to the general manager (or a delegate) for a conflict-of-interest risk assessment.

Note: Council-related development is defined in section 4.

- (2) The general manager is to:

- a. assess whether the application is one in which a potential conflict of interest exists,
- b. identify the phase(s) of the development process at which the identified conflict of interest arises,
- c. assess the level of risk involved at each phase of the development process,
- d. determine what (if any) management controls should be implemented to address the identified conflict of interest (in each phase of the development process if necessary) having regard to any controls and strategies outlined in clause 5 of the policy and the outcome of the general manager's assessment of the level of risk involved as set out clause 6(2)(c) of the policy,

Note: The general manager could determine that no management controls are necessary in the circumstances.

- e. document the proposed management approach for the proposal in a statement that is published on the NSW Planning Portal.

Note: The following is an example of a statement that could be published by councils to document its proposed management approach in a particular circumstance.

Scenario

BlueStar Council is upgrading one of their assets, 'Blue River Civic Place'. Council is the landowner and the applicant and is proposing to redevelop the site into a mixed-use development with a total capital investment value (CIV) of \$4.9 million. The development application seeks approval for the construction and use of an additional 2 storeys on an existing 3 storey building comprising a childcare centre, commercial office spaces and partial use of the building for council's public administration.

Example management statement

Council conflict of interest management statement	
Project name	Blue River Civic Place
DA number	DA21/0001
Potential conflict	BlueStar Council is the applicant. Blue River Civic Place has an estimated capital investment value of \$4.9 million and the council expects to receive revenue through renting commercial office spaces.
Management strategy	<p>The council is managing potential conflicts of interest in this matter as follows:</p> <ul style="list-style-type: none"> • The application will be referred to the local planning panel to determine the development application. • Council development assessment staff not involved with preparing the application will assess the DA. The staff will remain separated from the project team. • A private certifier will be engaged to undertake the certification for the development. • Green Hill Council has agreed to peer review any regulatory decisions should compliance decisions be made. • Key project milestones following the development consent will be reported at a public council meeting.
Contact	Anyone with concerns about council fulfilling its obligations should report their concerns to the council.

ITEM 12.5	VARIATIONS TO DEVELOPMENT STANDARDS UNDER CLAUSE 4.6 OF LOCAL ENVIRONMENTAL PLANS
REPORTING MANAGER	EXECUTIVE MANAGER DEVELOPMENT ASSESSMENT
TRIM FILE REF	2022/803072
ATTACHMENTS	1 ↓ Clause 4.6 - Variations to Development Standards

SUMMARY

PURPOSE

To report to Council the variations to development standards granted under Clause 4.6 of the *Manly Local Environmental Plan* (MLEP 2013), *Pittwater Local Environmental Plan* (PLEP 2014) and *Warringah Local Environmental Plan* (WLEP 2011), as required by the NSW Department of Planning and Environment.

EXECUTIVE SUMMARY

During the period 1 October 2022 to 31 December 2022, the following variations were granted:

- 34 variations under Clause 4.6 of Manly Local Environmental Plan 2013
- 10 variations under Clause 4.6 of Pittwater Local Environmental Plan 2014
- 16 variations under Clause 4.6 of Warringah Local Environmental Plan 2011.

RECOMMENDATION OF ACTING DIRECTOR PLANNING AND PLACE

That Council note the Development Applications approved with variations to development standards during the period 1 October 2022 to 31 December 2022.

REPORT

BACKGROUND

The following tables show all variations to development standards approved during the period 1 October 2022 to 31 December 2022, for each of the LEPs in the Northern Beaches LGA, and whether the determination was made by staff under delegated authority or by a determination panel.

A total of 54 Development Applications were approved with a clause 4.6 request during the quarter. During the quarter a total of 409 Development Applications were approved – noting that the total number of applications (including Modification and Review Applications) approved in the quarter totaled 546.

It should be noted that the Land and Environment Court caselaw *Merman Investments PTY LTD v Woollahra Municipal Council* [2021] NSWLEC 1582 in late 2021 changed the way building height is measured when the site had previously been altered through excavations. This has resulted in an increase in the number of clause 4.6 requests received and determined.

Northern Beaches Council has two external panels, being the Northern Beaches Local Planning Panel (NBLPP) and the Sydney North Planning Panel (SNPP). The internal determination panel is known as the Development Determination Panel (DDP).

It is noted that Council is currently preparing a new Local Environmental Plan. The development standards for both height and floor space ratio will be reviewed, and the review will consider the extent and circumstances in which the existing development standards have been varied using clause 4.6.

CONSULTATION

Variations to development standards lodged as part of a Development Application are made available to the community for comment on Council's Application Search, during the prescribed exhibition period and are available for viewing at all other times.

TIMING

Not applicable.

LINK TO STRATEGY

This report relates to the Community Strategic Plan Outcome of:

- Environmental sustainability - Goal 5 Our built environment is developed in line with best practice sustainability principles. Strategy (a): "ensure integrated land use planning balances the environmental, social and economic needs of present and future generations".

FINANCIAL CONSIDERATIONS

The costs associated with the assessment of variations are part of the Development Application assessment process.

SOCIAL CONSIDERATIONS

All Development Applications are required to consider social impacts through section 4.15 of the *Environmental Planning and Assessment Act 1979*.

ENVIRONMENTAL CONSIDERATIONS

All Development Applications are required to consider environmental impacts through section 4.15 of the *Environmental Planning and Assessment Act 1979*.

GOVERNANCE AND RISK CONSIDERATIONS

Reporting variations to Council satisfies NSW Department of Planning, Industry and Environment requirements and provides transparency in decision making, in addition to publishing this information on Council's website, reduces risk to the organisation.

The following applications had a Clause 4.6 variation request granted during the period of 1 October 2022 to 31 December 2022.

Manly LEP 2013

App No.	Address	Proposal	Category of Development	Development Standard Varied	Allowed	Proposed	Variation	Determined By
DA2022/0812	181 Sydney Road FAIRLIGHT NSW 2094	Alterations and additions to a dwelling house	Residential - Alterations and additions	4.3 Height of buildings	8.5m	8.6m	1.2%	Staff exercising delegated authority
DA2022/0193	199 - 205 Pittwater Road MANLY NSW 2095	Alterations and additions to shop top housing	Mixed	4.4 Floor space ratio	1:1 (684.6m ²)	1.02:1 (696.19m ²)	1.7%	NBLPP
DA2022/1589	71 Bower Street MANLY NSW 2095	Alterations and additions to a dwelling house	Residential - Alterations and additions	4.3 Height of buildings 4.4 Floor space ratio	8.5m 0.45:1 (314.6m ²)	8.7m 0.47:1 (326.6m ²)	2.35% 3.81%	Staff exercising delegated authority
DA2022/0976	55 Golf Parade MANLY NSW 2095	Alterations and additions to a semi-detached dwelling	Residential - Alterations and additions	4.4 Floor space ratio	0.6:1 (162.9m ²)	0.616:1 (167.2m ²)	2.64%	Staff exercising delegated authority
DA2022/0507	27 Wood Street MANLY NSW 2095	Alterations and additions to a dwelling house	Residential - Alterations and additions	4.4 Floor space ratio	0.6:1 (171.46m ²)	0.62:1 (178.22m ²)	3.3%	Staff exercising delegated authority
DA2022/1119	27 Violet Street BALGOWLAH NSW 2093	Alterations and additions to a dwelling house	Residential - Alterations and additions	4.4 Floor space ratio	0.5:1 (233.15m ²)	0.52:1 (243m ²)	4.3%	Staff exercising delegated authority
DA2022/1624	16 Barrabooka Street CLONTARF NSW 2093	Alterations and additions to a dwelling house	Residential - Alterations and additions	4.4 Floor space ratio	0.4:1 (267.7m ²)	0.42:1 (283.1m ²)	5.0%	Staff exercising delegated authority
DA2022/1034	2 / 20 Clifford Avenue FAIRLIGHT NSW 2094	Alterations and additions to a dwelling within an attached dual occupancy	Residential - Alterations and additions	4.3 Height of buildings	8.5m	9m	5.8%	Staff exercising delegated authority
DA2022/1312	12 Pine Street MANLY NSW 2095	Alterations and additions to a dwelling house	Residential - Alterations and additions	4.4 Floor space ratio	0.6:1 (139.74m ²)	0.64:1 (150.0m ²)	7.34%	Staff exercising delegated authority

DA2022/1788	22 Richmond Road SEAFORTH NSW 2092	Alterations and additions to a dwelling house including a pergola.	Residential - Alterations and additions	4.3 Height of buildings	8.5m	9.2m	8.2%	Staff exercising delegated authority
DA2022/1135	40 Ellery Parade SEAFORTH NSW 2092	Alterations and additions to a dwelling house	Residential - Alterations and additions	4.3 Height of buildings	8.5m	9.2m	8.2%	Staff exercising delegated authority
DA2022/1335	12 Panorama Parade SEAFORTH NSW 2092	Demolition works and construction of a dwelling house including swimming pool	Residential - Single new detached dwelling	4.4 Floor space ratio	0.45:1 (284.2m ²)	0.488:1 (308.5m ²)	8.6%	Staff exercising delegated authority
DA2022/1334	5 Beatty Street BALGOWLAH HEIGHTS NSW 2093	Alterations and additions to a dwelling house	Residential - Alterations and additions	4.3 Height of buildings	8.5m	9.53m	12.08%	DDP
DA2022/0678	31 Wood Street MANLY NSW 2095	Alterations and additions to a dwelling house	Residential - Alterations and additions	4.3 Height of buildings 4.4 Floor space ratio	8.5m 0.6:1 (172m ²)	9.7m 0.65:1 (187.2m ²)	14.1% 8.4%	DDP
DA2022/0856	53 Frenchs Forest Road SEAFORTH NSW 2092	Alterations and additions to form a secondary dwelling and construction of a swimming pool	Residential - New second occupancy	4.4 Floor space ratio	0.45:1 (205.4m ²)	0.528:1 (241m ²)	17.3%	DDP

Manly LEP 2013 - Variations over 20%

App No.	Address	Proposal	Category of Development	Development Standard Varied	Allowed	Proposed	Variation	Determined By
DA2022/1131	5 / 7 & 6 / 7 Parkview Road FAIRLIGHT NSW 2094	Alterations and additions to a residential flat building including the consolidation of Units 5 and 6 into a single dwelling	Residential - Alterations and additions	4.4 Floor space ratio	0.75:1 (335.4m ²)	0.94:1 (419.3m ²)	25%	NBLPP
Description: The 4.6 request for the non-compliance with FSR standard arises from the existing gross floor area on the site. The proposal does not add or remove any existing gross floor area. As such, the proposed FSR is a technical non-compliance as it does not alter the existing FSR. The bulk and scale of the existing building is generally maintained with the balcony additions being of a lightweight design that minimises any perceived increase in building bulk.								

DA2022/1289	9 Lower Beach Street BALGOWLAH NSW 2093	Alterations and additions to a semi-detached dwelling	Residential - Alterations and additions	4.4 Floor space ratio	0.45:1 (171.5m ²)	0.577:1 (220m ²)	28.2%	DDP
Description: The 4.6 request for the non-compliance with FSR standard arises due to an undersized allotment. It is noted that the FSR does achieve compliance with the FSR variations permitted within Manly DCP for undersized allotments.								
DA2022/0824	1 / 35, 2/35 & 35 Lauderdale Avenue FAIRLIGHT NSW 2094	Alterations and additions to create a dwelling house	Residential - Alterations and additions	4.3 Height of buildings 4.4 Floor space ratio	8.5m 0.5:1 (217.25m ²)	10.96m 0.65:1 (284.9m ²)	28.9% 30%	DDP
<p>Description: FSR variation: The 4.6 request for the non-compliance with FSR standard arises from retaining the existing FSR, but the redistribution of the existing building floorspace on the first floor level. The existing building has an FSR of 0.65:1 (285.0m²), which presents an existing variation of 30% of the MLEP 2013 based on historical approvals. The proposed FSR will be 0.65:1 (284.9m²), which is a marginal reduction to the existing FSR. The retention of the existing numerically non-compliant FSR and the rearrangement of the building footprint will not create an unreasonable or adverse built form.</p> <p>Building Height variation: The 4.6 request for the non-compliance with height standard arises from the site being extensively excavated underneath the existing building creating a 28.9% variation for a section of the building. Based on extrapolated natural ground levels the height would only be measured at a maximum of 9.7m (or 14.1% variation) for a length of 7.0m, with the remainder of the building in the northern portion of the site achieving compliance with the maximum building height requirement.</p>								
DA2022/1500	8 / 122 Bower Street MANLY NSW 2095	Alterations and Additions to a Residential Flat Building	Residential - Alterations and additions	4.3 Height of buildings	8.5m	11.3m	33.3%	NBLPP
Description: The 4.6 request for the non-compliance with the height of building standard arises due to the replacement of windows and doors midway up the residential flat building, which creates a 33% variation. The existing building currently breaches the height limit significantly and a number of other windows and doors have been replaced in other apartments, in a similar way, in the last few years.								
DA2022/0509	25 Montpelier Place MANLY NSW 2095	Alterations and additions to a dwelling house	Residential - Alterations and additions	4.3 Height of buildings 4.4 Floor space ratio	8.5m 0.45:1 (257.3m ²)	8.67m 0.605:1 (346.3m ²)	2% 34.47%	DDP
Description: The 4.6 request for the non-compliance with FSR standard arises from a first floor addition at the rear of the building above existing floorspace and is consistent with the surrounding built form.								
DA2022/1047	6 Monash Crescent CLONTARF NSW 2093	Alterations and additions to a dwelling house including a swimming pool	Residential - Alterations and additions	4.4 Floor space ratio	0.4:1 (260.12m ²)	0.54:1 (351m ²)	35%	DDP

Description: The 4.6 request for the non-compliance with the Floor Space Ratio development standard arises from an existing non compliance and the development proposes a minor reduction in gross floor area of the overall dwelling.								
DA2021/2390	29 Monash Crescent CLONTARF NSW 2093	Alterations and additions to a dwelling house	Residential - Alterations and additions	4.4 Floor space ratio	0.4:1 (240m ²)	0.54:1 (329m ²)	37.1%	DDP
Description: The 4.6 request for the non-compliance with FSR standard arises due to an undersized allotment. It is noted that the FSR does achieve compliance with the FSR variations permitted within Manly DCP for undersized allotments.								
DA2021/1813	7 Bruce Avenue MANLY NSW 2095	Demolition works and construction of a dwelling house including a boat shed	Residential - Single new detached dwelling	4.3 Height of buildings	8.5m	11.7m	37.6%	DDP
Description: The 4.6 request for the non-compliance with height standard arises due to the steep site topography and from the site being partially excavated underneath the existing ground level of the building by 5.7m for a small section of the building approximately 121m ² in area.								
DA2022/0643	19 - 23, 25 & 27 The Corso MANLY NSW 2095	Alterations and additions to the existing building to allow for shop-top housing and a pub	Mixed	4.3 Height of buildings	10m	14.47m 15.47m 18.67m	44.7% (No.23 - Roof) 54.7% (No.19-21 - Roof) 86.7% (No.19-21 - Lift Shaft)	NBLPP
Description: The 4.6 request for the non-compliance with height standard arises as a result of the existing height of the building. The height of the proposal is maintained in the top most storey fronting The Corso. The additions behind this area fronting The Corso are generally below the existing storey with the exception of the lift shaft. The variations proposed are up to 15.47m to the roof and 18.67m to the lift shaft.								
DA2022/1651	6 Richmond Road SEAFORTH NSW 2092	Alterations and additions to a dwelling house	Residential - Alterations and additions	4.4 Floor space ratio	0.4:1 (317.24m ²)	0.58:1 (461.4m ²)	45%	DDP
Description: The 4.6 request for the non-compliance with the FSR standard arises from a 14m ² increase in floorspace. The existing building has an existing floor space of 433m ² or 0.56:1. The new FSR will be a minor increase to 461m ² or 0.58:1. Despite the non compliance, the proposal is not considered to result in any further unreasonable bulk, scale or amenity impacts from the street frontage and adjoining properties.								
DA2022/1330	20 / 7 The Crescent MANLY NSW 2095	Alterations and additions to a unit within a residential flat building including a new spa	Residential - Alterations and additions	4.3 Height of buildings	11m	28.1m	155%	NBLPP
Description: The 4.6 request is for the non-compliance with the height standard that arises from the works within the existing 8th level building involving internal works, new windows, spa pool, balustrading and a retractable awning. The works will sit below the existing roof line and will be setback from the front elevation and will not increase the visual bulk of the building. The proposal does not increase the existing non compliance of 155.4% above the building height standard.								

DA2022/1025	25 Cliff Street MANLY NSW 2095	Alterations and Additions to a Residential Flat Building	Residential - Alterations and additions	4.3 Height of buildings 4.4 Floor space ratio	8.5m 0.6:1 (205.08m ²)	12.73m 1.63:1 (557.6m ²)	49.76% 171.67%	NBLPP
Description: The Clause 4.6 request for the non-compliance with the FSR standard arises from a 28.6sqm increase in floor space. The existing building has an existing floor space of 1.55:1, which is 157.95% above compliance with the LEP standard of 0.6:1 based on historical approvals. The proposal increases the existing floor space from 1.55:1 (529sqm) to 1.63:1 (557.6sqm). The additional floor space is located within the footprint of the existing ground floor rear alfresco and does not increase the perceived bulk and scale of the existing residential flat building.								
DA2021/1330	15 Bligh Crescent SEAFORTH NSW 2092	Alterations and additions to a dwelling house	Residential - Alterations and additions	4.3 Height of buildings 4.4 Floor space ratio	8.5m 0.4:1 (113.8m ²)	13.06m 1.04:1 (298m ²)	54% 162%	DDP
Description: The 4.6 request for the non-compliance with the Floor Space Ratio standard arises from the redistribution and minor increase to the floor area the existing dwelling upon an undersized allotment and results in an overall increase of 13sqm which results in a minimal change in the visual bulk and scale of the existing building. It is noted that the FSR does achieve compliance with the FSR variations permitted within Manly DCP for undersized allotments.								

Pittwater LEP 2014

App No.	Address	Proposal	Category of Development	Development Standard Varied	Allowed	Proposed	Variation	Determined By
DA2022/1210	10 Elvina Avenue NEWPORT NSW 2106	Alterations and additions to a dwelling house	Residential - Alterations and additions	4.3 Height of buildings	8.5m	8.72m	2.59%	Staff exercising delegated authority
DA2022/1396	32 Prince Alfred Parade NEWPORT NSW 2106	Alterations and additions to a dwelling within a dual occupancy development	Residential - Alterations and additions	4.3 Height of buildings	8.5m	8.85m	4.12%	Staff exercising delegated authority
DA2022/1429	126 Prince Alfred Parade NEWPORT NSW 2106	Alterations and additions to a dwelling house	Residential - Alterations and additions	4.3 Height of buildings	8.5m	9.0m	5.9%	Staff exercising delegated authority

DA2022/0042	62 Florida Road PALM BEACH NSW 2108	Alterations and additions to a dwelling house including a swimming pool and cabana with studio	Residential - Alterations and additions	4.3 Height of buildings	8.5m	9.1m	7%	DDP
DA2022/0617	917 Barrenjoey Road PALM BEACH NSW 2108	Demolition works and construction of a dwelling house including a swimming pool	Residential - Single new detached dwelling	4.3 Height of buildings	8.5m	9.1m	7%	DDP
DA2022/0666	439 Barrenjoey Road NEWPORT NSW 2106	Alterations and additions to a dwelling house including a swimming pool	Residential - Alterations and additions	4.3 Height of buildings	8.5m	9.6m	12.9%	DDP
DA2022/0953	18 Rednal Street MONA VALE NSW 2103	Demolition works and construction of a dwelling house and swimming pool	Residential - Single new detached dwelling	4.3 Height of buildings	8.5m	9.65m	13.5%	DDP
DA2022/0753	160 Crescent Road NEWPORT NSW 2106	Demolition works and construction of a dwelling house including swimming pool	Residential - Single new detached dwelling	7.8 Limited development on foreshore area	Building footprint must not extend further into the foreshore area	Proposed works will extend into the foreshore area by 3.4m	Non- numerical developm ent standard	NBLPP

Pittwater LEP 2014 - Variations over 20%

App No.	Address	Proposal	Category of Development	Development Standard Varied	Allowed	Proposed	Variation	Determined By
DA2021/1718	6 / 5 A Wollombi Road BILGOLA PLATEAU NSW 2107	Construction of a dwelling house including a swimming pool	Residential - Single new detached dwelling	4.3 Height of buildings	8.0m	10.5m	31.25%	DDP

Description: The Clause 4.6 request for the non-compliance with the height of buildings standard arises in relation to the north-eastern corner of the garage, as the land beneath it falls steeply towards a natural watercourse. The encroaching corner is positioned around 5.0m from the boundary and is not found to cause any impacts on neighbours.								
DA2022/1293	15 Hansford Parade BILGOLA PLATEAU NSW 2107	Alterations and additions to a dwelling house	Residential - Alterations and additions	4.3 Height of buildings	8.5m	14.1m	65%	DDP
Description: The non-compliance with the Height of Building standard arises due to siting of the existing dwelling and significant slope of the site. It is noted that the proposal qualifies with the 10m height variations permitted on sloping sites, however extends beyond the 10m permitted variation. The height non-compliance does not contribute to any unreasonable or excessive building bulk and scale or result in adverse amenity impacts to nearby properties with respect to view sharing, visual bulk or solar access.								

Warringah LEP 2011

App No.	Address	Proposal	Category of Development	Development Standard Varied	Allowed	Proposed	Variation	Determined By
DA2022/0080	9 / 17 & 17 Wheeler Parade DEE WHY NSW 2099	Alterations and Additions to a unit within a residential flat building	Residential - Alterations and additions	4.3 Height of buildings	11m	11.1m	0.9%	Staff exercising delegated authority
DA2022/1553	123 Victor Road DEE WHY NSW 2099	Alterations and additions to a dwelling house including a swimming pool	Residential - Alterations and additions	4.3 Height of buildings	8.5m	8.625m	1.5%	Staff exercising delegated authority
DA2022/0935	31 Jocelyn Street NORTH CURL CURL NSW 2099	Demolition works and construction of a dwelling house	Residential - Alterations and additions	4.3 Height of buildings	8.5m	8.69m	2.24%	Staff exercising delegated authority
DA2022/1658	6 Ross Street NORTH CURL CURL NSW 2099	Alterations and additions to a dwelling house	Residential - Alterations and additions	4.3 Height of buildings	8.5m	8.7m	2.35%	Staff exercising delegated authority
DA2021/2515	15 Bridgeview Crescent FORESTVILLE NSW 2087	Demolition works and construction of a dwelling house	Residential - Single new detached dwelling	4.3 Height of buildings	8.5m	8.8m	3.5%	Staff exercising delegated authority

DA2022/1757	1 Kandra Road BEACON HILL NSW 2100	Alterations and additions to a dwelling house	Residential - Alterations and additions	4.3 Height of buildings	8.5m	8.8m	3.5%	Staff exercising delegated authority
DA2022/0671	36 Greycliffe Street QUEENSLIFF NSW 2096	Alterations and additions to a dwelling house, including a swimming pool	Residential - Alterations and additions	4.3 Height of buildings	8.5m	9.1m	7%	DDP
DA2021/2617	25 Carrington Parade FRESHWATER NSW 2096	Alterations and additions to a dwelling house	Residential - Alterations and additions	4.3 Height of buildings	8.5m	9.12m	7.29%	Staff exercising delegated authority
DA2022/1142	7 McDonald Street FRESHWATER NSW 2096	Alterations and additions to a dwelling house including a swimming pool	Residential - Alterations and additions	4.3 Height of buildings	8.5m	9.13m	7.41%	Staff exercising delegated authority
DA2022/1432	26 Smith Avenue ALLAMBIE HEIGHTS NSW 2100	Alterations and additions to a dwelling house	Residential - Alterations and additions	4.3 Height of buildings	8.5m	9.34m	9.9%	Staff exercising delegated authority
DA2022/0232	20 Cromer Road CROMER NSW 2099	Alterations and additions to a dwelling house including a swimming pool	Residential - Single new detached dwelling	4.3 Height of buildings	8.5m	9.35m	10%	Staff exercising delegated authority
DA2022/0855	23 Plateau Road COLLAROY PLATEAU NSW 2097	Alterations and additions to a dwelling house including a swimming pool	Residential - Alterations and additions	4.3 Height of buildings	8.5m	9.4m	10.59%	DDP
DA2022/1503	31 Towradgi Street NARRAWEENA NSW 2099	Alterations and additions to a dwelling house	Residential - Alterations and additions	4.3 Height of buildings	8.5m	9.45m	11.18%	DDP
DA2022/0914	5 Nenagh Street NORTH MANLY NSW 2100	Alterations and additions to a dwelling house	Residential - Alterations and additions	4.3 Height of buildings	8.5m	9.75m	14.71%	DDP
DA2022/1436	47 Sorlie Road FRENCHS FOREST NSW 2086	Alterations and additions to a dwelling house	Residential - Alterations and additions	4.3 Height of buildings	8.5m	9.85m	15.9%	DDP

Warringah LEP 2011 - Variations over 20%

App No.	Address	Proposal	Category of Development	Development Standard Varied	Allowed	Proposed	Variation	Determined By
DA2022/0682	291 & 293 Condamine Street MANLY VALE NSW 2093	Demolition works and construction of shop top housing	Mixed	4.3 Height of buildings	11m	14.8m	30%	NBLPP
Description: The 4.6 request for the non-compliance with height standard arises from the site already being partially excavated underneath the existing building creating a 30% variation for the lift overrun, giving a maximum height of 14.8m. Based on extrapolated natural ground levels the height would only be measured at a maximum of 12.6m or 14.5% variation at the highest point of the upper storey.								

13.0 TRANSPORT AND ASSETS DIVISION REPORTS

ITEM 13.1	RESPONSE TO NOTICE OF MOTION NO 36/2022 - POTHoles ON LOCAL ROADS
REPORTING MANAGER	EXECUTIVE MANAGER TRANSPORT & CIVIL INFRASTRUCTURE
TRIM FILE REF	2023/141362
ATTACHMENTS	NIL

BRIEF REPORT

NOTE: *This item was listed on the agenda but not dealt with at the 28 February 2023 Council Meeting*

PURPOSE

To provide a response to Council's Notice of Motion No 36/2022 - Potholes on Local Roads adopted at its ordinary Council meeting on 22 November 2022.

REPORT

At its ordinary meeting on 22 November 2022 Council resolved (377/22):

That:

- 1. The Chief Executive Officer report back to Council's February 2023 meeting on the current number of potholes on local roads and number of local roads whose overall surfaces have been badly damaged by rain this year, with an estimate of how much it would cost to repair current individual potholes, and to resurface roads whose overall surfaces have deteriorated due to rain.*
- 2. The Chief Executive Officer report on how much funding has been spent on (a) fixing potholes and (b) resurfacing roads this financial year and how much remains in the budget to fix current and future potholes and road surfaces.*
- 3. Staff identify and report back to Council's February 2023 meeting on funding included in this year's budget from current capital works projects that have failed to find suitable tenders that could be used to fix potholes and resurfacing roads badly damaged by this year's rain.*
- 4. If no such funding is available, identify money from other projects not impacted by this year's weather that could be spent on road repairs and resurfacing.*
- 5. Council lobby the NSW government to provide more funding for fixing potholes on local roads and resurfacing local roads badly damaged by this year's rain.*
- 6. Council calls on the NSW Government to promptly repair state roads in the Northern Beaches Local Government Area.*

In response to Item 1:

Between July 2022 and January 2023:

- Council has repaired 3,346 potholes in the above period
- 1,114 individual local roads have been identified where pavements have been damaged as a result of the recent periods of wet weather

- \$1.9 million has been spent on pothole repairs and road patching, with some \$3 million additional heavy patching programmed for the remainder of this year and around \$7 million proposed for next financial year (some from normal allocations and around \$6 million from the recent State Government Grant for Local and Regional Road repairs)
- \$25-30 million is the estimated cost to fully resurface roads whose surfaces have deteriorated due to rain.

In response to Item 2:

Council has spent the following amounts this financial year:

- (A) As noted above \$1.9 million on fixing potholes and on heavy patches so far this year with around \$3 million currently in hand and being scoped as a result of a State Government grant
- (B) \$5.5 million completed or currently in progress on resurfacing roads this financial year (to January 2023). There remains approximately \$2.6 million from the \$8.1 million Road Re-sheeting Capital Works budget to complete the current program of works. These works have been scoped and are in the process of having contractors engaged to deliver the works program.

In response to Item 3 and 4:

Council is committed to the delivery of the current adopted capital works program. Should our procurement processes fail to find suitable tenders on the first occasion, the procurement strategy is reviewed and addressed depending on the individual situation. It is considered that there are no capital works projects in the current program, where funding should be diverted to repairing potholes and resurfacing roads at this time. It is noted that much of our capital works program funding is either tied to grant funding, restricted funds (e.g., s7.11 & s7.12 funds), or required to meet other asset renewal ratios.

The recent State Government announcement of \$500 million for Councils to repair Regional and Local Roads would be best suited funding the road pavement repairs. Council has been advised that the allocation to Northern Beaches Council is \$9.1 million and works will need to be completed by February 2024. Actions have already commenced to undertake these works.

In response to Item 5 & 6:

Council has written to the Hon. Natalie Ward, MLC, Minister for Metropolitan Roads and Minister for Women's Safety and the Prevention of Domestic and Sexual Violence welcoming funding of the \$500 million Regional and Local Roads Repair Program and requesting further action on the State Road network in the Northern Beaches Local Government area.

The funding boost to improve our Local and Regional Road network is welcomed and Council has requested consideration be given to a general increase in road funding to keep our road network safe, efficient, and reliable now and into the future.

LINK TO COUNCIL STRATEGY

This report relates to the Community Strategic Plan Outcome of:

Transport, technology and connectivity - Goal 17 Our community can safely and efficiently travel within and beyond the Northern Beaches

FINANCIAL CONSIDERATIONS

The recommendations of this report pose no financial impact on Council.

ENVIRONMENTAL CONSIDERATIONS

There are no environmental impacts associated with the recommendations of this report.

SOCIAL CONSIDERATIONS

There are no social considerations associated with the recommendations of this report.

GOVERNANCE AND RISK CONSIDERATIONS

There are no risk or governance issues associated with the recommendation of this report.

RECOMMENDATION OF DIRECTOR TRANSPORT AND ASSETS

That Council note the information provided in this report.

ITEM 13.2	PROPOSED EASEMENT TO DRAIN WATER OVER FOX RESERVE, COLLAROY TO BENEFIT 41 AND 43 BEACH ROAD, COLLAROY
REPORTING MANAGER	EXECUTIVE MANAGER PROPERTY
TRIM FILE REF	2023/008031
ATTACHMENTS	1 Easement Dimension Plan (Included In Attachments Booklet) 2 Community Engagement Report - Proposed Easement over Fox Reserve, Collaroy (Included In Attachments Booklet)

SUMMARY

PURPOSE

To consider a request for an easement to drain water through a Council reserve (Fox Reserve, Collaroy) (which is Council-owned Community Land) by the adjacent property owners for the installation of an underground stormwater drainage pipe for connection to Council's underground stormwater drainage pit within Council's reserve.

EXECUTIVE SUMMARY

On 16 September 2020, the Northern Beaches Local Planning Panel granted development consent to DA2019/1522 for consolidation of 2 lots into one, demolition works and construction of a dwelling house including a swimming pool at 41 and 43 Beach Road, Collaroy.

The properties are located on the low side of Beach Road and under the approved DA are required to adequately deal with the stormwater overflow generated from the proposed development.

The owners of 41 and 43 Beach Road, Collaroy (Lot 1 DP 300846 and Lot 2 Sec 7 DP 7391) (the applicant) have applied to Council to obtain an easement to drain water through Fox Reserve, Collaroy (Lot 2 DP 566490) for the installation of an underground stormwater drainage pipe for connection to Council's stormwater drainage pit within Fox Reserve.

The applicant will be required to pay Council an amount of compensation for the proposed easement in accordance with independent qualified valuation advice received by Council.

Council staff have undertaken internal stakeholder consultation and external public notification in accordance with section 47 of the *Local Government Act 1993*.

During public notification of the proposed easement, Council received 10 submissions with all 10 submissions objecting to the proposal. The *Local Government Act 1993* provides that, if a person has made a submission by way of objection to the proposal, a council must not grant an easement in respect of community land for a period exceeding 5 years except with the consent of the Minister for Local Government. Accordingly, should Council wish to grant the easement, Council will need to apply to the Minister for consent to do so.

Whilst some objections against the proposal were received, having regard to all relevant circumstances, it is recommended that Council authorise the grant of the easement and seek the consent of the Minister to do so.

Council has granted similar easements previously for underground drainage connections in other Council reserves where easements do not significantly impact on the use of the reserve.

RECOMMENDATION OF DIRECTOR TRANSPORT AND ASSETS

That Council:

1. Note that it has considered all submissions in respect of the proposed easement referred to in Item 3 below (proposed easement) and endorse the position in relation to the objections received as set out in the report for this item.
 2. Apply to the Minister for Local Government in accordance with Section 47 of the *Local Government Act 1993* for consent to grant the proposed easement.
 3. Subject to the consent of the Minister for Local Government, authorise a one-metre-wide Easement to Drain Water and associated Positive Covenant, by underground pipe within Lot 2 DP 566490 Fox Reserve, Collaroy in favour of 41 and 43 Beach Road, Collaroy (Lot 1 DP 300846 and Lot 2 Sec 7 DP 7391) for an amount in accordance with Council's adopted Fees and Charges.
 4. Require the applicant to fund all costs associated with the granting of the proposed easement and associated Positive Covenant as referred to in Item 3 of this recommendation, including but not limited to, Council's legal costs, GST if applicable, document registration and reinstatement of land post authorised drainage work.
 5. Delegate authority to the Chief Executive Officer to execute the necessary documentation to give effect to this resolution.
-

REPORT

BACKGROUND

On 16 September 2020, the Northern Beaches Local Planning Panel granted development consent to DA2019/1522 for consolidation of two lots into one, demolition works and construction of a dwelling house including a swimming pool. Condition 9 of Development Consent DA2019/1522 required that the site to be drained to a new on-site drainage system with a discharge point at the south-east corner of the site via a level spreader directly to the public reserve and provided:

9. Stormwater Disposal from Low Level Property

The Applicant is to demonstrate stormwater from the new development within this consent shall be disposed of to a level spreader system in accordance with Northern Beaches Council's Warringah Water Management Policy PL 850 in particular the Stormwater Drainage from Low Level Properties Technical Specification. The level spreader system shall be located sufficiently from the rear boundary to allow for maintenance purposes. Details demonstrating compliance with the Northern Beaches Council's Warringah Water Management Policy PL 850 are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

As the site is located at the end of the overall catchment it was proposed to discharge stormwater from the site with no time delays (no on-site stormwater detention).

However, recent weather events (heavy rainfall) exposed some issues with the above approach, including that the existing swale, located within the public reserve, does not have enough fall due to sand erosion. Water within the channel is therefore trapped and builds up against the neighbouring property boundary wall.

A Stormwater Drainage application was submitted to Council in March 2022 to propose outfall arrangements. Council's Development Engineering team refused the application for the following reason:

The private stormwater drainage line that is proposed to run through the adjacent Council public reserve and connect to an existing drainage pit requires the creation a drainage easement.

Therefore, after consultation with Council's Development Engineering team, the applicant has submitted an Easement over Council Land application to obtain an Easement to Drain Water over Fox Reserve, being the downstream property, for the installation of an underground stormwater drainage pipe to connect to Council's stormwater drainage pit.

Council's Water Management for Development Policy recommends obtaining a drainage easement over the downstream property to Council's drainage infrastructure as an option to deal with stormwater disposal.

Section 46 (1) (a1) of the *Local Government Act 1993* specifically allows for such easements over community land, and Council has granted similar easements over other Council reserves in the past, including Fox Reserve. The proposed easement will require that the stormwater drainage pipe be placed under the surface of the ground, therefore, the drainage pipe will have minimal impact on the use of the reserve after installation.

The proposed easement is one metre wide and approximately 63 metres in length and a plan is included in Attachment 1 of this report.

If the easement is granted, the applicant will be required to lodge a Stormwater Drainage application to allow the drainage easement under Section 68 of the *Local Government Act 1993*. Assessment of the drainage works under Part 4 of the *Environment Planning & Assessment Act*

1979 may also be required. The appointed Principal Certifier will assess the Pre-DA conditions and may require an amendment before issuing an Occupation Certificate.

Rectification of the Council reserve following installation of the proposed stormwater drainage pipe will be done by the applicant. The applicant will be required to submit an appropriate bond, prior to the commencement of construction, for works within the Council reserve. Ongoing maintenance obligations for the underground pipe by the owners of 41 and 43 Beach Road, Collaroy, will be registered in a Positive Covenant over 41 and 43 Beach Road, Collaroy, as a condition of granting the proposed easement.

CONSULTATION

The application for easement over Council land was publicly notified for a period greater than 28 days in accordance with Section 47 of the *Local Government Act 1993*, which included a notice on Council's website, notice letters to surrounding property owners and notice sign at Fox Reserve seeking public submissions. The submission period commenced on 4 November 2022 and concluded on 4 December 2022.

As a result of the public notification process, 10 objections to the proposed easement were received during the notification period. The objections were opposed to the granting of the proposed drainage easement due to, among other things, impact on public land and the environment.

In accordance with Section 47 (5) of the *Local Government Act 1993*, if an objection is received and Council wishes for the easement to proceed, Council is required to apply to the Minister for Local Government for consent to grant the proposed easement. The objections received and Council officers' responses are noted below.

Theme	Issues, change requests and other considerations raised	Council's response
Loss of public land	This land is for the public and should not be just for the benefit of an individual	An easement is a common legal agreement between Council and adjacent property owners to allow for the connection of services from a neighbouring property to services that run through Council land such as stormwater, sewer, and water mains. The proposed easement would only confer rights for the property owner to connect underground services and does not provide for exclusive use of or access to Fox Reserve.
Environmental Impact	There is concern about the environmental impact from the creation of this easement such as sand erosion and flooding occurring in the Collaroy area.	The proposed easement is to connect private stormwater into an existing stormwater pipe. The additional amount of water being discharged into the existing pipe will not be materially increased and therefore will not materially increase the existing stormwater discharge into Fisherman's Beach. The connection to a formal stormwater system will improve overland flow running from the property across Fox Reserve.

Theme	Issues, change requests and other considerations raised	Council's response
Trees	Concern about the impact on the nearby Norfolk trees	<p>A condition of consent for the Development Consent (DA2019/1522) is that all trees in the Reserve must be protected.</p> <p>Council has assessed the location of the easement with the location of the surrounding trees. Due to the distance from the easement pipes, there will be no impact to trees in the reserve.</p>
Compensation	The one-time compensation payment is not comparable to the future needs of the reserve for the community.	<p>The applicant is required to pay compensation to Council based on the impact of the proposed easement on the current value of the reserve.</p> <p>The applicant is also responsible for ongoing maintenance costs related to the stormwater system.</p>
Alternative means to drain water	There should be other means for the property to drain water other than through public land	<p>The Development Consent (DA2019/1522) included a condition for stormwater disposal to a level spreader system.</p> <p>However, certain weather events raised some issues with the above approach.</p> <p>To seek an alternative solution to drain water, the applicant has proposed a private stormwater drainage line through Fox Reserve and connection to the existing drainage pit.</p> <p>The applicant will be required to submit a Stormwater Drainage application if the easement is granted. Assessment of the drainage works under Part 4 of the <i>Environment Planning & Assessment Act 1979</i> may also be required.</p>

A Community Engagement Report of the submissions received is included in this report as Attachment 2.

TIMING

Should it be approved, the creation of the easement to drain water over Fox Reserve, Collaroy is expected to be completed within the next 12 months.

LINK TO STRATEGY

This report relates to the Community Strategic Plan Outcome of:

- Good governance - Goal 19 Our Council is transparent and trusted to make decisions that reflect the values of the community

FINANCIAL CONSIDERATIONS

The recommendations of this report pose no negative financial impact on Council.

The applicant will be required to pay Council an amount of compensation for the proposed easement in accordance with independent qualified valuation advice received by Council. All other associated costs in relation to the proposed easement will be borne by the applicant.

SOCIAL CONSIDERATIONS

There will be minimal impact to the Community as the stormwater drainage pipe will be installed under the surface of the ground.

Other surrounding properties have also been granted easements over Fox Reserve. Therefore, it is considered reasonable for the applicant to also be granted an easement in this case.

ENVIRONMENTAL CONSIDERATIONS

The proposed easement itself will have minimal environmental impact as no actual building works or other development are proposed as part of this determination. Any works required to install pipes in the easement would be assessed separately in accordance with the *Environmental Planning and Assessment Act 1979*

In any case, rectification of Fox Reserve after construction and ongoing maintenance of the proposed underground drainage pipe will be undertaken by the owners of 41 and 43 Beach Road, Collaroy.

In relation to the submission about the impact on trees, Council has assessed the location of the proposed easement with the location of the surrounding trees and concluded that there will be no impact to trees in the reserve. Importantly, a condition of Development Consent DA2019/1522 is that all trees in the reserve must be protected.

The additional amount of water being discharged in the existing pipe will not materially increase. The connection to a formal stormwater system will improve overland flow currently running from the property across Fox Reserve.

As 41 and 43 Beach Road are considered low level properties, this proposed easement where the water is drained by gravity was recommended as the most suitable option. Other options such as pumping out the water to connect to the Council drainage system on Beach Road were not recommended due to the potential for mechanical and system failures.

GOVERNANCE AND RISK CONSIDERATIONS

If the proposed easement is not granted, the applicant may seek an order for the proposed easement from the Supreme Court under section 88K of the *Conveyancing Act 1919*.

ITEM 13.3	PUBLIC EXHIBITION OF A PROPOSAL FOR A NEW COMMUNITY GARDEN AT ANNAM ROAD RESERVE, BAYVIEW
REPORTING MANAGER	MANAGER, PARK ASSETS - PLANNING DESIGN & DELIVERY
TRIM FILE REF	2022/625208
ATTACHMENTS	<ol style="list-style-type: none"> 1 ⇒ Proposed Community Garden - Annam Road Reserve Bayview - Aerial View (Included In Attachments Booklet) 2 ⇒ Draft Review of Environmental Factors - Proposed Community Garden, Annam Reserve at Bayview (Included In Attachments Booklet)

SUMMARY

PURPOSE

To seek Council's approval to publicly exhibit a proposal for a new community garden at Annam Road Reserve, Bayview.

EXECUTIVE SUMMARY

An application has been received from a group of residents to establish a community garden at Annam Road Reserve, Bayview (Attachment 1). This garden group is intending to grow organic produce, flowering plants, promote sustainable lifestyles and provide a neighbourhood meeting place. The garden group has included a concept plan in its application for a garden of approximately 450m² in size (included in Attachment 2). The garden group's objectives are for the garden to be:

- A happy, enjoyable meeting place for the local community
- A place where shared ideas of organic food growing, food preparation and eating become the norm and where education, peer learning and sustainable use of land as a valuable food resource are shared with the local community.

Annam Road Reserve is Council land, located in a residential area, bordered by Bayview Golf Course to the south-west, low density residential homes to the north-west and south-east and opposite a retirement village. The reserve is approximately 4,220m² in size with established trees around its perimeter and is not intensively used and doesn't have any park infrastructure.

This community garden proposal has been assessed internally and it has been determined that the proposal aligns with Council's Community Gardens Policy and Guidelines (2020). A draft Review of Environmental Factors (draft REF) has been developed for the proposed community garden (Attachment 2). The draft REF indicates that the potential impacts are minor or negligible with the mitigation measures proposed. The proposal is now required to be publicly exhibited for community feedback.

RECOMMENDATION OF DIRECTOR TRANSPORT AND ASSETS

That:

1. Council place the proposal for a new community garden at Annam Road Reserve, Bayview on public exhibition for a minimum of 28 days.
 2. The outcomes of the public exhibition be reported back to Council.
-

REPORT

BACKGROUND

An application has been received from a group of residents to establish a community garden at Annam Road Reserve, Bayview (the community garden proposal, see Attachment 1). The garden group is intending to: grow organic produce (fruit and vegetables) and flowering plants; promote sustainable lifestyles; provide a neighbourhood meeting place and opportunities for social interaction; and promote physical activity. The garden group has included a concept plan in its application for a garden of approximately 450m² in size (included in Attachment 2).

This community garden proposal has been assessed in accordance with Council's Community Gardens Policy and Guidelines (2020). This policy supports a community led approach for the development of new community gardens.

There are 6 community gardens on Council-owned or managed land at: Balgowlah, Seaforth, Freshwater, Curl Curl, Manly Vale and Newport. This is considered low relative to some other local government areas in Sydney. The nearest community garden to Annam Road Reserve is at Newport, approximately 4.6km by road.

Annam Road Reserve (the Reserve) is community land located in a residential area, bordered by Bayview Golf Course to the south-west, low density residential homes to the north-west and south-east and opposite a retirement village. The Reserve is approximately 4,220m² in size with established trees around its perimeter and is not intensively used and has no park infrastructure.

Comments on the community garden proposal have been sought from these internal teams: Parks and Recreation; Environment and Climate Change; Development Assessment; and Transport and Civil Infrastructure. There was no objection to the proposal proceeding to public exhibition. Comments received were considered for the draft Review of Environmental Factors prepared for this proposal (draft REF, Attachment 2). Some of the matters raised and responses are outlined below:

- Possible impacts on neighbouring residents - the proposed community garden may impact on adjoining residents due to noise from garden activities. A minimum 15m buffer is proposed between homes on the boundary and the community garden (Attachment 1). It is planned to limit garden activities to 7am to 8pm or dusk.
- Flora and fauna - according to the available data the reserve does not contain threatened native vegetation communities.
- The reserve is within the Koala SEPP, 2021 area - threatened fauna species associated with the adjoining bushland and golf course may visit the reserve. Possible fauna in the area includes long-nosed bandicoots, blue tongue lizards and water dragons. To mitigate impacts on flora and fauna, the proposed garden would be located on the turf area away from the canopy trees.
- Vehicle access to the reserve - an embankment runs across the street boundary of the reserve. Driveway access should be a matter for future consideration.
- Access to water - a new tap is proposed to be located close to the garden.

The community garden proposal is consistent with the plan of management and land zoning (RE1) applicable to this reserve and aligns with Council's Community Gardens Policy and Guidelines (2020). The draft REF indicates that the potential impacts are minor or negligible with the mitigation measures proposed (Attachment 2). Council shall publicly exhibit the proposal and consider submissions before it determines whether to proceed with the proposal.

CONSULTATION

Should the recommendations within this report be supported, the community garden proposal would be placed on public exhibition for a minimum of 28 days, during which community feedback would be sought. The opportunity to provide feedback would be promoted via: emails to stakeholders; temporary signs in the reserve; on-site public meeting; letters to nearby homes; and Council's social media and a Your Say online webpage. Feedback would be collected through an online submission form as well as letters and emails.

In accordance with the Community Garden Policy and Guidelines (2020) initial comments from internal stakeholders have already been sought and received about the proposal. These stakeholders will be provided a further opportunity to comment during the public exhibition period.

TIMING

The outcomes of the public exhibition of this community garden proposal would be reported to a Council meeting following a review of community feedback received.

Should Council support the establishment of a new community garden at Annam Road Reserve an agreement between Council and the garden group would be negotiated and executed. This agreement would define, among other things, the roles and responsibilities of Council and the garden group for the development, ongoing maintenance and management of the garden and the final garden design.

Works to establish the new garden would not commence until a range of matters are concluded to the satisfaction of Council, including: approval to establish the garden; the garden agreement; final design and costings; funding secured.

LINK TO STRATEGY

This report relates to the Community Strategic Plan Outcome of:

- Protection of the environment - Goal 3 Our community is well-supported in protecting and enhancing the environment to ensure safe and sustainable use
- Partnership and participation - Goal 21 Our community is engaged in decision making processes
- Housing, places and spaces - Goal 12 Our community has access to spaces that enable healthy and active living and allow for a broad range of creative, sporting and recreational opportunities to be enjoyed

FINANCIAL CONSIDERATIONS

The cost to publicly exhibit the community garden proposal can be met from the Parks and Recreation 2022/2023 operational budget.

Like all community gardens the intent is for the community garden group to meet the costs to establish, maintain and operate the garden and Council may provide minor financial or in-kind assistance from time to time such as providing a tap. These financial arrangements will form part of the agreement between Council and the garden group which must be executed before the proposed garden can be constructed.

SOCIAL CONSIDERATIONS

Community gardening is a recreational activity that contributes to the health and well-being of our community as well as providing a range of environmental, social and educational benefits.

This is a community-led proposal by a group of residents whose vision includes to create a unique, safe, and supportive garden for Bayview and the local community. Its objectives include:

- To promote a sense of community where trust, effort, knowledge, skills, and responsibility are shared, where creativity and the environment are nurtured, and where philanthropy can flourish.
- To become a happy, enjoyable meeting place for the local community. A place where shared ideas of organic food growing, food preparation and eating become the norm and where education, peer learning and sustainable use of land as a valuable food resource is shared with the local community.
- To work collaboratively with the community, government and businesses to establish a network to facilitate the establishment and on-going support of the Bayview Community Garden to make it a successful social activity for the local community.

Notwithstanding the potential community benefits of this proposal, the proposal may have impacts on residences located close to the reserve. Public exhibition of this proposal will provide these residents and other stakeholders the opportunity to express any concerns and ideas.

ENVIRONMENTAL CONSIDERATIONS

Should the community garden proposal be supported by Council, the establishment, maintenance and management of the new community garden would be done in accordance with all relevant environmental legislation and regulations and Council policies. The intention is for the produce to be organic so there is no proposal to use harmful chemicals in the maintenance of the garden.

Environmental matters raised during the internal assessment have been considered for the draft REF (Attachment 2). No trees or vegetation are required to be removed for this proposal.

GOVERNANCE AND RISK CONSIDERATIONS

This community garden proposal has been assessed internally and it has been determined that this proposal aligns with Council's Community Gardens Policy and Guidelines (2020).

Should Council support the establishment of a new community garden at Annam Road Reserve an agreement between Council and the garden group would be negotiated and executed. This agreement would define, among other things, the roles and responsibilities of Council and the garden group for the development, ongoing maintenance and management of the garden and the final garden design.

ITEM 13.4	OUTCOME OF COMMUNITY ENGAGEMENT - MARKET LANE WASTE FACILITY ACCESS FEE
REPORTING MANAGER	MANAGER, PROPERTY, COMMERCIAL & TOURIST ASSETS
TRIM FILE REF	2023/150533
ATTACHMENTS	1 Community Engagement Report - Proposed New Fee for Market Lane Waste Facility

SUMMARY

PURPOSE

To report on the submissions received from the public exhibition of the proposed Market Lane Waste Facility Fee and to seek Council endorsement for the proposed access fee.

EXECUTIVE SUMMARY

At the Council meeting held on 22 November 2022 Council resolved to:

- Place on public exhibition for a minimum of 28 days, the proposed new fee of \$585 (GST inclusive) for access to a commercial bin storage area for Market Lane businesses located within the Whistler Street carpark.*
- Provide a further report on the outcome of the public exhibition of the proposed fee.*

The proposed fee was publicly notified from 8 December 2022 to 29 January 2023 via Council's YourSay page, Council's E-News and our Have Your Say community engagement newsletter. Two responses were received, with one being supportive and one unsupportive of Council charging a fee to access the facility. Further detail on the feedback received is available in the attached Community Engagement Report.

It is recommended that a new fee for access to the area is established for a 12-month trial period. It is proposed that this fee is set at \$585 (GST inclusive) per participating business to cover administration and access to the commercial bin storage area during this trial period.

RECOMMENDATION OF DIRECTOR TRANSPORT AND ASSETS

That:

- Council note the community feedback from the public exhibition of the draft Market Lane Waste Facility Access Fee.
 - Council approve the new proposed Market Lane Waste Facility Access Fee.
-

REPORT

BACKGROUND

Council has been working with the Manly Business Chamber on a proposed waste storage area in the Market Lane precinct to find a solution to the issue with businesses leaving their commercial bins outside their premises.

The proposed area to be used by the Market Lane precinct businesses is an existing Council bin storage area located in Whistler Street carpark.

To provide an affordable, efficient, scalable, and sustainable model for the businesses to access the commercial bin storage area, a new fee for access to the area has been proposed for a 12-month trial period. It is proposed that this fee is set at \$585 (GST inclusive) per participating business to cover administration and access to the commercial bin storage area during this trial period. It is not intended that Council will have any operational involvement with the waste removal from this storage. A business representative appointed by the Manly Business Chamber shall arrange a centralised waste contract for businesses with Council-issued access agreements in place.

This fee was not exhibited as part of the 2022/23 Fees and Charges as the commercial bin storage area location had not been decided at that time.

Council resolved to place the proposed fee on public exhibition at its November 2022 meeting and subsequent to that meeting carried out Public Notification between 8 December 2022 to 29 January 2023.

CONSULTATION

The working group, in identifying an appropriate location for the Market Lane waste facility, consulted with relevant business units within Council to determine the process and fee for location and access of the facility, including the Property Team, Transport Network Team, Community Transport, Parking and Fleet and Waste Management and Cleansing. The Manly Business Chamber has been kept informed as the working group considered appropriate options for the location of the proposed commercial bin facility and supports the location in Whistler Street carpark.

The proposed fee was publicly notified from 8 December 2022 to 29 January 2023 via Council's YourSay page, Council's E-News and our Have Your Say community engagement newsletter. Two responses were received, with one being supportive and one unsupportive of Council charging a fee to access the facility.

The response that was not supportive of the proposal felt it was unnecessary to charge local business for access to the facility. In response to this submission Council staff have advised that private use of public land is something for which Council does charge a fee. Food and Beverage premises generally have a condition of their development consent to set aside an adequate area for waste storage within their own premises. It would not be a sustainable or equitable approach to allow businesses to store their waste bins for free on public land.

The attached Community Engagement report provides a verbatim record of the submissions along with further information as to why a fee is appropriate in the given circumstances.

TIMING

Should Council approve the proposed fee, it is anticipated the facility will be operational during Q2 of 2023.

LINK TO STRATEGY

This report relates to the Community Strategic Plan Outcome of:

- Environmental sustainability - Goal 6 Our Council is recognised as a leader in environmental sustainability
- Good governance - Goal 20 Our Council is proactive, and efficiently and effectively responds to, and delivers on, the evolving needs of the community
- Partnership and participation - Goal 22 Our Council builds and maintains strong partnerships and advocates effectively on behalf of the community

FINANCIAL CONSIDERATIONS

It is anticipated that introduction of the fee for access to this new facility will generate approximately \$5,000 in unbudgeted operational revenue for Council over the proposed 12-month trial period.

Fee	Unit	\$	GST Applicable
Market Lane Waste Facility Access fee	Per business	\$585	Yes (included in fee)

SOCIAL CONSIDERATIONS

Introducing this fee will ensure that businesses located within the Market Lane precinct have a reasonable opportunity to take part in accessing the Market Lane waste facility at Whistler Street carpark, alleviating the issues of unsightly commercial bins being left in public areas.

It is anticipated that the removal of commercial bins from the Market Lane precinct area will have a positive social impact on the local community who use that area for recreation and socialising.

ENVIRONMENTAL CONSIDERATIONS

The Market Lane waste facility area will be used by a number of businesses located in the Market Lane precinct with day-to-day operations and management undertaken by a nominated Market Lane business user, ensuring the facility is kept in a clean and tidy condition and regular servicing of the commercial bins undertaken.

GOVERNANCE AND RISK CONSIDERATIONS

Each business will enter into an agreement with Council for access to the Market Lane waste facility area and be issued with swipe cards to access the facility. The facility will operate for a 12-month trial period after which time ongoing access will be reviewed by Council in collaboration with businesses using the facility and the Manly Business Chamber.



Community engagement summary report of public notification

Project name	2022/23 Fees and Charges: Market Lane Waste Facility – New access fee
Your Say notification period	Thursday 8 December 2022 to Sunday 29 January 2023
Background	<p>Council have been working with the Manly Business Chamber on a proposed waste storage area in the Market Lane precinct to find a solution to the issue with businesses leaving their commercial bins outside their premises.</p> <p>The proposed area to be used by the Market Lane precinct businesses is an existing Council bin storage area located in Whistler Street carpark.</p> <p>At the 22 November meeting 2022, Council resolved to exhibit the proposed new fee of \$585 (GST inclusive) for access to a commercial bin storage area located within the Whistler Street Carpark for Market Lane businesses, with the goal to provide an affordable, efficient, scalable, and sustainable model for businesses.</p>
Total number of submissions	Two (2)
Summary of findings	We received two submissions, one supporting the proposed waste solution, and the second querying the benefit to the businesses and need for a licence fee.
Engagement approach	<p>The engagement was planned, implemented and reported in accordance with the Northern Beaches Council Community Engagement Strategy (2022).</p> <p>A project page¹ was established on our Have Your Say platform and included project information and the road reserve closure area plan.</p> <p>The project was primarily promoted through, Council's E-News and our Have Your Say community engagement newsletter.</p> <p>Feedback was captured through an online submission form embedded onto the project page. An open-field comments</p>

¹ <https://yoursay.northernbeaches.nsw.gov.au/202223-fees-charges-market-lane-waste-facility>

	box provided community members a space to share their comments. Email and written submissions were also invited. Contact details were provided should people have questions.
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How we engaged	
Authorities notified by email	Nil
Visitors to Your Say page	918 visits
Have Your Say newsletter	1 edition (newsletter distribution approx. 22,000)
Council's E-News	1 edition (newsletter distribution approx. 160,000)
Manly Mainstreet News	1 edition (newsletter distribution approx. 595)

Findings	
Verbatim submission*	Council Response
Great idea. The bins left outside premises in Market lane are unsightly, smell, attract birds looking for scraps and detract from the overall ambience that is trying to be achieved. The laneways should be inviting with great restaurants, bars, shops, and good street furniture which encourage people to gather and enjoy the area.	Supportive feedback has been noted.
Businesses have entered into their lease arrangements with the knowledge they can have their bins outside for free. They already pay a fee to have their rubbish collected. Adding a fee for existing tenants for bin rental space is a bit odd. What incentive do the businesses have to use the new space? It might make collection easier as it is one location, but that benefits the waste collector, not the business who have to travel further to their bin. Unless all businesses use it, the amenity if the lane will not be improved. I also find it hypercritical that the council would charge businesses for the bin space yet Coles trolleys sit in the carpark taking up space at no fee, or has the council started charging Coles for the real estate? Council pays for a lot of things to improve amenities for people on the northern beaches, I think it would be nice if Market lane didn't have bins in. I think it would be good if there were no fee to small business for the new bin location but a fee if they don't use the new location. The distance is a inconvenience. The fee is a major deterrent.	<p>Generally, food and beverage businesses in the area surrounding the proposed bin storage room are required to provide adequate bin storage on their premises as a condition of development consent. Private use of community public land attracts a fee.</p> <p>Council have received numerous, ongoing complaints and concerns regarding the accumulation of waste in Market Lane. In response, this initiative was developed in consultation with the Manly Business Chamber (the Chamber) who have made it clear that local businesses have a demand for this kind of facility. Many businesses have inadequate space available to meet their obligations relating to the storage of bins and waste on their premises, or do not have allocated space within their premises to store garbage bins hence leading to the accumulation of waste and bins on public land in Market Lane. .</p> <p>It is anticipated that the Market Lane Precinct will benefit greatly in reducing litter and pollution in the area to promote the recreation, socialising and use of outdoor dining, and as such drawing the community to Market Lane and the respective businesses.</p> <p>Where commercial operations require the use of Council managed public land a fee is charged. Supermarkets with</p>

	trolley bays on Council land are required to have a licence with Council and do pay a fee for the use of the land.
--	--

**Personal details have been redacted where possible. Spelling and grammatical errors have been amended only where misinterpretation or offence may be caused.*

Document administration	
Version	1.0
Date	17 February 2023
Approval	Content provided and approved by Executive Manager, Property
Status	Draft
Notes	Community and stakeholder views contained in this report do not necessarily reflect the views of the Northern Beaches Council or indicate a commitment to a particular course of action.

15.0 NOTICES OF MOTION

ITEM 15.1 **NOTICE OF MOTION NO 1/2023 - PARKING RESTRICTIONS
REQUEST, PITTWATER ROAD, COLLAROY**

TRIM FILE REF **2023/141372**

ATTACHMENTS **NIL**

Submitted by: Councillor Vincent De Luca OAM

NOTE: This item was listed on the agenda but not dealt with at the 28 February 2023 Council Meeting

MOTION

That Council formally write to the NSW Minister for Roads and the Shadow Minister for Roads requesting the implementation of hourly parking restrictions on Pittwater Road from the intersection of Anzac Parade and Pittwater Road to Hadleigh Avenue, Collaroy to prevent cars for sale taking up much needed resident and beach-user parking and posing safety risks with potential purchasers walking on Pittwater Road to inspect vehicles.

ITEM 15.2	NOTICE OF MOTION NO 2/2023 - BEACH SAFETY SIGNS
TRIM FILE REF	2023/141415
ATTACHMENTS	NIL

Submitted by: Councillor Michael Gencher, Councillor Rory Amon

NOTE: This item was listed on the agenda but not dealt with at the 28 February 2023 Council Meeting

MOTION

That:

1. In an ongoing effort to reduce the drowning toll, Council work with local Surf Life Saving Clubs, Surf Life Saving Northern Beaches, and Surf Life Saving (SLS) NSW to identify, investigate and participate in available innovative projects and programs that specifically target high risk locations/user groups and to further improve public awareness.
 2. Council consider the installation of improved, prominent beach safety signs as permanent installations at beach entrances, and in the general proximity of coastal areas – to complement the temporary warning signage, services and information currently provided by local Surf Life Saving Clubs and coastal lifeguard services.
 3. Council consider the installation of improved permanent and prominent beach safety signage at identified blackspot locations throughout the Northern Beaches. A blackspot location is one that, historically, has had a high number of coastal safety-related incidents including preventions, rescues, emergency call outs and drownings – or being an unpatrolled beach – or area of beach.
 4. Council consider the production and installation of permanent and prominent beach safety signage and translations of key beach safety messages in multiple languages - as is currently standard practice for several Councils.
 5. An agreed action plan be prepared, and Council briefed by July 2023 – with the above actions to be funded from relevant operational budgets (if adopted), and if adopted, to be ready for implementation by September 2023 – to coincide with the start of summer and the SLS Patrol Season.
-

BACKGROUND FROM COUNCILLOR MICHAEL GENCHER AND COUNCILLOR RORY AMON

As at the writing of this background – Thursday 9 February 2023, there have been 56 drowning deaths in Coastal and Inland Waterways in NSW this summer. Beach safety signs are designed to send clear messages and warnings.

Surf Life Saving (SLS) NSW has indicated that coastal drownings are up 30 per cent on the 10-year average – with a 13 per cent increase on last year.

This summer the drowning toll is the highest on record – including several tragic drownings on our Northern Beaches.

According to the National Coastal Safety Report 2022, 939 coastal drowning fatalities were recorded from 2012-2022, almost half of which were overseas-born beachgoers. However, the 939 fatalities were only of people whose birth continent was known, so the total number of drownings is higher.

Current research indicates that 50 per cent of beach goers born overseas and approximately 40 per cent of locals rarely see, or never read beach safety signage at beaches they are not familiar with.

Approximately half of the overseas-born beachgoers had no understanding of some beach safety terms such as, rip, bank, high surf, shore dump, or bluebottles.

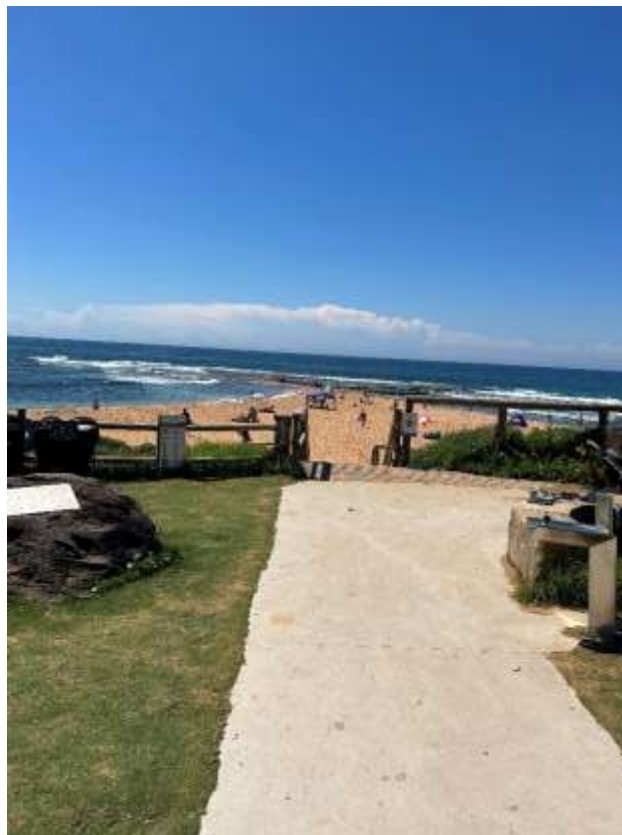
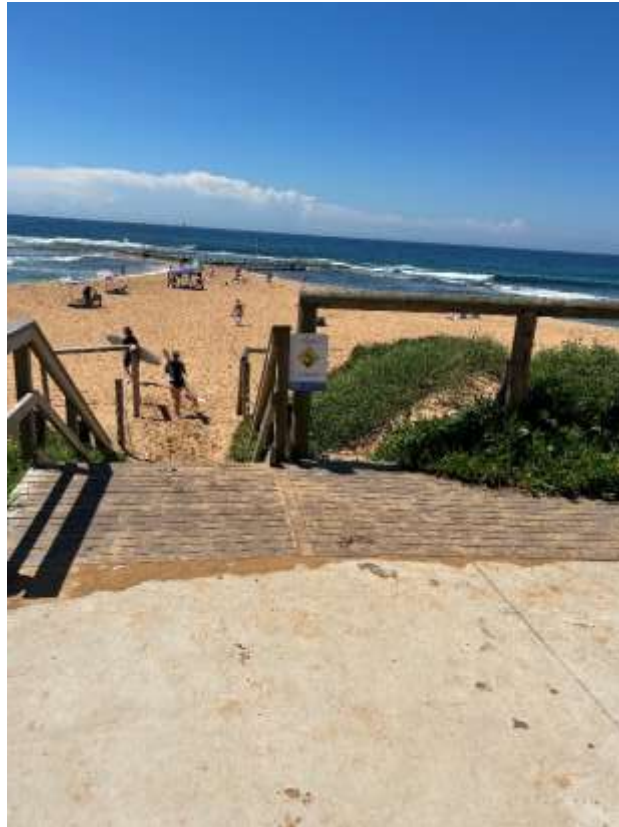
Not seeing, not reading, and not understanding the signs, could, and does have deadly consequences.

Research indicates that many people are also unsure about what the Australian beach flags mean - while they represent 'always swim between the flags', more than 30 per cent of the overseas visitors and residents believe that beach flags mean that only people 'perceived to be good swimmers' were allowed to be between the flags.

Another common flag instruction – 'No flags = no swim' – is also confusing, with research showing that this instruction is perceived as – 'they may not swim, but they may play, walk, and stand/wade in the water'.

Currently, local Surf Life Saving Clubs are having to deal with an overwhelming number of preventions and rescues, due to the lack of signage and information. The local surf clubs are having to hire (at their own expense) variable message sign (VMS) boards with safety and information messaging to protect beachgoers.





ITEM 15.3	NOTICE OF MOTION NO 3/2023 - CASHLESS GAMING CARD REFORM
TRIM FILE REF	2023/141477
ATTACHMENTS	NIL

Submitted by: Councillor Rory Amon

NOTE: This item was listed on the agenda but not dealt with at the 28 February 2023 Council Meeting

MOTION

That Council

1. Support, in principle, the NSW Government-announced cashless gaming card policy.
2. Write to the NSW Premier and the Leader of the Opposition informing each of Council's position.

BACKGROUND FROM COUNCILLOR RORY AMON

Problem gambling is a scourge on society. Council can play a role in advocating for reform in this space. In 2017, this council resolved in favour of calling on the NSW Government to put an immediate cap on poker machine licences in the Northern Beaches LGA.

The NSW Government has announced a policy to make every poker machine cashless by 31 December 2028. This will help combat and reduce problem gambling and money laundering. Full details of the policy can be read on [here \(https://www.nsw.gov.au/media-releases/pokies-to-be-cashless-2028-under-historic-changes#:~:text=The%20NSW%20Liberal%20and%20Nationals,laundrying%20in%20electronic%20gaming%20machines\)](https://www.nsw.gov.au/media-releases/pokies-to-be-cashless-2028-under-historic-changes#:~:text=The%20NSW%20Liberal%20and%20Nationals,laundrying%20in%20electronic%20gaming%20machines).

The policy announcement has been widely supported, including by the Alliance for Gambling Reform and Independent Members of Parliament, Alex Greenwich and Greg Piper (see [here - https://www.smh.com.au/national/nsw/perrottet-on-a-winner-as-advocates-and-mps-praise-pokies-reform-20230206-p5cicb.html](https://www.smh.com.au/national/nsw/perrottet-on-a-winner-as-advocates-and-mps-praise-pokies-reform-20230206-p5cicb.html)).

ITEM 15.4	NOTICE OF MOTION NO 6/2023 - BREWARRINA SISTER CITY YOUTH PROGRAM
TRIM FILE REF	2023/141494
ATTACHMENTS	NIL

Submitted by: Councillor Sue Heins and Councillor Ruth Robins

NOTE: This item was listed on the agenda but not dealt with at the 28 February 2023 Council Meeting

MOTION

That Council:

1. Investigate future options of supporting our Sister City relationship with Brewarrina in supporting youth from both Brewarrina and the Northern Beaches LGA.
 2. Staff prepare a report to come back within 3 months outlining future possible options to continue this support, including the financial cost for consideration in the 2023/24 Budget.
-

BACKGROUND FROM COUNCILLOR SUE HEINS AND COUNCILLOR RUTH ROBINS

Since COVID-19 our relationship with assisting the youth of our sister city, Brewarrina and sending our youth to Brewarrina appears to have halted.

Historically the Bush to Beach program supported primary-aged children and Brewarrina Council had a system that brought high school achievers to the Northern Beaches and Northern Beaches Council sent local high school achievers to Brewarrina and surrounds.

Bush to Beach has a vision to connect outback regional areas in need with local surf lifesaving clubs as is the relationship with South Narrabeen SLSC and Brewarrina.

There appears to be an opportunity to re-engage and for Councillors to assess which way forward in assisting to re-engage for the benefit of our youth and assist their development.

ITEM 15.5

NOTICE OF MOTION NO 7/2023 - URGENT REQUEST FOR A SAFETY AUDIT OF ELECTRIC BIKE, ELECTRIC SCOOTER AND OTHER BIKE USAGE ON NORTHERN BEACHES SHARED PATHS, BIKE PATHS AND FOOTPATHS

TRIM FILE REF **2023/141499**

ATTACHMENTS **NIL**

Submitted by: Councillor David Walton and Councillor Sprott

NOTE: This item was listed on the agenda but not dealt with at the 28 February 2023 Council Meeting

MOTION

That:

1. The Northern Beaches Council Local Traffic Committee, in partnership with the Northern Beaches Police Area Command, conduct an urgent safety audit of electric bike, electric scooter and other bike usage, on Northern Beaches shared paths, bike paths, and footpaths. The safety audit should include consideration of, but not limited to:
 - A. Speeding;
 - B. Shared path design models and factors;
 - C. Path separation versus segregation;
 - D. Advisory speed signage;
 - E. Education and communication campaign on electric bike, scooter and other bike legislative responsibilities; and
 - F. Regulatory factors, including Council Rangers and Police operations to target non-compliance of road rules applicable to electric bikes, scooters and other bikes.
2. The outcomes of the safety audit be reported back to Council as a matter of urgency, with recommendations to mitigate the increasing risks associated with these safety issues.

BACKGROUND FROM COUNCILLOR DAVID WALTON AND COUNCILLOR SPROTT

The Northern Beaches shared paths are an area open to the public that is designated for the use of both bicycle riders and pedestrians. The Northern Beaches is seeing a significant increase in the use of electric bikes, scooters and other bikes on shared bike paths with increased speeds, that a reasonable person would consider an increasing risk to pedestrian safety.

An increasing number of residents are contacting their elected representatives to address this increasing safety concern.

When riding on a shared path, the road rules require electric bicycle riders and other bike and scooter riders to:

- Keep to the left (unless it is impractical to do so)
- Give way to pedestrians including wheeled recreational devices/toys. You should always slow down, stopping if necessary to avoid a collision.
- Keep to the left of any oncoming bicycle rider.

In line with the Centre for Road Safety guidance, to make paths safer for everyone it is recommended that bike riders:

- Provide pedestrians with a metre of space when passing
- Use their bell to warn others when you are approaching
- If there is room, moving off the path to the left if you wish to stop riding
- Be careful around young children and dogs, as they are often unpredictable in their movements, and older pedestrians who may be more vulnerable
- Travel at a safe speed so you can stop within a safe distance of pedestrians on the path.

- ITEM 15.6** **NOTICE OF MOTION NO 4/2023 - DUFFYS FOREST
COMMUNITY BRIDLE TRAIL**
- TRIM FILE REF** **2023/141507**
- ATTACHMENTS** 1 [↓](#) Rob Stokes MP Letter of Support to Council - Duffys
Forest and Terrey Hills Community Bridle Trail
2 [↓](#) NBCS Letter of Support to Council - Duffys Forest and
Terrey Hills Community Bridle Trail

Submitted by: Councillor Rory Amon

NOTE: This item was listed on the agenda but not dealt with at the 28 February 2023 Council Meeting

MOTION

That:

1. In consultation with the Duffys Forest Residents Association and Terrey Hills Progress Association, Council Officers prepare a draft "Community Bridle Trail Action Plan" detailing the steps which need to be taken in the short, medium and long term, to repair and enhance the Community Bridle Trail.
 2. A report be brought back to Council in 3 months providing a draft Action Plan and next steps for Council's consideration.
-

BACKGROUND FROM COUNCILLOR RORY AMON

The Community Bridle Trail through Terrey Hills and Duffys Forest is a unique feature of this wonderful area. For those not familiar, the Community Bridle Trail can be described as a naturally formed trail through the Terrey Hills and Duffys Forest area which provides amenity for walkers, runners, bike riders and horse riders.

Unfortunately, over time, the Trail has degraded and become unsafe for users. The purpose of this motion is to establish a process by which the Trail can be repaired and enhanced.

On 25 January 2023, the Duffys Forest Residents Association provided Council with correspondence detailing steps which needed to be taken in relation to the Bridle Trail. A copy of that correspondence will be provided to Councillors. It is noted that both the local Member of Parliament, the Hon. Rob Stokes MP, and Northern Beaches Christian School support the residents' efforts on this matter.



Rob Stokes

Pittwater MP

20 January 2023

Mr Ray Brownlee PSM
Chief Executive Officer
Northern Beaches Council
725 Pittwater Road
DEE WHY NSW 2099

Dear Mr Brownlee, *Ray*

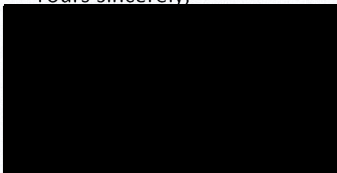
I write in support of the Duffy's Forest Resident's Association's (DFRA) submission to Northern Beaches Council to repair and enhance the Bridle Trail along Booralie Road, between Terrey Hills and Duffys Forest.

I appreciate that the trail traverses a unique and special area of our community and believe that the DFRA has articulated the benefits and opportunities that improvements to the Trail would provide.

I acknowledge and support the efforts of the DFRA and look forward to collaborative discussions occurring between its members and Northern Beaches Council.

Thank you for your consideration of this matter.

Yours sincerely,



ROB STOKES MP
MEMBER FOR PITTPATER

1725 Pittwater Road MONA VALE NSW 2103

Phone: 02 9999 3599 Fax: 02 9999 0922 Email: pittwater@parliament.nsw.gov.au

Printed on 100% Recycled Paper



Wednesday 18 January 2023

ATT: Craig Sawyer
Executive Manager, Transport & Civil Infrastructure
Northern Beaches Council

Cc: Councillor Rory Amon

Dear Mr Sawyer,

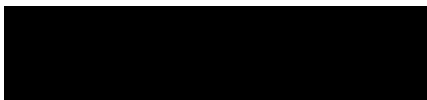
Letter of Support: Duffys Forest and Terrey Hills Community Bridle Trail

I write in support of the submission, made by Mr Paul Moore on behalf of Duffys Forest Residents Association (DFRA) to Council regarding the upgrade and ongoing maintenance of the Duffys Forest and Terrey Hills Community Bridle Trail (CBT).

Northern Beaches Christian School is supportive of local infrastructure that will enhance the amenity of Terrey Hills/Duffys Forest and ensure that Booralie Road is safe for cyclists, horses, pedestrians, and drivers. We believe that safety and amenity will be improved for users in the area and the wider community through upgrading and maintaining the Trail.

Thank you for your consideration of this matter.

Kind regards,



Tim Watson

Principal, Northern Beaches Christian School

ITEM 15.7	NOTICE OF MOTION NO 5/2023 - DAYDREAM STREET, WARRIEWOOD
TRIM FILE REF	2023/141515
ATTACHMENTS	NIL

Submitted by: Councillor Rory Amon

NOTE: This item was listed on the agenda but not dealt with at the 28 February 2023 Council Meeting.

MOTION

That Council write to Transport for NSW seeking advice as to the detailed reasons why Daydream Street, Warriewood, is proposed to remain closed onto Mona Vale Road moving forward.

BACKGROUND FROM COUNCILLOR RORY AMON

Daydream Street, Warriewood, intersects with Mona Vale Road, but has been closed off.

Residents have been attempting to understand why the road is proposed to remain closed following the completion of the Mona Vale Road (East) duplication but have been unable to receive reasons from the project managers or Transport for NSW (TfNSW) as to the reasons why the road is proposed to remain closed.

The purpose of this motion is for Council to write to TfNSW and seek formal advice and reasons for the proposal for Daydream Street to remain closed.

ITEM 15.8	NOTICE OF MOTION NO 9/2023 - BUILDING AND DEVELOPMENT COMPLIANCE
TRIM FILE REF	2023/180481
ATTACHMENTS	NIL

Submitted by: Councillor Kristyn Glanville

MOTION

That:

1. Council note:
 - A. The leadership role Council plays in fostering a strong compliance culture within the community with regards to compliance with building and development controls.
 - B. Resourcing of compliance staff dealing with development and building control, and other areas of compliance, are being prioritised for review through the ongoing service levels review being undertaken by Council staff.
 - C. Council's Compliance and Enforcement Policy is being currently reviewed by staff, and draft amendments for exhibition will be reported to the May 2023 council meeting.
2. The Chief Executive Officer prepare a report to Council at the May 2023 meeting concerning the following points regarding the private certification scheme:
 - A. Any issues identified by staff or residents regarding the efficacy of this scheme
 - B. Any recommendations for improving state legislation dealing with oversight of development and compliance
 - C. Prepare a draft letter to the NSW Government, Shadow Planning Spokesperson, Department of Fair Trading, Office of Local Government, and NSW Local Government Association, highlighting the matters identified in A - B.
3. The Chief Executive Officer prepare a workshop by May 2023 for the Councillors concerning any innovative ideas for improving compliance by the community with building and development regulations. This could include, for example:
 - A. Proactive and random inspections of building sites
 - B. Joint inspection 'blitzes' with co-regulators such as the NSW EPA
 - C. Use of new technology to identify illegal development such as clearing of trees
 - D. Education campaigns to improve a culture of compliance.
4. The Chief Executive Officer report back to Council at the May 2023 meeting with options for resourcing a specialised compliance team responsible for dealing with allegations of unauthorised tree or vegetation clearing.

BACKGROUND FROM COUNCILLOR KRISTYN GLANVILLE

1. Council's role as a regulator

Council has jurisdiction to take enforcement and compliance activity in relation to a number of areas, which are listed in its Compliance and Enforcement Policy. This jurisdiction includes development and building control, pollution control and environmental degradation or damage, environmental health, public health and safety, waste water systems, control over companion

animals, food safety, fire safety, tree preservation, residential swimming pool safety, and noxious weeds. Council has various powers to investigate and address allegations of breaches, including (but not limited to) issuing compliance orders and bringing enforcement proceedings.

2. Community concerns regarding the efficacy of compliance measures

Councillors frequently receive complaints from residents about non-compliance they have observed in the community in relation to these areas. Some common complaints concern non-compliant development, tree lopping or removal without permission, and dogs on beaches where they are not permitted.

Some specific examples of complaints received by Councillors regarding non-compliant development include that:

- The development did not first obtain a development approval (DA) or complying development certificate (CDC), and was otherwise not exempt development.
- The developer/landowner obtained a CDC which ought not to have been granted by the private certifier, as the development was not in fact complying development, or which has unreasonable amenity impacts on their privacy, solar access, view sharing, etc.
- The private certifier has taken a lax approach to oversight of the development
- Residents are directed by Council to raise their complaints to the certifier, but the certifier takes no action.
- Complaints by residents to Fair Trading regarding the conduct of a private certifier do not result in any meaningful action being taken against that certifier.
- The costs of taking private enforcement action to the Land and Environment Court are beyond the means of ordinary residents, as this would realistically cost in the order of \$100,000, and there is only a window of 3 months to bring proceedings.
- The resident has identified what they believed to be unauthorised clearing of trees or vegetation on both private and public land.

3. Rationale for this motion

There is harm to the community and environment where breaches are common and take place with impunity. Illegal development can undermine social cohesion of a neighbourhood, have negative visual amenity and privacy impacts on residents, undermine ecological sustainability of development, and have a significant financial cost to residents in having to bring private enforcement proceedings or having the value of their property devalued by neighbouring illegal works. Even relatively “minor” breaches which do not cause environmental harm, may nonetheless cause social harm due to their everyday impacts on amenity or by generally reinforcing a lax culture towards compliance within the community.

Recognising that Council has a diverse range of activities that it regulates, this motion seeks to:

1. Note for the community’s visibility the forthcoming reviews of resourcing of enforcement and compliance activity by Council staff, with a view to ensuring Council is appropriately resourced to deal with the number of complaints being received and promote a culture of compliance within the community. For example, compliance staff dealing with building and development issues currently deal with approximately 80 complaints each at any given time, however, it is likely that 25-30 complaints would be a more manageable workload in order to ensure high levels of customer satisfaction, rigour, and staff morale and wellbeing.

2. Note for the community's visibility an upcoming review of Council's existing Compliance and Enforcement Policy. This policy guides the activities of staff and discretions exercised during investigations.
3. Advocate on behalf of the community for reforms to the private certification system, given this scheme generates many of the complaints raised to Council, and much of the frustration experienced by the community.

ITEM 15.9	NOTICE OF MOTION NO 10/2023 - WARRINGAH AQUATIC CENTRE ADULT SWIM CLASSES
TRIM FILE REF	2023/185181
ATTACHMENTS	NIL

Submitted by: Councillor Rory Amon

MOTION

That:

1. An options report be prepared and presented to the April 2023 Council meeting that outlines options available to Council to re-establish the Swim Fit squads with a suitable staff member or temporary hire to run the squads until such time that the Warringah Aquatic Centre can find suitable and more permanent coaching replacements. The options report is to include consideration of the following matters:
 - A. Options available to offer an attractive remuneration in line with the Local Government (State) Award for a suitably qualified candidate.
 - B. Options to explore all available avenues, including commercial organizations, to identify a longer-term coaching solution.
 - C. Options available for Council to run the squads with other staff when the regular coach is sick or unavailable
2. Council when conducting future expressions of interest/ tender for swimming squads with Warringah pool and other pools to include both children and adult swim squads.

BACKGROUND FROM COUNCILLOR RORY AMON

Warringah Aquatic Centre (WAC) has been running adult squads for decades, providing local residents adult swim classes every weekday at 9.30am to around lunch time, the latter for local office workers and the like. This has been an exemplary service and it provided fitness for predominately 30–80 year-olds over a very long time. There are numerous people with disabilities both physical and mental who rely on their swimming fitness for their well-being. There are also residents in the 80s who love the squads as a part of their fitness and friendship regime and rely on the service as their only form of exercise each week.

Not only is it good for fitness but also does a lot of good for emotional well-being, networking and social aspects for the community. There is a substantial number that currently benefit from the squads. No doubt this contributes significant income to the WAC since it is central to why many people subscribe for the annual membership or pay on a daily entry basis. A significant amount of income will be lost should the squads not be re-instated.

The issue the swimmers now face has arisen since 23 December 2022 when all squad swimmers were informed that the regular coach was going to take long service leave and that no swim squads would be available until 23 March 2023. However, this was followed by a further communication in mid-March saying the squads are no longer viable and offering a refund on pre-paid annual fees. All information on adult swim squads has been taken off the Council website.

People participating in the Warringah Adult Swim Squads believe that the WAC is the jewel of Northern Beaches and is an excellent facility. People from all over the Northern Beaches use the squads. It is therefore difficult for the users to reconcile that the WAC – which has long been the

home of one of the best adult swim squads – can now no longer offer this service. The users are also understandably upset by how abruptly the service was withdrawn.

The swimmers are grateful for a constructive meeting with the Executive Manager, Recreation Services on 17 March 2023, and they appreciate staff efforts and willingness to work with the group going forward.

Staff have confirmed that they have written to squad swimmers to advise that as an interim measure, from 22 March 2023, 4 lanes will be set aside for lap swimmers from 9.30am to 10.30am and that each of the lanes will have a sign designating it as slow, medium or fast.

16.0 QUESTIONS WITH NOTICE

ITEM 16.1	QUESTION WITH NOTICE NO 5/2023 - MANLY'S LITTLE PENGUINS
TRIM FILE REF	2023/168460
ATTACHMENTS	NIL

Submitted by: Councillor Sarah Grattan

QUESTION

1. What are the most recent figures of Little Penguin breeding pairs?
2. What are the main causes of the decline in penguin population numbers over the last 10 years?
3. What measures have been taken by lead authorities in the last 12 months to protect Manly's Little Penguins?
4. What support was provided by Council?
5. How effective were the measures instituted to date?
6. What measures and enforcement must be taken by relevant authorities to protect the remaining penguins? What can Council do to support?
7. What would be the cost of increased ranger presence at Collins Beach and other sensitive habitat sites during the penguin nesting season?
8. What actions should we ask the lead authorities to take to avoid the extinction of Little Penguins at Manly (NSW National Parks and Wildlife Service, Department of Environment)

ITEM 16.2	QUESTION WITH NOTICE NO 6/2023 - BROOKVALE STRUCTURE PLAN - NIGHT CLUBS
TRIM FILE REF	2023/179077
ATTACHMENTS	NIL

Submitted by: Councillor Vincent De Luca OAM

QUESTION

At the recent Candidates' Forum for State Candidates, Mayor Michael Regan stated that the Brookvale Structure Plan will include "Night Clubs". Could this please be confirmed whether this is accurate and if so where exactly would "Night Clubs" be allowed in Brookvale?

ITEM 16.3**QUESTION WITH NOTICE NO 7/2023 - BROOKVALE
STRUCTURE PLAN - INCREASED DEVELOPMENT AND LACK
OF TRANSPORT INFRASTRUCTURE TO COPE****TRIM FILE REF****2023/179096****ATTACHMENTS****NIL**

Submitted by: Councillor Vincent De Luca OAM

QUESTION

1. Is it correct that the Plan will facilitate a maximum height limit of 13 stories? If not, what is the maximum height limit?
2. Is it correct that the Plan proposes 1300 new apartments in Brookvale? If not, what is the number proposed?
3. A. Is Council aware of Mayor Regan's statement on Facebook on 15 March 2023 stating "the bus system is broken" and the efficacy of the BLine?

B. In view of these concerns, will Council abandon the Brookvale Structure Plan, that Mayor Regan proposed, due to the "broken" bus system and inefficiency of the "BLine" in view of the lack of local infrastructure which is struggling to cope now let alone coping with high rise developments that the Plan will facilitate in Brookvale?

17.0 RESPONSES TO QUESTIONS WITH NOTICE

ITEM 17.1	RESPONSE TO QUESTION TAKEN ON NOTICE NO 1/2023 - LIZARD ROCK SECOND OPINION LEGAL COSTING
TRIM FILE REF	2023/052106
ATTACHMENTS	NIL

Taken on notice at the extraordinary Council meeting on 24 January 2023 from: Mayor Michael Regan.

QUESTION

What would be the approximate cost of obtaining a second legal opinion?

RESPONSE

\$42,000 excluding GST

ITEM 17.2 **RESPONSE TO QUESTION WITH NOTICE NO 2/2023 - GIPA APPLICATIONS**

TRIM FILE REF **2023/083137**

ATTACHMENTS **NIL**

Submitted by: Councillor Vincent De Luca OAM

QUESTION

I refer to a recent email dated 5 January 2023 from Council's Information Access Officer to a constituent which states:

"My apologies for the delay in responding to your request - due to the high volume of information requests that Council received last year, there have been delays in responding within our usual timeframes."

In view of this, could I please be advised on the following:

- A. How many Council Officers were responsible for processing applications made to Council under GIPA in 2021, 2022 and currently in 2023?
- B. In each respective year 2019, 2020, 2021 and 2022 how many Formal and Informal Applications were received by Council?
- C. Between 2019 to 2022 how many applications under GIPA were refused by Council?
- D. Between 2019 to 2022 how many determinations on GIPA applications were subject to external review applications to the NSW Information and Privacy Commission and of those, how many did the Commission recommend Council review or change its decision?
- E. Between 2019 to 2022 how many determinations on GIPA applications were subject to Appeal to NCAT and of those, how many Appeals were upheld by the Tribunal?
- F. Between 2019 to 2022 what is the total amount of fees collected by Council for Formal GIPA Applications?

REPONSE

- A. How many Council Officers were responsible for processing applications made to Council under GIPA in 2021, 2022 and currently in 2023?

Year	Staff head count
2023	2.57 FTE
2022	2.57 FTE except for the period August to November when it was 1.57 FTE due to a vacancy
2021	2.57 FTE

- B. In each respective year 2019, 2020, 2021 and 2022 how many Formal and Informal Applications were received by Council?

Year	Formal	Informal
FY 2022	75	2,949
FY 2021	74	2,899
FY 2020	61	2,765
FY 2019	72	2,377

- C. Between 2019 to 2022 how many applications under GIPA were refused by Council?

Year	Refused
FY 2022	3
FY 2021	0
FY 2020	1
FY 2019	0

- D. Between 2019 to 2022 how many determinations on GIPA applications were subject to external review applications to the NSW Information and Privacy Commission and of those, how many did the Commission recommend Council review or change its decision?

Year	Determinations	Decisions changed
FY 2022	2	2
FY 2021	0	0
FY 2020	0	0
FY 2019	0	0

- E. Between 2019 to 2022 how many determinations on GIPA applications were subject to Appeal to NCAT and of those, how many Appeals were upheld by the Tribunal?

Year	Applications	Decision changed
FY 2022	0	0
FY 2021	1	0
FY 2020	0	0
FY 2019	1	0

- F. Between 2019 to 2022 what is the total amount in fees collected by Council for Formal GIPA Applications?

Year	Fees collected*
FY 2022	\$2540
FY 2021	\$2670
FY 2020	\$2485
FY 2019	\$2840

*Includes application and search fees.

18.0 MATTERS PROPOSED TO TAKE PLACE IN CLOSED SESSION

RECOMMENDATION

That:

1. In accordance with the requirements of section 10A of the Local Government Act 1993 as addressed below, Council resolve to close the meeting to the public to consider and discuss:

- A. Item 18.1 RFT 2022/125 - Lease of Cafe/Restaurant - Flying Fox Cafe on the basis that it involves the receipt and discussion of commercial information of a confidential nature that would, if disclosed, prejudice the commercial position of the person who supplied it [10A(2)(d(i)) Local Government Act 1993].

This report discusses/provides advice concerning commercial tenders. On balance, the public interest in preserving the confidentiality of the information about the matter outweighs the public interest in maintaining openness and transparency in Council decision-making because the disclosure of this information would result in the release of commercial in confidence information.

- B. Item 18.2 Exemption from Tendering for Provision of Maintenance of Parking Equipment and Software for the Manly Pay Stations on the basis that it involves the receipt and discussion of commercial information of a confidential nature that would, if disclosed, prejudice the commercial position of the person who supplied it [10A(2)(d(i)) Local Government Act 1993].

This report discusses/provides advice concerning Exemption from Tendering. On balance, the public interest in preserving the confidentiality of the information about the matter outweighs the public interest in maintaining openness and transparency in Council decision-making because the disclosure of this information would result in the release of commercial in confidence information.

2. The resolutions made by the Council in Closed Session be made public after the conclusion of the Closed Session and such resolutions be recorded in the Minutes of the Council Meeting.

19.0 REPORT OF RESOLUTIONS PASSED IN CLOSED SESSION

In accordance with Part 15 of the Code of Meeting Practice, resolutions passed during a meeting, or a part of a meeting, that is closed to the public must be made public by the chairperson as soon as practicable. The resolution must be recorded in the publicly available minutes of the meeting.



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