

## 4.1 Draft Warringah Local Environmental Plan 2009 - Consideration of Submissions

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### EXECUTIVE SUMMARY

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#### Purpose

To consider the submissions received in response to the exhibition of the draft Warringah Local Environmental Plan (WLEP) 2009 and to seek Council's endorsement of the final draft WLEP 2009 as contained in the Attachment Booklet 1 *Warringah Local Environmental Plan (WLEP) 2009*, and Attachment Booklet 2 *Warringah Local Environmental Plan Maps* (separately tabled) and for WLEP 2009 to be forwarded to the Director-General of the NSW Department of Planning requesting that the Minister make the plan.

#### Summary

- Council received 306 submissions in response to the public exhibition of draft WLEP 2009.
- The submissions and internal comments have resulted in 40 recommended changes to draft WLEP 2009.
- Several submissions also identify issues that could be addressed in a future review of WLEP 2009.
- Councillors have been provided with a copy of all submissions received up to 31 March 2010.
- Should Council resolve to adopt WLEP 2009, it will be forwarded to the Director-General of the Department of Planning with a request that the Minister for Planning make the plan.

#### Financial Impact

The WLEP 2009 has been prepared within the Strategic Planning budget and resources.

#### Policy Impact

Once the plan is made by the Minister, WLEP 2009 will form the statutory basis for land use planning in Warringah.

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### RECOMMENDATION OF DIRECTOR PLANNING AND DEVELOPMENT SERVICES

- A. That Council consider this report, its attachments and all submissions in accordance with section 68 of the Environmental Planning and Assessment Act.
  - B. That Council formally acknowledge receipt of all submissions as copied on the CD and distributed to Councillors (see Attachment Booklet 3 *Submissions CD*).
  - C. That Council adopt the Warringah Local Environmental Plan 2009 at Attachment Booklet 1 *Warringah Local Environmental Plan (WLEP) 2009*, and the Warringah Local Environmental Plan 2009 Maps separately tabled as Attachment Booklet 2 as altered in accordance with the recommendations of this report.
  - D. That Council advise the Director-General of the Department of Planning that:
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- (i) Council requests the Director-General of the NSW Department of Planning to advise the Minister to make the plan in accordance with Council's submission
- (ii) Council has fulfilled its responsibilities under section 68(4) of the Environmental Planning and Assessment Act by submitting to the Director-General:
- (a) details of all submissions made to the exhibition of the draft Warringah Local Environmental Plan 2009, and
  - (b) the draft Warringah LEP 2009 as altered in accordance with the recommendations of this report, and
  - (c) this report, inclusive of all attachments
- E. That Council advise all parties who made a submission of its decision in this matter.
- F. That Council not undertake a public hearing in response to matters raised in submissions.
- G. That proponents of rezoning proposals or other suggested amendments to the Warringah Local Environmental Plan 2009 be advised that they can submit a planning proposal to Council with the required fee and all necessary documentation to support the proposal, for further consideration in accordance with the *Environmental Planning and Assessment Act* once the WLEP 2009 is in force. This advice in no way indicates support or otherwise of any such proposal.
- H. That Council note requests for rezoning or amendments to WLEP 2009 that relate to Council's study of housing as part of the Housing Strategy currently underway.
- I. That Council note requests for rezoning or amendments to WLEP 2009 that relate to Council's study of the Brookvale Employment Lands as part of the Brookvale Employment Lands Strategy currently underway.
- J. That Council investigate appropriate building heights, amongst other matters, for Warringah's employment lands as part of its strategic work program to respond to the employment targets of the Metropolitan Strategy.
- K. That Council advise the Land and Property Management Authority that the submission of a planning proposal for Lot 2406, DP 752038 in relation to Crown land at Jersey Place Cromer is required for any land use changes.
- L. That Council endorse the following changes to the zoning and development standards:

Location	Map(s)	Change from	Change to
1. Lot 5 DP 747057 - Bate Avenue, Allambie Heights	Land Zoning Map	R2 Low density residential	RE1 Public Recreation
	Lot Size Map	600m <sup>2</sup>	Not applicable
	Height of Buildings Map	8.5m	Not applicable
2. Lot 7028 DP 1109287 - Wanniti Road, Belrose	Land Zoning Map	RE1 Public Recreation	E1 National Parks and Nature Reserves
3. Lot 1 DP 544788 - Queenscliff	Land Zoning Map	R2 Low density residential	RE1 Public Recreation
	Lot Size Map	450m <sup>2</sup>	Not applicable

Road, Queenscliff	Height of Buildings Map	8.5m	Not applicable
4. Lots 3 and 4 DP 9392, nos 4 and 6 - Innes Rd, Manly Vale	Land Zoning Map	R2 Low density residential	RE1 Public Recreation
	Lot Size Map	600m2	Not applicable
	Height of Buildings Map	8.5m	Not applicable
5. Lot B DP 374942 no 27 - Old Pittwater Road, Brookvale	Land Zoning Map	R2 Low density residential	RE1 Public Recreation
	Lot Size Map	600m2	Not applicable
	Height of Buildings Map	8.5m	Not applicable
6. Lot 31 Sec 4 DP 1818, no 50 Washington Avenue, Cromer	Land Reservation Acquisition Map	Identified for acquisition (but now acquired)	Delete from Land Reservation Acquisition Map
7. Lot 102 DP 1104837, nos 122 – 126 Old Pittwater Road, Brookvale	Land Reservation Acquisition Map	Identified for acquisition (but now acquired)	Delete from Land Reservation Acquisition Map
8. Lot 101 DP 1043940; Lot 2 DP 577611 Lot 10 DP 569549 Rural Fire Services Headquarters off Kamber Road, Terrey Hills	Land Zoning Map	E3 Environmental Management	RE1 Public Recreation
	Lot Size Map	20ha	Not applicable
	Height of Buildings Map	8.5m	Not applicable
9. Lease area for Manly Vale Bowling Club house	Land Zoning Map	RE2 Private Recreation	RE1 Public Recreation
10. Lease area for North Manly Bowling Club house	Land Zoning Map	RE2 Private Recreation	RE1 Public Recreation
11. Lease area	Land Zoning Map	RE2 Private Recreation	RE1 Public Recreation

for Long Reef Golf Club house			
12. Lease area for Wakehurst Golf Club house	Land Zoning Map	RE2 Private Recreation	RE1 Public Recreation
13. Lot 81 DP 852584 and Lot 71 DP 871903 - Wakehurst Parkway, Frenchs Forest	Land Zoning Map	R2 Low Density Residential (discrepancy between zone and cadastre)	RE1 Public Recreation (align with cadastral boundaries)
	Lot Size Map	discrepancy between zone and cadastre	Not applicable (align with boundaries)
	Height of Buildings Map	discrepancy between zone and cadastre	Not applicable (align with boundaries)
14. Lot 1 DP 1132323 - Joalah Road Duffy's Forest	Land Zoning Map	RU4 Rural small holdings	RE1 Public Recreation
	Lot Size Map	2ha	Not applicable
	Height of Buildings Map	8.5m	Not applicable
15. Land zoned SP1 at 187 Allambie Road, Allambie Heights, Spastic Centre of NSW	Land Zoning Map	SP1 Special Activities	SP1 Special Activities delete <i>schools</i> and add <i>community facilities</i> and <i>educational establishments</i>

M. That Council amend the Land Use Table as follows:

- (i) All zones except E1 National Parks and Nature Reserves and E2 Environmental Conservation: add *public utility undertakings* as an Item 2 Permitted without consent use
- (ii) All zones except E1 National Parks and Nature Reserves, E2 Environmental Conservation and W1 Natural Waterways: add *emergency services facilities* as an Item 3 Permitted with consent use
- (iii) Zone B5 Business Development: add *bulky goods premises* as an Item 3 Permitted with consent use
- (iv) Zone RE1 Public Recreation: add registered clubs (ordinarily incidental or ancillary to any type of recreation facility) as an Item 3 *Permitted with consent use*.
- (v) Zone RE1 Public Recreation: add *car parks* as an Item 3 Permitted with consent use
- (vi) Zone RU4 Rural Small Holdings: delete *recreational facilities (outdoor)* as an Item 3 Permitted with consent use

N. That Council amend the various clauses below as follows:

- (i) Clause 1.2(2)(f)(vi): delete the word *sulphate* and replace with the word *sulfate*

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- (ii) Clause 3.1(3A)(e): delete
  - (iii) Clause 4.2A: change the title to read: *No strata plan or community title subdivisions in certain rural and environmental protection zones*
  - (iv) Clause 4.3(1)(a): delete and replace with:
    - (a) *to ensure that buildings are compatible with the height and scale of surrounding and nearby development*
  - (v) Clause 6.9(3)(b): delete the word *east* and replace with the word *west*
  - (vi) Clause 6.20(2): delete subclause (b) and replace with
    - (b) *must ensure that all lots contain a suitable building area that will allow the preservation of natural landscape features including rock outcrops*

O. That Council amend Schedule 1 Additional permitted uses as follows:

(i) Clause 2 Use of certain land at Challenger Drive, Belrose

Subclause (1): delete the words *Licence Number L308608* and insert instead the words *Lease RE 412 592*

Subclause (2): add the words *Processing and recycling facility for construction and demolition waste and a concrete batching plant*

(ii) Clause 14 Use of certain land at Lumsdaine Drive, Freshwater

Subclause (1): delete and replace with (1) *This clause applies to land in Lumsdaine Drive, Freshwater, being Lot 100 DP 1136132*

(iii) Clause 20 Use of certain land in the vicinity of Mona Vale and Myoora Roads, Terrey Hills

Subclause (2): add *recreational facilities (outdoor)*

Subclause (2): add *recreation areas*

P. That Council amend Schedule 2 Exempt development as follows:

(i) Signage (Other) subclause (1)(d): delete *6m<sup>2</sup>* and replace with *0.06m<sup>2</sup>*

(ii) Signage (Other) subclause (1)(e): delete the word *dwelling* and replace with *building*

(iii) Outdoor eating areas (associated with an approved restaurant): add after Note 2:

*Note 3 The occupation of a Crown reserve requires a licence under the Crown Lands Act, and where Council is a Reserve Trust manager, outdoor eating is covered by a Trust licence*

(iv) Add the following item:

Outdoor areas on road reserves used for the display of goods or business identification signage.

*Must be associated with a lawfully established business.*

*Note. The use must be approved under section 125 of the Roads Act 1993*

Q. That Council amend Schedule 3 Complying development as follows:

(i) Delete: Building alterations (industrial and warehouse buildings) and its subclauses

(ii) Delete: Building alterations (internal for business premises, offices and shops) and its

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 subclauses

- (iii) Delete: Change of use (from one type of approved business, office or shop to another type of business, office or shop) and its subclauses
  - (iv) Delete: Change of use (from one type of approved industrial or warehouse use to another type of industrial or warehouse use), and its subclauses
- R. That Council amend Schedule 5 Environmental heritage by deleting Item no HI 8, Lot 72, DP 791319, 35 Beach Road, Collaroy, and delete this item from the Heritage Map.
- S. That Council, in relation to Clause 6.17 Coastline hazards, delete subclause 6.17(4) and replace with the following:
- (4) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*
    - (a) *in the Area of Wave Impact and Slope Adjustment – only development that is environmental protection works will be carried out, and*
    - (b) *in the Area of Reduced Foundation Capacity – all development will be carried out in accordance with current best practice for the geotechnical and structural design of foundations, including specialist coastal engineering advice, and*
    - (c) *the development and any beachfront trees, buildings, works and places will not be at risk from the coastal processes of erosion and wave impact, and*
    - (d) *the development will not adversely affect coastal processes resulting in detrimental increases in coastal risk exposure of other development, properties, trees, buildings, works and places.*
- T. That Council, in relation to the Belrose Road Corridor:
- (i) amend the draft Warringah LEP 2009 Land Zoning Map as contained in Attachment Booklet 2 to zone the three parcels of land in the Belrose Road Corridor (west) to Zone RE1 Public Recreation
  - (ii) amend the draft Warringah LEP 2009 Lot Size and Height of Buildings Maps as contained in Attachment Booklet 2 so that these maps are not applicable to this land
  - (iii) insert the following subclause in Clause 6.18 and appropriately renumber all subclauses within the clause:
 

*6.18(2) This clause applies to land zoned E3 Environmental Management except land known as Belrose Road Corridor being Lot 52, DP 819308, Lot 12, DP 225340, Lot 5, DP 260080, Lot 3, DP 534463, Lot 13, DP 587071, Lot 33, DP 222330, Lot 38, DP 238042, Lot 39, DP 238042, Lot A, DP 347637, Lot 2, DP 526613, Lot 11, DP 244797, Lot 6, DP 514039 and Lot 5, DP 514039.*
  - (iv) delete Clause 6.20(3)(b) and replace with the following subclause:
 

*6.20(3)(b) must include the creation of lots (in addition to those referred to in paragraph (a)) that contain land zoned RE1 Public Recreation.*
- U. That Council, in relation to the Dee Why Town Centre:
- (a) delete the words *Not adopted* from Clause 4.4 Floor space ratio, and insert instead:
    - (1) The objectives of this clause are as follows:
      - (a) to control the bulk and size of buildings;
      - (b) to achieve an appropriate visual relationship between buildings;
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- (c) to define the allowable density and intensity of development, taking into account the availability of infrastructure and the generation of vehicle and pedestrian traffic; and
  - (d) to minimise adverse environmental effects from buildings on the use or enjoyment of adjoining properties and the public domain.
- (2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.
- (b) delete the words *Not adopted* from Clause 4.5 Calculation of floor space ratio and site area, and insert instead:

### **(1) Objectives**

The objectives of this clause are as follows:

- (a) to define floor space ratio,
- (b) to set out rules for the calculation of the site area of development for the purpose of applying permitted floor space ratios, including rules to:
  - (i) prevent the inclusion in the site area of an area that has no significant development being carried out on it, and
  - (ii) prevent the inclusion in the site area of an area that has already been included as part of a site area to maximise floor space area in another building, and
  - (iii) require community land and public places to be dealt with separately.

### **(2) Definition of “floor space ratio”**

The *floor space ratio* of buildings on a site is the ratio of the gross floor area of all buildings within the site to the site area.

### **(3) Site area**

In determining the site area of proposed development for the purpose of applying a floor space ratio, the site area is taken to be:

- (a) if the proposed development is to be carried out on only one lot, the area of that lot, or
- (b) if the proposed development is to be carried out on 2 or more lots, the area of any lot on which the development is proposed to be carried out that has at least one common boundary with another lot on which the development is being carried out.

In addition, subclauses (4)–(7) apply to the calculation of site area for the purposes of applying a floor space ratio to proposed development.

### **(4) Exclusions from site area**

The following land must be excluded from the site area:

- (a) land on which the proposed development is prohibited, whether under this Plan or any other law,
- (b) community land or a public place (except as provided by subclause (7)).

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### **(5) Strata subdivisions**

The area of a lot that is wholly or partly on top of another or others in a strata subdivision is to be included in the calculation of the site area only to the extent that it does not overlap with another lot already included in the site area calculation.

### **(6) Only significant development to be included**

The site area for proposed development must not include a lot additional to a lot or lots on which the development is being carried out unless the proposed development includes significant development on that additional lot.

### **(7) Certain public land to be separately considered**

For the purpose of applying a floor space ratio to any proposed development on, above or below community land or a public place, the site area must only include an area that is on, above or below that community land or public place, and is occupied or physically affected by the proposed development, and may not include any other area on which the proposed development is to be carried out.

### **(8) Existing buildings**

The gross floor area of any existing or proposed buildings within the vertical projection (above or below ground) of the boundaries of a site is to be included in the calculation of the total floor space for the purposes of applying a floor space ratio, whether or not the proposed development relates to all of the buildings.

### **(9) Covenants to prevent “double dipping”**

When consent is granted to development on a site comprised of 2 or more lots, a condition of the consent may require a covenant to be registered that prevents the creation of floor area on a lot (the restricted lot) if the consent authority is satisfied that an equivalent quantity of floor area will be created on another lot only because the site included the restricted lot.

### **(10) Covenants affect consolidated sites**

If:

- (a) a covenant of the kind referred to in subclause (9) applies to any land (affected land), and
- (b) proposed development relates to the affected land and other land that together comprise the site of the proposed development,

the maximum amount of floor area allowed on the other land by the floor space ratio fixed for the site by this Plan is reduced by the quantity of floor space area the covenant prevents being created on the affected land.

### **(11) Definition**

In this clause, public place has the same meaning as it has in the Local Government Act 1993.

V. That following the making of the Warringah Local Environmental Plan 2009 by the Minister for Planning, Council include the following as part of the future review of WLEP 2009:

- (i) the issues raised in submissions that request changes beyond the translation from WLEP 2000
  - (ii) Discussions with Department of Climate Change and Water regarding their advice on
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the revised boundaries of national parks.

- (iii) Discussions with the Roads and Traffic Authority on their requested changes to the SP2 Infrastructure zone on the northern side of Mona Vale Road, Terrey Hills, near the intersection of Pittwater Road and Delmar Parade, Dee Why, and at the intersection of Forest Way and Dawes Road, Belrose.
- (iv) Discussions with the Roads and Traffic Authority on the zoning of public roads to clarify the Roads and Traffic Authority's position on which roads or parcels of land are affected.
- (v) The zoning of Dee Why, Curl Curl and Manly Lagoons as RE1 compared to Narrabeen Lagoon zoning of W1.
- (vi) The zoning of the perimeter of Griffith Park, Dee Why headland and other significant Crown reserve headlands to E2 Environmental Conservation.
- (vii) Discussions with the Land and Property Management Authority on the zoning of Waratah Park.
- (viii) Discussions with the Land and Property Management Authority on the need for additional uses associated with the Harbord Diggers Club to be included in the zoning.
- (ix) Consideration of the proposed additional uses of 'function centre' and 'place of public entertainment' at Lot 270 DP 752017 Myoora Road, Terry Hills.
- (x) The aims of WLEP 2009 be reviewed for clarity and intention
- (xi) Consider the amendment of WLEP 2009 as follows:
  - a) Schedule 1 Additional permitted uses be amended as follows:
    - By inserting:
      - Item 21 Use of certain land in the vicinity of Old Pittwater Road, Cross Street, Green Street and Dale Street, Brookvale
      - (1) This clause applies to land in the vicinity of Old Pittwater Road, Cross Street, Green Street and Dale Street, Brookvale, shown as "Area 10" on the Additional Permitted Uses Map.
      - (2) Development for the purposes of office premises is permitted with consent.
  - b) The Land Use Table be amended by deleting *boat repair facilities* as an Item 4 Prohibited use in the IN1 General Industrial zone.
  - c) The Warringah Local Environmental Plan 2009 Additional Permitted Uses Map be amended by identifying land in the vicinity of Old Pittwater Road, Cross Street, Green Street and Dale Street, Brookvale as "Area 10".



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## REPORT

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### Background

On 31 March 2006 the NSW Government gazetted the Standard Instrument (Local Environmental Plans) Order 2006. All Councils in NSW are required to prepare a new comprehensive local environmental plan (LEP) for their respective areas in the standard LEP format. The State Government established timeframes for completion of this work and Warringah was given 3 years within which to undertake the preparation of its new plan.

Having regard to this timeframe and the need to bring Warringah's LEP into alignment with State Environmental Planning Instruments, Council resolved to translate the existing provisions of Warringah LEP 2000 into the new standard format. The draft Warringah (Standard Instrument) LEP was adopted by Council 13 November 2007 and forwarded to Department of Planning on 27 November 2007 for certification.

Due to difficulties encountered by the NSW Department of Planning in processing the large number of LEPs being prepared throughout NSW, the State Government has revised its original timeframes. Warringah Council remains a priority Council and in this regard, Council received a letter in late April from the Department of Planning requesting that the draft LEP be submitted by 31 May 2010. Staff have replied advising that this does not fit into the Council meeting schedule or the programmed orderly progress of the draft LEP, including the full consideration of submissions as contained in this report.

After forwarding the draft LEP to the Department of Planning for certification (November 2007) extensive liaison between officers of the Department of Planning and officers of Council has occurred in relation to a wide variety of LEP matters. It is noted that Warringah Council was one of the earlier Councils to progress its Standard Instrument LEP which has led to delays due to the Department's ongoing refinement of the Standard Instrument LEP, development of new model clauses and the making of new State Environmental Planning Policies that overlap with LEPs. For example, the Standard Instrument (LEPs) Order (Amendment 2), State Environmental Planning Policy (Infrastructure) 2007 and State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 have all been made since Council's submission of its draft LEP for certification and have all necessitated revision of the plan.

The Director-General of the Department of Planning certified the draft Warringah LEP 2009 under section 65(2) of the Environmental Planning and Assessment Act on 9 September 2009. The draft Warringah LEP 2009 was publicly exhibited between 12 October and 30 December 2009 and is now brought before Council for its consideration of submissions and other matters.

### Matters arising from the Department's changes to the draft WLEP 2009

In addition to advising of certification of the draft LEP and required changes to the draft LEP, the Department's letter certifying draft WLEP 2009 also advises Council that it requires further information in relation to employment capacity targets, housing targets, and floor space ratios in the commercial area of Dee Why. Council's response to these matters is detailed at Attachment A to this report.

The certified 'Public Exhibition Draft' of WLEP 2009 includes changes to the draft LEP that were made by the Department without consultation with Council. The certificate also includes conditions requiring mapping changes to the draft LEP as conditions of certification.

The certification of the draft LEP was the subject of a report to Council on 22 September 2009. At that meeting Council resolved to:

*A. Adopt the certified draft public exhibition LEP, inclusive of all changes made by the Department of Planning. Make all map changes required by Schedule 2 to the section 65 certificate. Proceed to publicly exhibit the draft LEP.*

*B. Before commencement of the public exhibition, advise the Director General as follows:*

- a) Council does not support the Department's conditions of certification in relation to:*
- land known as Belrose Corridor (west), and*
  - Clause 6.17 Coastline hazards.*

*b) In order to expeditiously progress the draft Warringah LEP 2009, Council will proceed to publicly exhibit the draft plan but will seek to amend the provisions of the plan in relation to the above matters when it reports to the Department under section 68 of the Environmental Planning and Assessment Act.*

*c) In this regard, Council will immediately request a forum to discuss these matters further with the Department of Planning and will seek to:*

- i) resolve both matters in a way that is suitable to both the Department and Council, and*
- ii) gain agreement from the Department that any resolution foreshadowed in i) will be considered favourably by the Department when Council makes its report under section 68 of the Environmental Planning and Assessment Act.*

Council's responses to the Belrose Road Corridor West and Clause 6.17 Coastline hazards are also included in Attachment A.

### **Consultation and public exhibition of draft WLEP 2009**

Public exhibition of the draft Warringah LEP 2009 has been undertaken in accordance with the provisions of the Environmental Planning and Assessment Act, 1979 and the Environmental Planning and Assessment Regulation, 2000. Public exhibition took place between 12 October and 30 December 2009.

On 10 October 2009 an advertisement was placed in the Manly Daily to give notice of commencement of the public exhibition period. On 31 October 2009 an advertisement was placed in the Manly Daily to commence the simultaneous public exhibition of the draft Warringah Development Control Plan. Additional advertisements were placed in the Manly Daily on 7, 14, 21 and 28 November 2009 and 5, 12, and 19 December 2009.

On 5 November 2009 letters were sent to registered community groups, Chambers of Commerce, the Warringah Development Assessment Panel, the Warringah Development Review Panel and the Joint Regional Planning Panel to inform them of Council's decision to exhibit the draft LEP and draft DCP, to invite them to view the documents and make submissions.

The draft LEP and related documents were available for viewing at the Civic Centre (in hard copy) and online (inclusive of online at Warringah Council libraries) from the 12 October 2009. On 2 November 2009 Council's website listed a link to the exhibition of both the draft LEP and draft DCP on its home page. Users were invited to view the documents through Council's new electronic planning service and to make submissions online through Council's 'e-portal' or in the traditional manner of a written submission.

Staff conducted a series of public information evening forums for the general public. These included viewing of the draft LEP, draft DCP and associated documents, presentations on the draft documents and question time. The information forums were held as follows:

- Manly Vale Community Centre, Manly Vale, Wednesday 11 November 2009
- Tramshed Hall, Narrabeen, Tuesday 17 November 2009
- Forestville Memorial Hall, Wednesday 18 November 2009

Staff also conducted a series of public information 'shop fronts' on weekends at commercial venues to provide opportunities for the general public to view and ask questions regarding the draft documents. These were held as follows:

- Forest Way Shopping Centre, Saturday 14 November 2009
- Narrabeen Markets, Berry Reserve, Sunday 15 November 2009
- Forestville Shopping Centre, Saturday 21 November 2009

- Warringah Mall, Saturday 28 November 2009

At its meeting of 10 November 2009, Council resolved to extend the public exhibition and submission period for the draft LEP and DCP from its original date of 11 December to 30 December 2009, thereby exhibiting the draft LEP for 80 days.

Throughout the exhibition period a dedicated staff member maintained a 'hot line' to respond to telephone calls in relation to the draft LEP and draft DCP. Council also made the draft LEP, draft DCP and all supporting exhibition documentation available, free of charge to the community via CDs for viewing electronically. These were provided at the Civic Centre, Council libraries, all public information events and in response to telephone inquiries.

## Submissions

### Overview

Submissions received during the exhibition of draft WLEP 2009 and up to 31 March 2010 are addressed in this report. Over 300 submissions were received.

Attachment Booklet 3 *Submissions CD* to this report is a CD containing all submissions (with the exception of confidential submissions) in full, identified by their unique record number. This is provided to ensure that all Councillors have ready access to all submissions. Council also received several submissions that requested confidentiality. These have been provided to Councillors separately in hard copy.

In accordance with Council's resolution of 13 March 2007, the draft LEP has been prepared to translate the provisions of Warringah LEP 2000 into the Standard Instrument LEP format and into the Warringah DCP. Changes to land use planning policy have been limited and have been made only where these give effect to directions of the NSW Government's *Metropolitan Strategy* or to Council's *Community Strategic Plan*.

The translation of 74 'place based' localities into 20 land use based zones has given rise to many submissions that disagree with the outcome of this process. In particular, the matter of permitted and prohibited uses has given rise to multiple submissions. Differences in definitions between the Warringah LEP 2000 and the Standard Instrument LEP have also given rise to submissions. These issues are discussed further in Attachment Booklet 4 *Submissions Discussion* to this report.

The submissions include multiple requests for rezoning of land or changes that require a rezoning process, eg addition of a use to a particular zone. For the most part, such requests are not supported because they seek changes that are not consistent with Council's resolution of 13 March 2007. However, such issues are not 'lost causes'. Should Council resolve to continue the LEP process as recommended in this report, when the Minister has made the WLEP 2009, the issues raised in these submissions will be separately listed, prioritised, workshopped with Councillors and reported back to Council with appropriate timetabling as soon as possible.

### Submissions discussion

Submissions have been summarised and the issues raised have been addressed by staff. Due to the number of submissions, this summary and assessment is at Attachment Booklet 4 *Submissions Discussion*.

### How submissions are categorised for discussion in this report

The issues raised in submissions have been broken down into groups of like issues. Some submissions raise matters that fall within multiple groups.

- Part 1 Submissions requesting a public hearing
- Part 2 Submissions made by public authorities
- Part 3 Submissions requesting site specific rezoning
  - A Small sites
  - B Large sites

- Part 4 Issues arising from translation process
  - A Land zoned RE2 Private Recreation
  - B Land zoned SP1 Special Activities zone
  - C Permitted and prohibited uses
- Part 5 Issues arising from translation process – Precincts specific submissions
  - A B2 Oxford Falls Valley Locality (under Warringah LEP 2000)
  - B C8 Belrose North Locality (under Warringah LEP 2000)
  - C A4 Myoora Road Locality (under Warringah LEP 2000)
  - D Terrey Hills and Duffys Forest
- Part 6 Submissions about the draft LEP clauses and provisions
- Part 7 Submissions making general comments
- Part 8 Submissions received through Council's 'e portal'

### Request for a public hearing

Two submissions requested that a public hearing be held. One of these requests was based on the Standard Instrument clause *5.9 Preservation of trees and vegetation*, while the other related to the planning provisions for the Oxford Falls valley.

The issues raised in regard to the preservation of trees and vegetation relate to the planting and removal of trees by owners. These issues are not of a scale, nature or significance to warrant a public hearing. The issues raised in regard to Oxford Falls valley would require review and change to the planning provisions for the area. The WLEP 2009 is as close as possible to a translation of the provisions under WLEP 2000 in accordance with Council's resolution and review of the existing provisions has not been undertaken. The NSW Planning Assessment Commission's conclusion that future planning of the area must be carried out in a comprehensive and thorough way, assessing cumulative impacts for the whole area, was supported by Council at its meeting of 11 August 2009. This is a matter separate to the current requirement for Warringah to prepare a Standard Instrument template LEP in accordance with the NSW State Government directives.

Therefore it is recommended that a public hearing not be held in response to these submissions.

### Internal comments

Having regard to the time that has elapsed since the submission of the draft LEP to the Department in 2007 for certification, it was appropriate for all operational areas of Council to be afforded the opportunity to review the certified draft WLEP 2009 and provide comments.

Comments were received from six operational areas and reviewed as part of the process to bring forward this report to Council for finalisation of the draft LEP. Broadly, the comments addressed the following range of matters:

- zoning of publicly owned land, including national parks and land uses on public land,
- reservations of land for public purposes,
- management of exempt and complying development and development without consent including activities on road reserves,
- on going identification of coastline and flood hazards, and
- management of public infrastructure.

Attachment Booklet 5 *Internal Comments* provides a summary of comments, planning responses, and recommendations to Council for alterations to the draft LEP. It addresses all matters raised by various sections of Council that fall within the scope of the Standard Instrument LEP Order, are consistent with the translation of Warringah LEP 2000 or otherwise are supported.

The Strategic Planning team has separately responded to the relevant sections of Council, providing responses to the full range of matters raised and advising of the proposed recommendations to Council.

## Statutory matters

Section 68(4) of the Environmental Planning and Assessment Act, 1979, provides as follows:

(4) *The Council shall, subject to and except as may be provided by the regulations, submit to the Director-General:*

- a) *details of all submissions,*
- b) *the report of any public hearing,*
- c) *the draft local environmental plan and the reasons for any alterations made to the plan, and*
- d) *a statement:*
  - (i) *to the effect that the provisions of sections 66 and 67 and this section relating to public involvement in the preparation of the draft plan have been complied with,*
  - (ii) *specifying the environmental planning instruments and directions under section 117 that have been taken into consideration,*
  - (iii) *giving details of any inconsistency between the draft plan and an instrument or direction referred to in subparagraph (ii) and the reasons justifying the inconsistency, and*
  - (iv) *giving details of the reasons justifying the exclusion of provisions of the draft plan under subsection (5) or the exclusion from the application of the draft plan of any land under that subsection.*

The matters identified in section 68(4)(d) are each addressed below.

### Consideration of environmental planning instruments

As set out above, pursuant to section 68(4)(d)(ii) and (iii) Council must provide advice to the Director-General in relation to any environmental planning instruments that it has considered in the making of the draft LEP.

Attachment Booklet 6 *Consideration of environmental planning instruments* identifies the environmental planning instruments that have been considered in the preparation of the draft LEP, the manner in which the plan responds to these and provides details of any inconsistencies between the draft LEP and any environmental planning instrument

### Consideration of section 117 Directions

As set out above, pursuant to section 68(4)(d)(ii) and (iii) Council must provide advice to the Director-General in relation to the directions under section 117 of the Act that it has considered in the making of the draft LEP.

Attachment Booklet 7 *Consideration of section 117 Directions* identifies all section 117 directions that have been considered in the preparation of the draft LEP, the manner in which the plan responds to these and provides details of any inconsistencies between the draft LEP and any directions.

### Statement under section 68(4)(d)(i)

- i) The provisions of sections 66, 67 and 68 of the Act relating to public involvement in the preparation of the draft plan have been complied with. For details in this regard see discussion under the headings *Consultation and public exhibition of draft WLEP 2009* and *Submissions* in this report.

The public notice given by Council was in accordance with the requirements of section 66 of the Act and with the relevant provisions of the Regulation. The documentation exhibited in conjunction with the draft LEP was also in accordance with section 66 of the Act.

- ii) Details of Council's consideration of environmental planning instruments and directions under section 117 of the Act in the preparation of the draft LEP can be found under the headings *Consideration of environmental planning instruments* and *Consideration of section 117 Directions* and relevant attachments.
- iii) Council does not propose to exclude any provisions of the draft plan or parts of land from the draft plan pursuant to section 68(5) of the Act.

### **Recommended changes to draft WLEP 2009**

The recommended changes to the draft WLEP 2009 contained in this report are the result of submissions, legislation changes, corrections, updated mapping and geographical information, review and refinement of the document.

At Attachment C to this report each of the recommendations contained in this report is given a brief rationale. Further details can be found in Attachment Booklet 4 *Submissions Discussion*, and Attachment Booklet 5 *Internal Comments*.

These recommended changes have been made to the WLEP 2009 contained in Attachment Booklet 1 *Warringah Local Environmental Plan (WLEP) 2009*.

It should also be noted that since exhibition of the draft WLEP 2009, the Standard Instrument LEP template has been changed by the State Government. The WLEP 2009 contained in Attachment Booklet 1 *Warringah Local Environmental Plan (WLEP) 2009* has been drafted in accordance with those changes.

### **Policy Impact**

Local environmental plans are prepared to guide decision making on land use. These plans determine the areas in which various types of development can be considered; and which areas of open space and environmental sensitivity need to be protected.

Warringah Local Environmental Plan 2009 has been prepared in combination with the draft Development Control Plan to translate as closely as possible the provisions of Warringah Local Environmental Plan 2000. Once gazetted, WLEP 2009 will form the statutory basis for land use planning in Warringah.

### **Financial Impact**

The WLEP 2009 has been prepared within the Strategic Planning budget and resources.

### **Conclusion**

The community's response to the exhibition of WLEP 2009 resulted in over 300 submissions being received, attendance at public information evening forums, and interaction through the online forum. As well, internal staff comments have been received and considered as part of this report.

Many submissions suggested changes to the draft WLEP 2009 and some of these have been made in accordance with the recommendations listed in this report.

Should Council resolve to continue the LEP process as recommended in this report, the issues raised in submissions that request changes beyond the translation from WLEP 2000 will form part of a future review of WLEP 2009 following the making of the plan by the Minister for Planning.

### **Manager Strategic Planning**

Attachments A, B and C are attached to this report  
 Attachment 1 – see separate Attachment Booklet  
 Attachment 2 – A3 maps to be distributed at Meeting  
 Attachment 3 – CD  
 Attachment 4 – see separate Attachment Booklet  
 Attachments 5, 6 and 7 – see separate Attachment Booklet

Responses to the Department of Planning requirements

## Responses to the Department of Planning requirements

### Employment Capacity Targets

The DOP requested detailed information on how Council intends to provide for additional jobs and meet a significant proportion of the target identified under the draft North East Subregional Strategy, and the employment capacity potential of the draft WLEP 2009, including a breakdown by centre and significant employment areas.

The draft Warringah LEP 2009 is a translation, as far as possible, of WLEP 2000 in accordance with Council's resolution. As a translation, the amount of land zoned for employment will not change, ie there is no additional land proposed to be zoned for business or industrial purposes, and no land currently zoned for business or industrial purposes will be lost.

By way of comment, the NSW State Government's definition of employment lands is quite restricted to include industrial areas and business and technology parks that are primarily concerned with the production and movement of goods, although it is generally accepted that retail employs more people.

Warringah is expected to provide additional job capacity of 12,500 by 2031, which is likely to rise under the review of the Metropolitan Strategy with its extension to 2036.

Warringah's industrial areas and business parks total over 300ha, comprising Austlink, Brookvale, Cromer, Forestville, Frenchs Forest, Harbord, and Terrey Hills.

The draft North East Subregional Strategy identifies Brookvale, Frenchs Forest, Austlink/Terrey Hills and Cromer as being of strategic importance and to be retained for industrial uses. These areas are retained in the draft WLEP 2009.

Consultants Hill PDA prepared the SHOROC Regional Employment Study for SHOROC (March 2008) and found that Warringah is expected to experience a modest growth in demand for industrial floorspace up to 2016 and then a significant decline to 2031.

Following the making of the WLEP 2009 by the Minister for Planning, Council will be embarking on a review of its centres and employment lands. Master plans will be developed for each with detailed investigations and recommendations for delivery. The Brookvale Employment Lands Strategy, preceded by the Brookvale Employment Lands Issues Paper, will be the first of these studies and is expected to be finalised by the end of 2010.

The SHOROC study recommends that existing key employment areas such as Brookvale, Dee Why, Austlink and Frenchs Forest will need to be actively promoted as prestigious locations and Specialised Centres with a range of business services and support infrastructure, with Master Plans that contain realistic and implementable mechanisms to achieve sustainable economic and employment growth. The SHOROC study further recommends that a range of employment opportunities should be provided, including higher skilled business and technology jobs.

The study also provides SHOROC-wide and Warringah-specific principles for the development of centres, commercial offices, bulky goods, retail, industrial lands, business parks, enterprise corridors, home working, health related uses, education related uses, sport leisure and recreation, tourism, marine industry, and TV and film. These will all be assessed and where appropriate implemented following detailed analysis of Warringah's employment lands.

### Housing Targets

The DOP requested detailed information on how Council intends to achieve the housing targets in the long term identified under the draft North East Subregional Strategy, and the breakdown by key sites and centres and the expected take up rates at these locations.

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#### Responses to the Department of Planning requirements

The draft Warringah LEP 2009 is a translation, as far as possible, of WLEP 2000 in accordance with Council's resolution. As a translation, the existing densities and controls of the residential land will not change, i.e. there is no increase in densities for land zoned residential.

Warringah is expected to provide additional 10,300 dwellings by 2031, which is likely to rise under the review of the Metropolitan Strategy with its extension to 2036.

Warringah is currently preparing a draft Housing Strategy with the primary objective of planning to accommodate the additional 10,300 dwellings identified in the draft North East Subregional Plan.

In December 2009 Council adopted an extensive community engagement plan for the development of the Housing Strategy. Council is engaging with the community prior to drafting the Housing Strategy to ensure it is informed by community input. A major part of this consultation was a Community Summit that was held in May 2010.

Council has engaged consultants to assist Council to determine how many additional dwellings could be achieved under the existing planning controls and if new controls were applied to existing serviced centres. The economic analysis study models the effects of changes in planning control variables on the number of dwellings that could potentially be achieved at each of the centres, identified as a "village" or "small village" in the draft North East Subregional Plan. This provides an understanding of the impact that rezoning will have on residential development, to enable Council to amend planning controls to achieve the housing targets.

In addition to testing a range of planning control variables, the study models development scenarios to illustrate the outcomes of changing variables which are not within Council control. These include considerations such as the rate at which landowners choose to subdivide or redevelop lots for higher residential density, whether the maximum allowable floorspace is built on each lot and the mix and size of dwelling types contained within multiple dwelling developments.

This information and the outcome of the Community Summit will be used to develop a draft Housing Strategy which is expected to be completed by the end of 2010. It is then expected that Master plans will be developed for areas identified for increased residential densities with recommendations for delivery including amendments to the LEP.

#### Belrose Road Corridor West

In accordance with the above resolution of Council of 22 September 2009, on 6 October 2009 Council wrote to the Director-General of the Department of Planning. Since that time officers of the Department of Planning and Council have met on three occasions (4 October 2009; 27 January 2010 and 8 March 2010). Council officers reiterated Council's primary concerns as being to ensure that appropriate areas are set aside to maintain ecological values, in particular the wildlife corridor and to ensure that the land to become public open space is made available at no cost to Council, in accordance with previous understandings.

Through this process the Department (Office of Strategic Lands) has advised that it agrees to the amendment of the draft LEP Land Zoning Map to zone the land that is to become public open space RE1 Public Recreation.

By letter dated 7 May 2010 the Office of Strategic Lands (now part of the Land and Property Management Authority) has now confirmed that three hectares will be dedicated to Council at no cost for open space. The boundaries of two of the three of proposed open space have been resolved and Council has received a map showing the location of these two areas that are now recommended to be zoned RE1 Public Recreation.

The third area is within sector three, where flexibility is requested due to the difficulties in resolving stormwater across the site. The Office of Strategic Lands suggests that once the exact boundaries are defined during the DA process Council can zone the land RE1 Public Recreation following its

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Responses to the Department of Planning requirements

transfer. However, Council would prefer to have this third area zoned RE1 Public Recreation from the outset to demonstrate the clear intention. Any required changes can be made following the resolution of the stormwater issues. A copy of the letter is at Attachment B to this report.

Clause 6.20(3)(b) Subdivision of certain land, exists in the draft LEP to allow for the creation of the lots that will become public open space. Hence, with the identification of the land to become public open space on the draft LEP Land Zoning Map, Clause 6.20(3)(b) can be reworded to provide greater clarity of intent as set out in the recommendations.

Clause 6.18 Erection of dwelling houses in Zone E3 Environmental Management, is a local clause that was developed by Council to translate the provisions of Warringah LEP 2000 in relation to housing density for land to be zoned E3 Environmental Management. When developed, it was envisaged by Council that this clause would apply only to certain land to which a minimum subdivision lot size of 20 hectares applies. Council did not envisage its application to land in the Belrose Road Corridor as it sought to zone the corridor land E2 Environmental Conservation. With the Department's requirement of certification to change the zone to E3, the clause is activated in relation to the corridor land. This is not the intention of the clause and the clause should be amended to ensure that it does not operate over this land. This can be achieved with the addition of a subclause to Clause 6.20 as set out in the recommendations, and the appropriate renumbering of subclauses within the clause.

### Coastline hazards

Clause 6.17 Coastline hazards was included in the draft LEP (together with related provisions in the draft DCP) to translate the existing provisions of Warringah LEP 2000 for the Collaroy, Narrabeen and Fisherman's Beaches.

As a requirement of certification of the draft LEP the Department made changes to the clause.

On 6 October 2009 Council wrote to the Director General of the Department of Planning, in accordance with its resolution of 22 September 2009, stating its concerns in relation to the changed clause. Since that time officers of the Department of Planning and Council have met on three occasions (4 October 2009; 27 January 2010 and 8 March 2010).

Council officers reiterated Council's primary concern as being to ensure that the current provisions of Warringah LEP 2000 that prevent development in the area of wave impact and slope adjustment are carried forward into the draft LEP. The Department's primary concern is that Clause 6.17, as submitted for certification by Council, creates a sub zone (being the area of wave impact and slope adjustment). This is contrary to Direction 1 to Clause 2.1 Land use zones, of the Standard Instrument LEP.

Resolution of this issue has been further complicated by the release in November 2009 of the NSW Government's *Sea Level Rise Policy Statement* and draft documents for discussion/consultation being: *Draft Flood Risk Management Guide: Incorporating sea level rise benchmarks in flood risk assessments*; *Draft Coastal Risk Management Guide - Incorporating sea level rise benchmarks in coastal risk assessment* and *Draft NSW Coastal Planning Guideline – Adapting to Sea Level Rise*. In February 2010 Council made a submission to the relevant state agencies in response to this consultation process.

These documents have generated significant debate. In particular, the *Draft NSW Coastal Planning Guideline – Adapting to Sea Level Rise*, when final, may include directions relevant to Warringah's planning instruments.

One of the planning tools under consideration by the State Government is the development of a model (or standard) clause in relation to coastline hazards which must be adopted by all Councils seeking to include coastline hazard/protection provisions in their LEPs. However, to date, these

Responses to the Department of Planning requirements

documents have not been finalised and Council has not been advised of a timeframe of completion.

With a view to progressing the draft LEP it is considered that Council should alter the draft LEP to include a revised version of Clause 6.17 as set out in the recommendations. It also addresses an inconsistency in Clause 6.17 (as exhibited) whereby the management of development on land zoned R2 Low Density Residential is treated differently to that on land zoned B2 Local Centre or RE1 Public Recreation.

### Dee Why Town Centre Local Provisions

A submission to the Department of Planning was made in April 2010 requesting Department's agreement to leave Part 6 Division 1 as exhibited. Council staff have been repeatedly advised to expect a response from the Department shortly, however no response has been received to date, and consequently this section remains as exhibited without change.

### Floor space ratios – Dee Why commercial area

As a requirement of the Section 65(2) Certificate the NSW Department of Planning requires Council to address FSR controls for Dee Why town centre as part of the section 68 submission. This report explains the methodology on how FSR controls are derived for Dee Why town centre.

The draft LEP is a translation of the current controls under the Warringah LEP 2000. Therefore a consistent approach will be to analyse the built form controls to derive building envelopes which total floor area can be calculated from. Dee Why town centre is identified in the draft LEP as Zone B4 Mixed Use in the land zoning map. In WLEP 2009, the standard FSR control is in clause 4.4 and additional local provisions for Dee Why town centre are in Part 6, Division 1.

The current built form controls defined as building envelopes and maximum area of floor plates are compiled to derive the maximum floor area – Envelope FSR (Env FSR). This building envelope is not a building but a three dimensional zone that limits the extent of a building in any direction. It defines the extent of the overall building zone in plan and section within which a future building can be located. The Residential Flat Design Code states that building envelopes are at least 20-25% greater than their achievable floor area to allow for building articulation. From that definition, the Envelope FSR established has to be reduced to allow for building articulation. To establish the 'reduction factor', four (4) case studies of recently completed buildings approved under the current built form controls have been compiled. Refer to the Floor Space Ratio (FSR) Calculations (*below*) for the detailed worksheet.

#### Case Study A – Dee Why Grand (Commercial/ residential building under construction)

Built FSR = 4.44 Env. FSR = 5.54 Reduction Factor =  $4.44/5.54 = 0.8$

#### Case study B – 11-13 Oaks Ave (Completed commercial/ residential building)

Built FSR = 3.32 Env FSR = 4.20 Reduction Factor =  $3.32/4.20 = 0.79$

#### Case Study C – 691 Pittwater Rd Commonwealth Bank (Existing Heritage Building)

Existing FSR = 2.0 Env FSR = 4.96 Reduction Factor =  $2.0/4.96 = 0.40$

#### Case Study D – 4-14 Kingsway (Residential Development under construction)

Built FSR = 1.99 Env FSR = 1.80 Increase Factor =  $1.99/1.8 = 1.1$

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Responses to the Department of Planning requirements

### **Analysis**

Reduction factor of 0.8 is consistent with mixed use zoned sites – Case Studies A and B

Development potential for sites with heritage constraints will be reduced - Case Study C

Overdevelopment is possible with current built form controls with the 4th floor loft apartments built within the 13m height limit – Case Study D

### **Conclusion**

A reduction factor of 0.8 is proposed to be uniformly applied to all areas for the following reasons:

A reduction factor of 0.8 is consistent with the recommendation of the Residential Flat Design Code to allow for building articulation; design constraints of SEPP 65 requirements and non gross floor area like lift shafts, stairs, vehicular access, loading docks, plant rooms, etc. Applying a consistent reduction factor throughout will be considered fair and unbiased considering the whole area is zoned mixed use.

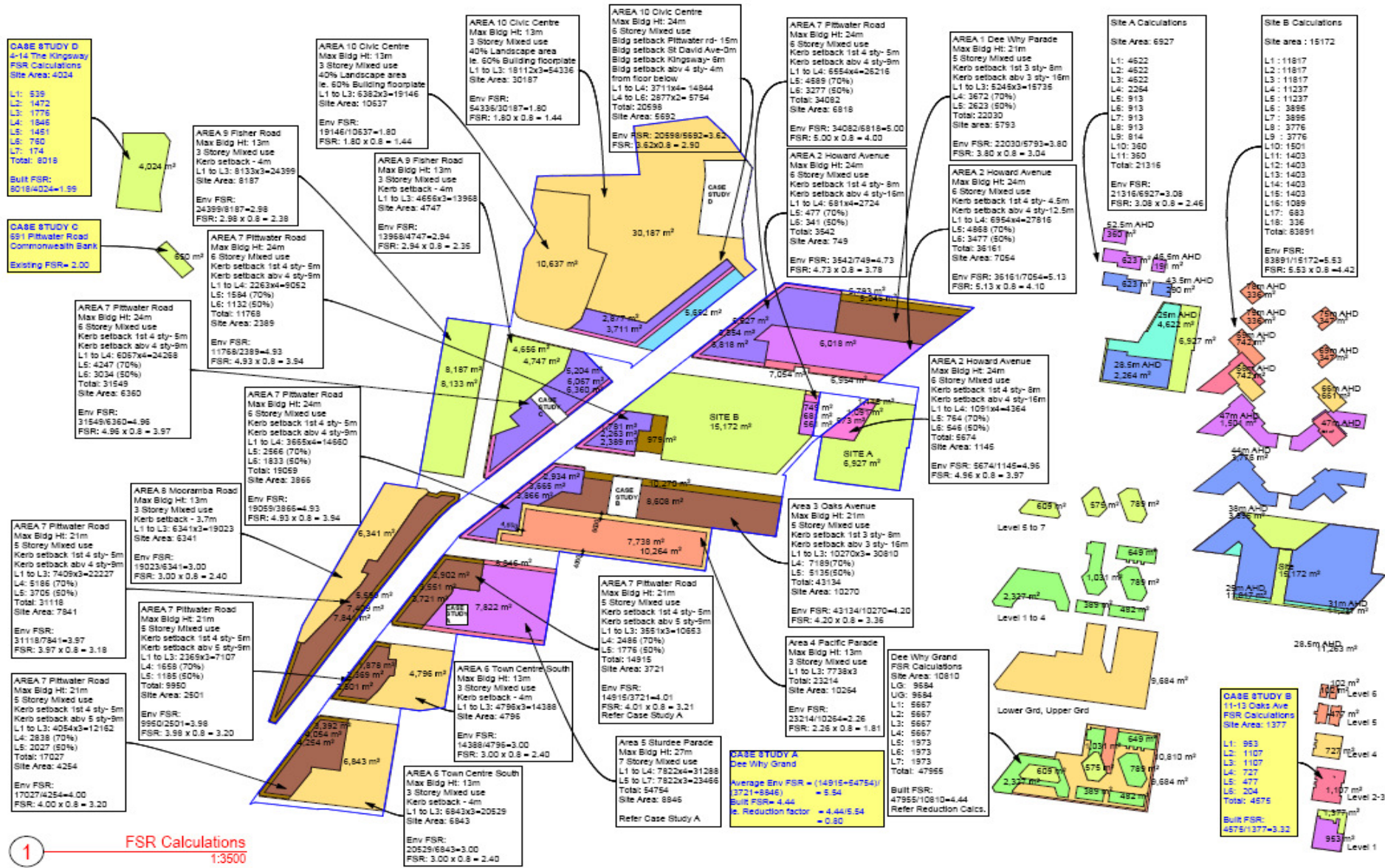
Sites with heritage constraints will not be able to be developed to the maximum FSR capacity but if they are amalgamated, the FSR can be distributed to other non-heritage area provided all development standards are met.

With FSR control, overdevelopment as in Case Study D will not occur because there is a finite development control in place.

Applying this method to Dee Why town centre results in FSRs varying from 1.45 to 4.40. The FSRs for individual sites or precincts are contained in the FSR map.

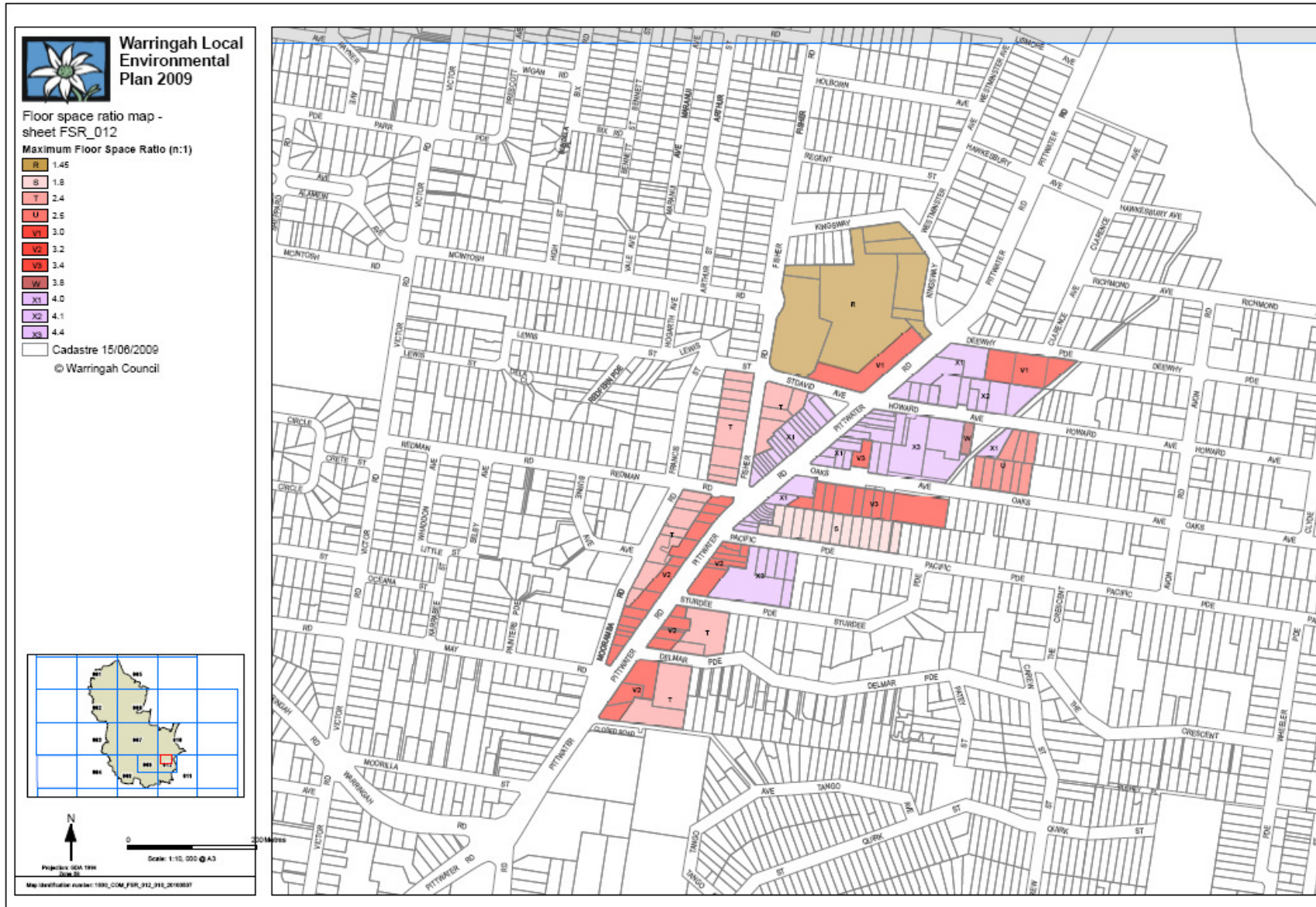


Responses to the Department of Planning requirements



1 FSR Calculations 1:3500

Responses to the Department of Planning requirements



Responses to the Department of Planning requirements

The inclusion of the floor space ratios for B4 Mixed Use zone (Dee Why commercial area) requires the inclusion of two standard clauses in the draft LEP:

- Clause 4.4 Floor space ratio, is a standard clause but requires the addition of local objectives by Council; and
- Clause 4.5 Calculation of floor space and site area, is a standard clause that cannot be altered by Council.

Recommendation:

That Council resolves to make the following alterations to the draft LEP:

A Delete the words *Not adopted* from Clause 4.4 Floor space ratio, and insert instead:

(1) The objectives of this clause are as follows:

- (a) to control the bulk and size of buildings;
- (b) to achieve an appropriate visual relationship between buildings;
- (c) to define the allowable density and intensity of development, taking into account the availability of infrastructure and the generation of vehicle and pedestrian traffic; and
- (d) to minimise adverse environmental effects from buildings on the use or enjoyment of adjoining properties and the public domain.

(2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.

B Delete the words *Not adopted* from Clause 4.5 Calculation of floor space ratio and site area, and insert instead:

### (1) Objectives

The objectives of this clause are as follows:

- (a) to define floor space ratio,
- (b) to set out rules for the calculation of the site area of development for the purpose of applying permitted floor space ratios, including rules to:
  - (i) prevent the inclusion in the site area of an area that has no significant development being carried out on it, and
  - (ii) prevent the inclusion in the site area of an area that has already been included as part of a site area to maximise floor space area in another building, and
  - (iii) require community land and public places to be dealt with separately.

### (2) Definition of “floor space ratio”

The floor space ratio of buildings on a site is the ratio of the gross floor area of all buildings within the site to the site area.

### (3) Site area

In determining the site area of proposed development for the purpose of applying a floor space ratio, the site area is taken to be:

- (a) if the proposed development is to be carried out on only one lot, the area of that lot, or
- (b) if the proposed development is to be carried out on 2 or more lots, the area of any lot on which the development is proposed to be carried out that has at least one common boundary with another lot on which the development is being carried out.

Responses to the Department of Planning requirements

In addition, subclauses (4)–(7) apply to the calculation of site area for the purposes of applying a floor space ratio to proposed development.

**(4) Exclusions from site area**

The following land must be excluded from the site area:

- (a) land on which the proposed development is prohibited, whether under this Plan or any other law,
- (b) community land or a public place (except as provided by subclause (7)).

**(5) Strata subdivisions**

The area of a lot that is wholly or partly on top of another or others in a strata subdivision is to be included in the calculation of the site area only to the extent that it does not overlap with another lot already included in the site area calculation.

**(6) Only significant development to be included**

The site area for proposed development must not include a lot additional to a lot or lots on which the development is being carried out unless the proposed development includes significant development on that additional lot.

**(7) Certain public land to be separately considered**

For the purpose of applying a floor space ratio to any proposed development on, above or below community land or a public place, the site area must only include an area that is on, above or below that community land or public place, and is occupied or physically affected by the proposed development, and may not include any other area on which the proposed development is to be carried out.

**(8) Existing buildings**

The gross floor area of any existing or proposed buildings within the vertical projection (above or below ground) of the boundaries of a site is to be included in the calculation of the total floor space for the purposes of applying a floor space ratio, whether or not the proposed development relates to all of the buildings.

**(9) Covenants to prevent “double dipping”**

When consent is granted to development on a site comprised of 2 or more lots, a condition of the consent may require a covenant to be registered that prevents the creation of floor area on a lot (the restricted lot) if the consent authority is satisfied that an equivalent quantity of floor area will be created on another lot only because the site included the restricted lot.

**(10) Covenants affect consolidated sites**

If:

- (a) a covenant of the kind referred to in subclause (9) applies to any land (affected land), and
- (b) proposed development relates to the affected land and other land that together comprise the site of the proposed development,

the maximum amount of floor area allowed on the other land by the floor space ratio fixed for the site by this Plan is reduced by the quantity of floor space area the covenant prevents being created on the affected land.

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Responses to the Department of Planning requirements

**(11) Definition**

In this clause, public place has the same meaning as it has in the Local Government Act 1993.



Letter from Department of Planning regarding Belrose Road Corridor West



Office of Strategic Lands  
Level 4, 10 Valentine Avenue  
Parramatta NSW 2150

PO Box 404  
Parramatta NSW 2124

7 May 2010

General Manager  
Warringah Council  
725 Pittwater Road  
DEE WHY NSW 2099

Dear Sir

**Re: Warringah LGA - Belrose Corridor West Site**

Please be advised that the Minister for Planning has recently delegated the management of Sydney Region Development Fund (SRDF) and its associated activities to the Land and Property Management Authority (LPMA). The operation and management of the SRDF was formerly undertaken by the Department of Planning. All functions have now been transferred to LPMA within the business unit name "Office of Strategic Lands" (OSL).

The core functions as an acquirer of land for public purposes and the management of land within its holdings and divestment of its surplus assets remains unchanged. The Minister's landholdings are noted on title as 'Minister Administering the Environmental Planning and Assessment Act, 1979'.

**Open Space Lands**

As you are aware, these lands are jointly owned with the Roads & Traffic Authority (RTA) and both agencies are jointly finalising development application plans to enable lodgement with Council shortly. The most challenging aspect in finalising these plans is resolving stormwater across the site, particularly in sector three, and as such the exact final boundaries of open space in this sector will require flexibility. We request that once the exact boundaries are resolved during the D/A process that Council could zone the land RE1 at a later date following transfer of the land to Council.

In recognition of the above, OSL agrees to have the RE1 zone applied to two other areas of proposed open space within the D/A plans, as these areas are defined and we do not envisage any boundary adjustments to them. Please find attached a map that indicates the location of the two defined portions of open space that can be zoned RE1.

Both agencies would like to emphasise that as per DCP requirements 3 hectares of open space lands within the Belrose Road Corridor will be dedicated at no cost to Council as part of the development application process. As both agencies will now be responsible for the lodgement of the Development Application the need to prepare a Voluntary Planning Agreement is considered unnecessary.

It is understood that the above satisfies Council's requirements and will enable the draft Warringah LEP to be finalised by 30 June 2010.




Office of Strategic Lands is a division of Land and Property Management Authority | ABN 36 691 806 169 | [www.lpma.nsw.gov.au](http://www.lpma.nsw.gov.au)

## Letter from Department of Planning regarding Belrose Road Corridor West

Should you have any queries, please contact Mr Stephen Dewick, Senior Manager, Divestments on 9895 7940 or John McDonald, Project Manager, Divestments on 9895 7236.

Yours sincerely



Carl Malmberg  
A/Director  
Office of Strategic Lands

cc: Michael File, Regional Director, Sydney Region East, Department of Planning

cc: Glen Blair, Manager Property Sales, Roads and Traffic Authority

Letter from Department of Planning regarding Belrose Road Corridor West



**BELROSE CORRIDOR  
PROPOSED R1 ZONES**  
SCALE: 1:3000@A3 16/05/10

PREPARED BY:  
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Summary rationale for recommended changes

## Summary rationale for recommendations for changes to the draft WLEP 2009

Note: The numbered recommendations correspond to the numbers in the body of the report. The summarised rationale is highlighted grey, except in the table under recommendation L.

F. That Council not undertake a public hearing in response to matters raised in submissions.

In relation to Clause 5.9, the issues raised are not of a scale, nature or significance to warrant the holding of a public hearing.

The draft LEP provisions for the Oxford Falls Valley are a translation of the existing provisions within Warringah LEP 2000.

L. That Council endorse the following changes to the zoning and development standards:

Location	Change to	Rationale
16. Lot 5 DP 747057 - Bate Avenue, Allambie Heights	RE1 Public Recreation	The land has been dedicated to Council as a public reserve (Item 1 in Internal Comments)
17. Lot 7028 DP 1109287 - Wanniti Road, Belrose	E1 National Parks and Nature Reserves	Database has been reviewed for this site and verifies that it should be included in the E1 zone (Item 2 in Internal Comments)
18. Lot 1 DP 544788 - Queenscliff Road, Queenscliff	RE1 Public Recreation	Correction (Item 3 in Internal Comments)
19. Lots 3 and 4 DP 9392, nos 4 and 6 - Innes Rd, Manly Vale	RE1 Public Recreation	The purchase of these sites by Council is now complete (Item 3A in Internal Comments)
20. Lot B DP 374942 no 27 - Old Pittwater Road, Brookvale	RE1 Public Recreation	The purchase of these sites by Council is now complete (Item 3A in Internal Comments)
21. Lot 31 Sec 4 DP 1818, no 50 Washington Avenue, Cromer	Delete from Land Reservation Acquisition Map	The land has been acquired by Council as a public reserve (Item 4 in Internal Comments)
22. Lot 102 DP 1104837, nos 122 – 126 Old Pittwater Road, Brookvale	Delete from Land Reservation Acquisition Map	The land has been acquired by Council as a public reserve (Item 4 in Internal Comments)
23. Part Lot 101 DP 1043940; Lot 2 DP 577611 Lot 10 DP 569549 Rural Fire Services Headquarters off Kamber Road, Terrey Hills	RE1 Public Recreation	The land is owned by Council and classified as operational (Item 6 in Internal Comments)
24. Manly Vale Bowling Club	RE1 Public Recreation	Registered clubs ancillary to recreational use of public land (such as a golf course), should be permissible with consent and the
25. North Manly Bowling Club	RE1 Public Recreation	
26. Long Reef Golf Club	RE1 Public Recreation	

Summary rationale for recommended changes

Location	Change to	Rationale
27. Wakehurst Golf Club	RE1 Public Recreation	land should be zoned RE1 Public Recreation consistent with Council's management responsibilities (Item 7 in Internal Comments)
28. Lot 81 DP 852584 and Lot 71 DP 871903 - Wakehurst Parkway, Frenchs Forest	RE1 Public Recreation (align with boundaries)	Appropriate to align the RE1 boundary with the cadastre. (Item 8 in Internal Comments)
29. Lot 1 DP 1132323 - Joalah Road Duffy's Forest	RE1 Public Recreation	The land has been transferred to Council as a public reserve
30. 187 Allambie Road, Allambie Heights, Spastic Centre of NSW	SP1 Special Activities delete <i>schools</i> and add <i>community facilities</i> and <i>educational establishments</i>	The additional standard definitions are consistent with the current planning provisions for the site

M. That Council amend the Land Use Table as follows:

- (i) All zones except E1 National Parks and Nature Reserves and E2 Environmental Conservation: add *public utility undertakings* as an Item 2 use

So that any instances where the required infrastructure is not wholly addressed by the SEPP Infrastructure 2007 it can be addressed by the LEP (Item 2.1 in Attachment Booklet 4 Submissions Discussion)

- (ii) All zones except E1 National Parks and Nature Reserves, E2 Environmental Conservation and W1 Natural Waterways: add emergency services facilities as an Item 3 use

To ensure that *emergency services facilities* can be established in suitable locations in Warringah (Item 11 in Attachment Booklet 5 Internal Comments)

- (iii) Zone B5 Business Development: add bulky goods premises as an Item 3 use

To ensure Council's intention to allow *bulky goods premises* in the B5 zone (Item 9 in Attachment Booklet 5 Internal Comments)

- (iv) Zone RE1 Public Recreation: add registered clubs (ordinarily incidental or ancillary to any type of recreation facility) as an Item 3 use.

Registered clubs ancillary to recreational use of public land (such as a golf course), should be permissible with consent and the land should be zoned RE1 Public Recreation consistent with Council's management responsibilities (Item 7 in Attachment Booklet 5 Internal Comments)

- (v) Zone RE1 Public Recreation: add car parks as an Item 3 use

Summary rationale for recommended changes

In the interests of optimum maintenance and improvement of public parking facilities in Warringah it is desirable that car parks are recognised as permitted uses in the RE1 Public Recreation zone (Item 10 in Attachment Booklet 5 Internal Comments)

- (vi) Zone RU4 Rural Small Holdings: delete *recreational facilities (outdoor)*

Closer to translation from WLEP 2000 (5.D in Attachment Booklet 4 Submissions Discussion)

N. That Council amend the various clauses below as follows:

- (i) Clause 1.2(2)(f)(vi): delete the word sulphate and replace with the word sulfate

Correction (Item 19 in Attachment Booklet 5 Internal Comments)

- (ii) Clause 3.1(3A)(e): delete

Change required due to the publication of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Item no 15 in Attachment Booklet 5 Internal Comments)

- (iii) Clause 4.2A: change the title to read: No strata plan or community title subdivisions in certain rural and environmental protection zones

To ensure that the legal reference to the relevant zones is correct (Item no 12 in Attachment Booklet 5 Internal Comments)

- (iv) Clause 4.3(1)(a): delete and replace with:

- (a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development

Not appropriate to include reference to desired future character in WLEP 2009 (Item no 13 in Attachment Booklet 5 Internal Comments)

- (v) Clause 6.9(3)(b): delete the word *east* from and replace with the word *west*

Correction (Item no 14 in Attachment Booklet 5 Internal Comments)

- (vi) Clause 6.20(2): delete subclause (b) and replace with

- (b) must ensure that all lots contain a suitable building area that will allow the preservation of natural landscape features including rock outcrops*

To soften clause (5.D in Attachment Booklet 4 Submissions Discussion)

O. That Council amend Schedule 1 Additional permitted uses as follows:

- (i) Clause 2 Use of certain land at Challenger Drive, Belrose:

Summary rationale for recommended changes

Subclause (1): delete the words *Licence Number L308608* and insert instead the words *Lease RE 412 592*

Subclause (2): add the words *Processing and recycling facility for construction and demolition waste and a concrete batching plant*

This is a more appropriate description of permissible uses on the site (Item 4B.4 in Attachment Booklet 4 Submissions Discussion)

(ii) Clause 14 Use of certain land at Lumsdaine Drive, Freshwater:

Subclause (1): delete the property description and replace with *(1) This clause applies to land in Lumsdaine Drive, Freshwater, being Lot 100 DP 1136132*

Updating of property description (Item 3B.4 in Attachment Booklet 4 Submissions Discussion)

(iii) Clause 20 Use of certain land in the vicinity of Mona Vale and Myoora Roads, Terrey Hills:

Subclause (2): add *recreational facilities (outdoor)*

Subclause (2): add *recreational areas*

Closer to translation from WLEP 2000 (5.D in Attachment Booklet 4 Submissions Discussion)

P. That Council amend Schedule 2 Exempt development as follows:

(i) Signage (Other) subclause (1)(d): delete *6m<sup>2</sup>* and replace with *0.06m<sup>2</sup>*

Correction (Item 18 in Attachment Booklet 5 Internal Comments)

(ii) Signage (Other) subclause (1)(e): *delete the word dwelling and replace with building*

Change needed to take into account a business that is not located at the ground floor of a dwelling (Item 17 in Attachment Booklet 5 Internal Comments)

(iii) Outdoor eating areas (associated with an approved restaurant): add after Note 2:

*Note 3 The occupation of a Crown reserve requires a licence under the Crown Lands Act, and where Council is a Reserve Trust manager, outdoor eating is covered by a Trust licence*

Clarification sought by Land and Property Management Authority (Item 2.13 in Attachment Booklet 4 Submissions Discussion)



Summary rationale for recommended changes

(iv) Add the following item:

*Outdoor areas on road reserves used for the display of goods or business identification signage.*

*Must be associated with a lawfully established business.*

*Note. The use must be approved under section 125 of the Roads Act 1993*

To ensure that approvals can be issued under the Roads Act to allow portions of road reserve adjacent to existing lawfully established businesses to be used for ancillary commercial purposes without any conflict with the provisions of the LEP (Item no 16 in Attachment Booklet 5 Internal Comments)

Q. That Council amend Schedule 3 Complying development as follows:

Delete: *Building alterations (industrial and warehouse buildings) and its subclauses*

Delete: *Building alterations (internal for business premises, offices and shops) and its subclauses*

Delete: *Change of use (from one type of approved business, office or shop to another type of business, office or shop) and its subclauses*

Delete: *Change of use (from one type of approved industrial or warehouse use to another type of industrial or warehouse use, and its subclauses*

Changes required due to the publication of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Item no 15 in Attachment Booklet 5 Internal Comments)

R. That Council amend Schedule 5 Environmental heritage by deleting Item no HI 8, Lot 72, DP 791319, 35 Beach Road, Collaroy, and delete this item from the Heritage Map.

Council commissioned an independent heritage consultant who concluded that the heritage significance has been lost through cumulative alterations.

S. In relation to Clause 6.17 Coastline hazard

The rationale for this change is contained in Attachment A Responses to Department

T. In relation to the Belrose Road Corridor

The rationale for this change is contained in Attachment A Responses to Department

U. In relation to the Dee Why Town Centre

The rationale for this change is contained in Attachment A Responses to Department

V. That following the making of the Warringah Local Environmental Plan 2009 by the Minister for Planning, Council include the following as part of the future review of WLEP 2009:

## Summary rationale for recommended changes

- (i) the issues raised in submissions that request changes beyond the translation from WLEP 2000

These matters need to be addressed following the process of translation from WLEP 2000 to WLEP 2009 in accordance with the previous Council resolution;

- (ii) Discussions with Department of Climate Change and Water regarding their advice on the revised boundaries of national parks.

The revised boundaries include various parcels of land at Cottage Point that are zoned E4 Environmental Living and are a similar size and adjacent to those zoned E4 in private ownership under the draft WLEP 2009.

- (iii) Discussions with the Roads and Traffic Authority on their requested changes to the SP2 Infrastructure zone on the northern side of Mona Vale Road, Terrey Hills, near the intersection of Pittwater Road and Delmar Parade, Dee Why, and at the intersection of Forest Way and Dawes Road, Belrose.

More land is affected than identified in the exhibition, and part is in private ownership (Item 2.12 in Attachment Booklet 4 Submissions Discussion)

- (iv) Discussions with the Roads and Traffic Authority on the zoning of public roads to clarify the Roads and Traffic Authority's position on which roads or parcels of land are affected.

It is unclear as to which parcels of land are affected and what zones are considered appropriate (Item 2.12 in Attachment Booklet 4 Submissions Discussion)

- (v) The zoning of Dee Why, Curl Curl and Manly Lagoons as RE1 compared to Narrabeen Lagoon zoning of W1.

In response to the Land and Property Management Authority submission (Item 2.13 in Attachment Booklet 4 Submissions Discussion)

- (vi) The zoning of the perimeter of Griffith Park, Dee Why headland and other significant Crown reserve headlands to E2 Environmental Conservation.

In response to the Land and Property Management Authority submission (Item 2.13 in Attachment Booklet 4 Submissions Discussion)

- (vii) Discussions with the Land and Property Management Authority on the zoning of Waratah Park.

In response to the Land and Property Management Authority submission (Item 2.13 in Submissions Discussion)



Summary rationale for recommended changes

- (viii) Discussions with the Land and Property Management Authority on the need for additional uses associated with the Harbord Diggers Club to be included in the zoning.

In response to the Land and Property Management Authority submission (Item 2.13 in Submissions Discussion)

- (ix) Consideration of the proposed additional uses of 'function centre' and 'place of public entertainment' at Lot 270 DP 752017 Myoora Road, Terry Hills.

In response to the Land and Property Management Authority submission (Item 2.13 in Submissions Discussion)

- (x) The aims of WLEP 2009 be reviewed for clarity and intention.

To make the aims and their intentions clear

- (xi) Consider the amendment of WLEP 2009 as follows:

- (i) Schedule 1 Additional permitted uses be amended as follows:

By inserting:

Item 21 Use of certain land in the vicinity of Old Pittwater Road, Cross Street, Green Street and Dale Street, Brookvale

- (1) This clause applies to land in the vicinity of Old Pittwater Road, Cross Street, Green Street and Dale Street, Brookvale, shown as "Area 10" on the Additional Permitted Uses Map.

- (2) Development for the purposes of office premises is permitted with consent.

- (ii) The amendment of the Land Use Table by deleting *boat repair facilities* as an Item 4 Prohibited use in the IN1 General Industrial zone.
- (iii) The amendment of the Warringah Local Environmental Plan 2009 Additional Permitted Uses Map by identifying land in the vicinity of Old Pittwater Road, Cross Street, Green Street and Dale Street, Brookvale as "Area 10".

These changes are recommended so that WLEP is closer in translation to WLEP 2000 and in response to submissions

