

## **Attachment Booklet 4**

### **EXTRAORDINARY COUNCIL MEETING**

**8 JUNE 2010**

#### **ITEM– 4.1 Draft Warringah Local Environmental Plan 2009 – Consideration of Submissions**

- Submissions Discussion

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## Submissions discussion

### Part 1 Submissions requesting a public hearing

#### *Submissions summary*

In addition to comments addressed elsewhere in this report, two submissions request that Council undertake a public hearing pursuant to section 68 of the Environmental Planning and Assessment Act, 1979.

One submission requests that a hearing be undertaken in respect of the provisions of draft LEP Clause 5.9 Preservation of trees or vegetation. The second submission requests that a public hearing be undertaken in relation to the provisions of the draft LEP for the Oxford Falls Valley.

#### *Planning assessment*

Section 68(1) of the Act provides that:

(1) *Where:*

(a) *a person making a submission so requests, and*

(b) *the council considers that the issues raised in a submission are of such significance that they should be the subject of a hearing before the council decides whether and, if so, what alterations should be made,*

*the council shall, in the prescribed manner, arrange a public hearing in respect of the submission.*

The requests for a public hearing are not supported. The issues raised in each submission are addressed elsewhere in this report. 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. The issues raised go to the review and alteration of these provisions. The review and alteration of the existing provisions has not been undertaken with the preparation of the draft LEP and, should Council undertake such a process in the future, this will be carried in consultation with all relevant stakeholders.

#### Recommendation:

That Council resolve that it will not undertake a public hearing in response to the matters raised by two submissions.

## Part 2 Submissions made by public authorities

### 2.1 TransGrid

#### *Submission summary*

TransGrid operates large substations to transfer high voltage power to lower voltage for electricity retailers such as Energy Australia. The Sydney East substation is located at Belrose (12 parcels with legal property descriptions provided) and is a critical piece of infrastructure to enable ongoing supply of power to the Northern Beaches.

The existing and proposed zoning of the substation holdings are not appropriate for the infrastructure. It will be prohibited in the zone. It is requested that Council change the zone to SP2 Infrastructure.

#### *Planning assessment*

The site (identified by TransGrid) lies within the C8 Belrose North Locality under Warringah LEP 2000 and, like other land in this locality is proposed to be zoned E3 Environmental Management under the draft LEP. This approach is consistent with the directions provided by the Department of Planning in relation to the zoning of land under the Standard Instrument LEP that accommodates infrastructure.

Further, with preparation of the draft LEP Council sought to include *public utility undertakings* as a permitted use in all zones except E1 National Parks and Nature Reserves and E2 Environmental Conservation. However, the Department of Planning removed the reference to *public utility undertakings* in all land use tables of the draft LEP. It is understood that this action was taken due to the NSW Government's introduction of State Environmental Planning Policy (Infrastructure).

SEPP (Infrastructure) 2007 was introduced to facilitate the delivery of infrastructure across NSW and contains specific planning provisions and development controls for 25 types of infrastructure. The SEPP takes precedent over LEPs.

If *public utility undertakings* are reinstated into the land use tables of the draft LEP as *development with consent*, any instances where the required infrastructure is not wholly addressed by the SEPP can be addressed by the LEP.

#### Recommendation:

That Council resolve to alter the draft Warringah LEP 2009 to include *public utility undertakings* as development permitted with consent in all zones except E1 National Parks and Nature Reserves and E2 Environmental Conservation.

### 2.2 Sydney Water

#### *Submission summary*

Sydney Water's preferred zone for critical water, wastewater and stormwater assets is SP2 Infrastructure. The agency is of the view that development expectations of current and future land owners can be unrealistically high because of inappropriate zoning. It believes that the SP2 zone will ensure that the existing dominant function of the land and Sydney Water's assets are protected. Sydney Water has provided a schedule of its assets and includes a suggested preferred zone for each.

Sydney Water encourages Council to include minimum water efficiency requirements in its development control plan for non residential development.

Sydney Water requests that Council continues to instruct proponents of development to obtain as Section 73 Certificate from Sydney Water.

Sydney Water provides advice to Council in relation to its new e-planning service for future consultation purposes.

### *Planning assessment*

Under the draft LEP the majority of Sydney Water owned sites are zoned consistently with surrounding land. This is consistent with the directions provided by the Department of Planning in this matter.

Further, with preparation of the draft LEP Council sought to include *public utility undertakings* as a permitted use in all zones except E1 National Parks and Nature Reserves and E2 Environmental Conservation. However, the Department of Planning removed the reference to *public utility undertakings* in all land use tables of the draft LEP. It is understood that this action was taken due to the NSW Government's introduction of State Environmental Planning Policy (Infrastructure).

SEPP (Infrastructure) 2007 was introduced to facilitate the delivery of infrastructure across NSW and contains specific planning provisions and development controls for 25 types of infrastructure. The SEPP takes precedent over LEPs.

If *public utility undertakings* are reinstated into the land use tables of the draft LEP as *development with consent*, any instances where the required infrastructure is not wholly addressed by the SEPP can be addressed by the LEP.

#### Recommendation:

That Council resolve to alter the draft Warringah LEP 2009 to include *public utility undertakings* as development permitted with consent in all zones except E1 National Parks and Nature Reserves and E2 Environmental Conservation.

Submissions in relation to the draft Warringah Development Control Plan are addressed through a separate report to Council. The requirement to obtain a Section 73 Certificate (under the Sydney Water Act 1994) is managed through the development application process. No provisions are required in that LEP in this regard.

## 2.3 NSW Maritime

### *Submission summary*

NSW Maritime advises that Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 zones parts of Middle Harbour as W1 Natural Waterways. The draft LEP should be amended to exclude its application from Middle Harbour as the SREP will supersede any zones applied under the LEP.

### *Planning assessment*

The overlap between the SREP and the LEP is acknowledged. This issue was discussed with officers of the Department of Planning with the development of the draft LEP. The Department did not have a preferred position in the matter of whether the relevant area should be excluded from the application of Warringah LEP 2009 or should remain affected by two planning instruments (as is currently the case).

By zoning the relevant area W1 Natural Waterways under draft LEP Council has sought to eliminate any conflict between the two instruments. Should a conflict of provisions arise, the SREP will prevail.

It is considered that there should be no alteration to the draft LEP arising from this submission.

## 2.4 Heritage Council of NSW

### *Submission summary*

No objection is raised to the content or intent of the draft Warringah LEP 2009. Heritage Council of NSW requests that Council further consults with the Heritage Office if it intends to make any

changes to the heritage provisions of the draft LEP as a consequence of submissions received during the public exhibition period.

#### *Planning assessment*

One submission has been received seeking alteration to the draft LEP in relation to a heritage item (see discussion under Part 6).

Council staff commissioned an independent heritage architect to review the heritage significance of this property (who concluded that the item should be deleted from the schedule) and have contacted the Heritage Council.

The Heritage Council has confirmed that it is concerned with items of State significance, and that as this item is of local significance only, further consultation will not be necessary.

It is also noted that should Council resolve to continue the LEP process, all required information will be forwarded to the Department of Planning, of which the Heritage Branch is a part.

### 2.5 Industry and Investment NSW

Industry and Investment was formed as a merger of NSW Fisheries, NSW Agriculture, Mineral Resources NSW and State Forests NSW. The submission is broken down to reflect the views of 3 of these 4 divisions.

#### Fisheries - Submission summary

The draft LEP should contain stronger measures to protect the sensitivities and values of the waterways across the LGA.

Consistent with Narrabeen Lagoon, Dee Why, Curl Curl and Manly Lagoons should be zoned W1 Natural Waterways of W2 Recreational Waterways rather than RE1 Public Recreation as proposed. The RE1 zone fails to protect and acknowledge the ecological, natural or aesthetic value of the waterways.

Rivers and creeks currently zoned RE1 Public Recreation should be identified on a 'sensitive waterways' overlay map with an associated LEP clause to address development within sensitive waterways.

Sensitive waterways should be identified in Clause 3.3 and Clause 3.3(2)(b) should be reworded to ensure that the exempt and complying development provisions of the LEP do not apply to these areas.

The land use table to the RE1 Public Recreation zone should be reviewed to ensure that consent is required for *environmental facilities, environmental protection works and roads*.

The LEP should include advisory notes advising that works in streams and waterbodies may require a permit from I & I NSW even though consent may not be required. Such notes should be included on the suggested 'sensitive waterways' overlay map and with the suggested associated clause. (Suggested notes provided).

#### Fisheries - Planning assessment

The draft LEP zones the lagoons consistently with Warringah LEP 2000. Narrabeen Lagoon is currently managed by way of the B10 Narrabeen Lake locality statement and Dee Why, Curl Curl and Manly Lagoons are zoned public open space. The RE1 zone under the draft LEP includes local objects around protection of ecological and aesthetic values.

Further, in accordance with the requirements of the Local Government Act, Council has adopted plans of management that address its intentions with respect to management of the lagoons and surrounding public reserves. It has also adopted estuary management plans for the lagoons made under the NSW Government's Estuary Management Policy. This suite of management tools afford, and will continue to afford, appropriate protection for Council's lagoons.

The draft Warringah Development Control Plan contains provisions with respect to development in waterways and riparian lands. This includes identification of relevant land on the DCP Waterways and Riparian Lands Map.

For the purposes of Clause 3.3 environmentally sensitive areas are defined by compulsory provisions of the Standard Instrument LEP. The matter of broadening this definition within the Standard Instrument LEP to include sensitive waterways should be determined by the Department of Planning in conjunction with all other relevant State agencies.

As described above, a suite of tools exist to guide and control the manner in which Council manages public land and associated waterways. The processes required for the carrying out of development for *environmental facilities*, *environmental protection works* and *roads* are adequately addressed by the E P and A Act and Council's management plans.

The matter of inclusion of advisory notes within the Standard Instrument LEP should be determined by the Department of Planning in conjunction with relevant State agencies.

It is considered that there should be no alteration to the draft LEP arising from this submission.

#### NSW Agriculture - Submission summary

The draft LEP represents an opportunity to strengthen agricultural investment in the LGA. Within the RU4 Rural Small Holdings zone the local objective *to ensure low intensity of land use*, does not give a clear vision for the locality and may prevent suitable but intensive activities. The objectives should incorporate principles and heads of consideration from the Rural SEPP.

The land use table to the RU4 should not include *child care centres* as permitted uses and should include *markets* as permitted uses. The land use table to industrial zones should include *agricultural produce industries*, *livestock processing industries* and *intensive horticulture* as permitted uses.

#### NSW Agriculture - Planning assessment

The local objectives for the RU4 zone are derived from the existing desired future character statements applying to the localities (under Warringah LEP 2000) that make up the land to which the zone applies. State Environmental Planning Policy (Rural Lands) 2008 does not apply to Warringah. It is appropriate that the desired future character statements from Warringah LEP 2000 guide the local objectives in the process to translate the current LEP into the Standard Instrument LEP format.

The land use table for the RU4 zone is derived from the current land use categories of Warringah LEP 2000. It remains appropriate to allow child care centres in Terrey Hills and Duffys Forest to serve the needs of the local area. Markets can be granted consent under the provisions of Clause 2.6B Temporary use of land.

The Department of Planning LEP Practice Note PN 06-003 indicates that the definition of *industry* includes *rural industry* which includes *agricultural produced industry* and *livestock processing industry*. Hence, as industries are permitted in the IN1 General Industrial zone, so too are their sub sets. Whilst not permitted in industrial zones as suggested, *horticulture* is permitted (as a compulsory land use) in the RU4 zone.

It is considered that there should be no alteration to the draft LEP arising from this submission.

#### Mineral Resources NSW - Submission summary

Warringah LEP has one active quarry (at Crozier Road, Belrose and operated by Benedict Sand and Gravel). The draft LEP proposes to zone the site E3 Environmental Management. The site would be more appropriately zoned RU4 to reflect the nature of the quarry activity as a primary industry.

## Mineral Resources NSW - Planning assessment

The quarry is an atypical land use in Warringah. The site is proposed to be zoned E3 Environmental Management which is consistent with the zoning of surrounding land. The quarry use of the site is recognised and given status as a permitted use by the site's inclusion (item 2) in Schedule 1 Additional Permitted Uses.

It is considered that there should be no alteration to the draft LEP arising from this submission.

### 2.6 Energy Australia

#### *Submission summary*

Energy Australia owns and operates significant electricity infrastructure sites in Warringah. A list of these is provided. Energy Australia requests that Council zones each of the sites SP2 Infrastructure (Electricity Supply) as this will appropriately reflect ownership and provide a level of certainty for Energy Australia to conduct its future operations.

State Environmental Planning Policy (Infrastructure) 2007 does not apply to all of Energy Australia's activities. It is therefore important that Public utility undertakings are permitted in all zones generally applicable to residential, commercial and industrial infrastructure development.

#### *Planning assessment*

Under the draft LEP Energy Australia owned sites are zoned consistently with surrounding land. This is consistent with the directions provided by the Department of Planning in this matter.

Further, with preparation of the draft LEP Council sought to include *public utility undertakings* as a permitted use in all zones except E1 National Parks and Nature Reserves and E2 Environmental Conservation. However, the Department of Planning removed the reference to *public utility undertakings* in all land use tables of the draft LEP. It is understood that this action was taken due to the NSW Government's introduction of State Environmental Planning Policy (Infrastructure).

SEPP (Infrastructure) 2007 was introduced to facilitate the delivery of infrastructure across NSW and contains specific planning provisions and development controls for 25 types of infrastructure. The SEPP takes precedent over LEPs.

If *public utility undertakings* are reinstated into the land use tables of the draft LEP as *development with consent*, any instances where the required infrastructure is not wholly addressed by the SEPP can be addressed by the LEP.

#### Recommendation:

That Council resolve to alter the draft Warringah LEP 2009 to include *public utility undertakings* as development permitted with consent in all zones except E1 National Parks and Nature Reserves and E2 Environmental Conservation.

### 2.7 Transport and Infrastructure

#### *Submission summary*

The NSW State Plan includes transport related targets and Transport and Infrastructure is seeking to ensure that key State policy is appropriately integrated into the draft Warringah LEP. It requests the inclusion of integrated land use and transport principles within the aims of the Plan and the objectives of the zones.

The submission includes a list of suggested inclusions in the draft Warringah Development Control Plan.

#### *Planning assessment*

The intention of the request is supported. At clause 1.2 Aims of plan, the draft LEP states:



(2) *The particular aims of this Plan are as follows:*

*(f) in relation to environmental quality, to:*

*(ii) encourage development that demonstrates efficient and sustainable use of energy and resources, and*

*(iii) achieve land use relationships that promote the efficient use of infrastructure, and*

That is, Clause 1.2 contains aims that address the author's request.

The compulsory objectives of the B2 Local Centre, B3 Commercial Core, B4 Mixed Use and B5 Business Development zones include references to public transport, walking, cycling, accessible locations and proximity to and viability of centres. These objectives are included in the draft Warringah LEP 2009.

Submissions in relation to the draft Warringah Development Control Plan are addressed through a separate report to Council.

It is considered that there should be no alteration to the draft LEP arising from this submission.

## 2.8 Department of Environment Climate Change and Water

### *Zone E1 National Parks and Nature Reserves - Submission summary*

Four (4) contiguous sites (Lots 1 & 2 in DP1031932 and Lots A & B in DP 372120) are proposed to be zoned E1 National Parks and Nature Reserves. These sites are not part of a national park or reserve and are owned by the Department of Planning and should be zoned E2 Environmental Conservation.

### *Zone E1 National Parks and Nature Reserves - Planning assessment*

The subject land is contiguous with Garigal National Park and lies on the western side of Wakehurst Parkway adjacent to Narrabeen Lagoon. The anomaly has occurred as a consequence of the translation of Warringah LEP 2000 under which the sites lie within the C4 Garigal National Park locality.

Advice from Council's Property and Commercial Development branch indicates that the NSW Government intends to transfer the land either to DECCW (for amalgamation into the National Park) or to Council (for public reserve purposes).

Until the decision is made about the long term future ownership and management responsibility of the land a decision about the appropriate zoning is premature. Hence, the zoning should remain as proposed for the present. Should the land ultimately be transferred to Council the zoning should then be changed to RE1 Public Recreation (consistent with other public reserves in Warringah) by way of a future amendment to the LEP. In the interim the cultural and biodiversity values of the land will be protected by the E1 zone.

It is considered that there should be no alteration to the draft LEP arising from this submission.

### *Zone E1 verification of boundaries - Submission summary*

Council should access the latest DECCW GIS mapping to ensure that only DECCW land is zoned E1 National Parks and Nature Reserves.

### *Zone E1 verification of boundaries - Planning assessment*

Land to be zoned E1 National Parks and Nature Reserves under the draft LEP was identified as land that currently lies within the Ku-Ring-Gai Chase National Park and the Garigal National Park. With the preparation of the draft plan in 2006/ 2007 a process to verify these boundaries was undertaken.

However, the relevant data source appears to have been updated since this exercise was undertaken. Hence, as a consequence of this submission a process to verify land to be zoned E1 National Parks and Nature Reserves has been undertaken in accordance with the DECCW advice. Several alterations to the draft LEP have been identified through this process, including various parcels of land at Cottage Point that are zoned E4 Environmental Living rather than E1 National Parks and Nature Reserves under the draft WLEP 2009. As several of these properties are of

similar size and adjacent to those zoned E4 in private ownership, confirmation of DECCW's position is warranted.

#### Recommendation

That Council hold discussions with DECCW on the verification of boundaries advice received as part of the future review.

#### *Zone E2 Environmental Conservation - Submission summary*

The E2 zone should be applied more broadly in Warringah to high conservation areas such as endangered ecological communities and the known habitat of threatened species. Where Council's public reserves contain bushland that is managed by Council to conserve and enhance biodiversity these should be zoned E2 rather than RE1 Public Recreation.

E2 zone should be used where private land has been set aside for conservation purposes, for example, through conditions of consent. The example of Lot 446, DP 48650 and Lot 447, DP 48649, Joalah Road, Duffys Forest is cited.

#### *Zone E2 Environmental Conservation - Planning assessment*

In the process to translate the Warringah LEP 2000 into the Standard Instrument LEP format the E2 Environmental Protection zone has been used to carry over the restricted development provisions of the areas identified as 'cross hatched' under Warringah LEP 2000.

The draft Warringah Development Control Plan contains provisions with respect to development in wildlife corridors, areas of threatened and high conservation habitat and areas of native vegetation. These provisions include identification by corresponding maps in the draft DCP. These provisions are not limited to land that is zoned E2 Environmental Conservation.

With the preparation of the draft LEP the Department of Planning advised that the RE1 Public Recreation zone should be used for all land that is held by Councils as public land for the purposes of a public reserve. The RE1 zone under the draft LEP includes local objects around protection and management of ecological, scientific, cultural and aesthetic values. Further, Warringah Council has adopted plans of management for its various bushland reserves. These address the intentions of Council for the future use and management of the specific areas to which they relate. It has also adopted estuary management plans for the lagoons made under the NSW Government's Estuary Management Policy. This suite of management tools afford, and will continue to afford, appropriate protection for Council's reserves and associated waterways.

A number of submissions to the draft LEP have suggested a review of the E2 Environmental Conservation zone. If such review is to be undertaken by Council it should be carried out in a holistic manner after the making of Warringah LEP 2009. This could include research into any private land that has been specifically set aside for conservation purposes.

It is considered that there should be no alteration to the draft LEP arising from this submission.

#### *Zone E3 Environmental Management - Submission summary*

Land within the Oxford Falls Valley and proposed to be zoned E3 Environmental Management should be deferred (not included within draft Warringah LEP 2009) pending the results of the investigations recommended by the recent Planning Assessment Commission investigations in this area.

If Council does not defer these lands it is suggested that the Oxford Falls Regional Crown Reserve should be zoned E2 Environmental Conservation. Cleared sites should be investigated to determine which portions of the site should be zoned E3 Environmental Management and which portions should be zoned RU4 Rural Small Holdings to reflect horticulture, agriculture and farm use.

The inclusion of aquaculture, extensive agriculture, farm buildings and horticulture are not appropriate uses in the E3 zone.

#### *Zone E3 Environmental Management - Planning assessment*

Under the draft LEP the E3 Environmental Management zone is made up five (5) localities that currently, under Warringah LEP 2000, contain like provisions. The local zone objectives and the detailed content of the land use table have been developed from the existing provisions. The process to translate Warringah LEP 2000 into the Standard Instrument LEP format did not include a review of permitted and prohibited land uses within each zone. Rather, it attempted to replicate the existing provisions in this regard.

Similarly, the Height of Buildings Map, the Minimum Subdivision Lot Size Map and a number of local provisions in the draft LEP have been prepared consistently with the existing provisions that apply under Warringah LEP 2000.

It is not appropriate that the Oxford Falls Valley be deferred from inclusion in the Plan. To do so will result in the continued application of Warringah LEP 2000 to this land and therefore will not resolve DECCW's concerns in relation to review of appropriate zones and permitted land uses.

It is considered that there should be no alteration to the draft LEP arising from this submission.

#### *Biodiversity and other natural resource management issues - Submission summary*

Clause 5.9 Preservation of trees or vegetation does not provide adequate recognition and protection for areas of high biodiversity value. The use of local provisions and map overlays to identify and protect biodiversity is recommended. Such local provisions within the LEP, rather than the DCP, will ensure that these are given statutory weight.

DECCW provides a suggested local clause for Environmentally Sensitive Lands – Biodiversity Overlay. DECCW also suggests that Warringah's mapping (Warringah Development Control Plan maps) should include some additional areas of 'Threatened and High Conservation Habitat'.

Other natural resource management issues suggested for addressing through LEP local provisions are wildlife corridors, waterways and riparian lands.

#### *Biodiversity and other natural resource management issues - Planning assessment*

The submission proposes the elevation of the DCP provisions for management of vegetation and waterways and riparian land into the LEP. It proposes 'model' clauses and advocates use of these clauses in conjunction with map overlays. It also suggests that the Standard Instrument LEP Clause 5.9 Preservation of trees or vegetation, has limitations in providing adequate protection for areas of high biodiversity value.

The merit in locating provisions within the LEP rather than the DCP to increase their statutory weight is acknowledged. The matter of development of appropriate 'model' clauses and mapping overlays to manage biodiversity issues should be undertaken by the Department of Planning in conjunction with other relevant State agencies before Council gives further consideration to this approach.

Also, the introduction of the provisions suggested by DECCW would represent a significant change to the draft LEP which is likely to prejudice completion of the plan making process in a timely manner.

It is considered that there should be no alteration to the draft LEP arising from this submission.

#### *Sea level rise and coastal hazards - Submission summary*

DECCW supports the inclusion of a local clause in draft Warringah LEP 2009 that addresses coastal hazards. DECCW notes that Council is in the process of undertaking further work to review coastal hazards and supports this action.

#### *Sea level rise and coastal hazards - Planning assessment*

No response required and no alteration to the draft LEP arising from this submission.

#### *Aboriginal heritage - Submission summary*

Council has refrained from listing known Aboriginal objects in Schedule 5 of the Draft LEP. It is understood that the Department of Planning advised Council to map general areas with the potential to contain evidence of Aboriginal occupation on the draft Warringah LEP Heritage Map

which Council has failed to do. It is possible for Council to map the potential for areas to contain Aboriginal objects, which could be mapped in terms of high, moderate, low and very low potential.

#### *Aboriginal heritage - Planning assessment*

In response to inquiries by Council, by way of letter dated 3 October 2007 the Department of Planning advised Council that only the general locations of Aboriginal heritage items should be shown on heritage maps in LEPs and that Council does not need to list specific Aboriginal heritage items or locations in Schedule 5.

At its meeting of 13 November 2007 Council decided that, whilst mapping of Aboriginal heritage had been undertaken, this would be suppressed due to on going discussion between State agencies as to whether such mapping is appropriate. Council also decided that if the certification of the draft LEP is dependent upon the mapping of Aboriginal heritage Council would submit an amended Heritage Map that included Aboriginal heritage. The Department certified the draft LEP without any further requirements in relation to Aboriginal heritage and, to date, has given no instructions to Council contrary to the certified position.

Council's position is based on various stakeholder concerns in relation to the sensitivity of Aboriginal heritage items. Also, mapping of general areas presents technical difficulties that the Standard Technical Requirements for LEP maps does not resolve. Council holds mapping of all known Aboriginal sites in Warringah. It also holds mapping that classifies the LGA in terms of potential for containing Aboriginal objects. Both sets of data are used when assessing development applications.

The most appropriate means of addressing Aboriginal heritage through the Standard Instrument LEP should be determined by the Department of Planning in conjunction with all other relevant State and stakeholder agencies.

It is considered that there should be no alteration to the draft LEP arising from this submission.

#### *Floodplain risk management - Submission summary*

To ensure consistency with Government Policy the relevant section 117 direction should be consulted.

DECCW's preference is for Council not to include flood maps in the LEP as they do not identify the probable maximum flood, do not identify all information known to Council and are static (ie. do not reflect updated data as it comes to hand).

In regard to the choice of flood clause Council should be mindful that there is potential for unmapped areas, adequacy of mapping overland flow paths and need to update mapping as new data becomes available.

#### *Floodplain risk management - Planning assessment*

Review of all relevant section 117 directions has been undertaken in the process to develop draft Warringah LEP 2009.

During the course of preparation of the draft LEP the Department of Planning was preparing a model clause to address development on flood affected land. The draft LEP clause 6.15 Flood planning land, is the model clause provided by the Department of Planning at the time of drafting the Plan. Council's preferred position that was communicated to the Department was that mapping of the land to which the clause applied should sit outside of the LEP to allow more timely amendment in response to new data.

Both the clause and the content of the draft Warringah LEP 2009 Flood Planning Area Map has been drafted is consistent with instructions received from the Department at the time of preparing the Plan.

It is considered that there should be no alteration to the draft LEP arising from this submission.

#### *Climate change - Submission summary*

Flood producing rainfall intensities may increase as a result of climate changes. It is understood that Council is addressing these impacts through its current program of flood studies. It is also

understood that will deal with issues related to climate change impacts of flooding part of the rezoning process and redevelopment.

#### *Climate change - Planning assessment*

No response required and no alteration to the draft LEP arising from this submission.

### 2.9 Sydney Buses

#### *Submission summary*

The State Transit Authority would like to see further inclusion of public transport in the draft Warringah LEP 2009 and raises the following issues:

- promotion and maximisation of public transport has not been included as an aim in the LEP,
- promotion and usage of public transport has not been included in the objectives for residential zones,
- LEP provisions must ensure that the Brookvale Bus Depot is permitted in the B5 Business Development zone,
- residential development is not appropriate in close proximity to an operational bus depot,
- passenger transport facilities should be permitted in the IN1 General Industrial Zone that adjoins the Brookvale Bus Depot site to allow for future expansion of the facility (consider use of Schedule 1 Additional Permitted Uses for this purpose),
- the draft LEP should ensure that the provisions of Part 3 Exempt and complying development, enable the installation of bus shelters, street furniture etc.
- Clause 6.13 Mobility, traffic management and parking (in Dee Why Town Centre) should include consideration of development in terms of its impact on the operation of public transport on the road network and should aim to promote public transport usage.

#### *Planning assessment*

- Whilst public transport has not been specifically referenced in the aims of the Plan, these make reference to *efficient and sustainable use of resources* and *land use relationships that promote the efficient use of infrastructure* (Refer to Clause 1.2(f)(ii) and (iii)).
- The R3 Medium Density Residential zone is a translation of like areas currently identified by Warringah LEP 2000. Should the Housing Strategy currently being prepared by Council identify the need for additional medium density residential development, amended zone objectives may be developed, eg the promotion of the benefits of access to public transport.
- *Passenger transport facilities* and *transport depots* are permitted in the B5 zone (location of the Brookvale bus depot). All ancillary components of the land use are permitted.
- Residential accommodation is not a permitted land use in the B5 Business Development zone nor in the nearby B3 Commercial Core or IN1 General Industrial zones.
- There are two definitions within the Standard Instrument LEP that address the function of the Brookvale Bus Depot being *Passenger transport facilities* and *transport depots*. *Transport depots* are permitted in the IN1 zone which appropriately permits the parking and servicing component of the operation.
- State Environmental Planning Policy (Infrastructure) allows the installation of bus shelters and street furniture as exempt development and will prevail over the LEP.
- The objective of the clause is to improve vehicular access and circulation for all road based transport including public transport. The promotion of public transport usage is addressed through the objectives of the B4 Mixed Use zone.

The submission also includes a separate section addressing the draft Warringah Development Control Plan which is addressed through a separate report to Council.

It is considered that there should be no alteration to the draft LEP arising from this submission.

## 2.10 NSW Rural Fire Service

### *Submission summary*

Submission raises concerns that provisions for exempt and complying development apply to certain development on bush fire prone land. RFS advises that it is currently addressing these issues with the Department of Planning.

Special Fire Protection Purpose developments (as defined by the Rural Fires Act) should be prohibited on small lots at the bush interface.

### *Planning assessment*

When Warringah LEP 2009 is made State Environmental Planning Policy (Exempt and Complying Development Codes) will come into effect and will prevail over the LEP. The Department of Planning will require that only development that is not addressed in the SEPP is included in Schedule 2 Exempt Development and Schedule 3 Complying Development of the LEP.

It is appropriate that the RFS concerns are resolved with the Department of Planning and that suitable provisions to address these included in both the Standard Instrument LEP provisions of Part 3 and in State Environmental Planning Policy (Exempt and Complying Development Codes).

The Standard Instrument LEP does not allow for the alteration of land use tables to prohibit nominated development on specified lots.

It is considered that there should be no alteration to the draft LEP arising from this submission.

## 2.11 Roads and Traffic Authority

### *Arterial road reservations - Submission summary*

The RTA has identified 3 changes to the Land Reservation Acquisition Map that it requires two changes that add parcels of land identified for acquisition by the RTA and one change that removes a parcel so identified.

### *Arterial road reservations - Planning assessment*

As required under section 62 of the Environmental Planning and Assessment Act, with the preparation of the draft Warringah LEP 2009, officers of Council consulted with officers of the RTA. This process identified land required to be zoned SP2 Infrastructure and included on the Land Reservation Acquisition Map.

The draft Land Zoning and Land Reservation Acquisition Maps are consistent with the consultation process. With this submission the RTA is requesting changes to its previously advised position.

The first of these changes proposes the zoning of additional land, on the northern side of Mona Vale Road at Terrey Hills, as SP2 Infrastructure. No reference is made by the submission to the inclusion of this land on the Land Reservation Acquisition Map. Council's records indicate that the land to be zoned is part owned by the Department of Lands and part is in private ownership.

The second change proposes the zoning of a small (proposed) parcel near the intersection of Pittwater Road and Delmar Parade at Dee Why as SP2 Infrastructure. No reference is made by the submission to inclusion on the Land Reservation Acquisition Map. Council's records indicate that the land is in private ownership.

The third change proposes the removal of the SP2 Infrastructure zone from a portion of land (mapped to describe the land) at Forest Way and Dawes Road. No reference is made by the submission to removal of the land from the Land Reservation Acquisition Map. Council's records indicate that the land is owned by the RTA.

Re-exhibition of the draft WLEP 2009 would be necessary if Council agrees to these changes at this point because more land is affected than identified in the exhibition, and further that it would be inappropriate to zone land SP2 Infrastructure where it is in privately ownership when it has not been exhibited this way.

## Recommendation

That Council hold discussions with the RTA 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.

### *Zoning of public roads - Submission summary*

RTA suggests that Council should review its zonings for public roads as many of these are inappropriate. Submission cites land adjacent to Forest Way.

### *Zoning of public roads - Planning assessment*

It is unclear from the submission as to which parcels of land are inappropriately zoned. Council requires the property descriptions of those affected parcels and what zones are considered appropriate.

## Recommendation

That Council hold discussions with the RTA on the zoning of public roads to clarify the RTA's position on which roads or parcels of land are affected as part of the future review.

### *Child care centres - Submission summary*

The RTA requests a change to *Clause 5.4 Controls relating to miscellaneous permissible uses*. It requests that the following subclause is added.

#### *(10) Child care centres.*

*If development for the purposes of a child care is permitted under this Plan, the site must not have direct access and/ or frontage to a classified road (existing or proposed).*

### *Child care centres - Planning assessment*

Clause 5.4 is a compulsory clause in the Standard Instrument LEP. The RTA proposed subclause is not Warringah specific but has wider application in relation to child care centres where these are located on classified roads. The requested change to Clause 5.4 is a matter the Department of Planning when considering future amendments to the Standard Instrument LEP.

It is considered that there should be no alteration to the draft LEP arising from this submission.

### *Land developments fronting classified roads - Submission summary*

Direct vehicular access from developments fronting classified roads, where access can be gained by an alternative non classified road, should be prohibited by the draft LEP.

### *Land developments fronting classified roads - Planning assessment*

The Standard Instrument LEP (Amendment 1) included (optional) clause *30 Classified roads*. This clause addressed the matters raised in the RTA submission. Clause 30 was removed from the Standard Instrument LEP with Amendment 2. It is understood that the issue is addressed through State Environmental Planning Policy (Infrastructure) 2007 and the Department of Planning sought to remove overlap between the provisions of the SEPP and Standard Instrument LEPs.

The matter of the most appropriate planning instrument for delivery of the development control in question should be determined by the Department of Planning in conjunction with all other relevant state agencies.

It is considered that there should be no alteration to the draft LEP arising from this submission.

### *Zone SP2 Infrastructure - Submission summary*

The RTA advises Council that the provisions of State Environmental Planning Policy (Infrastructure) 2007 prevail over the draft LEP and allow development for the purposes of roads or road infrastructure without consent on land zoned SP2 Infrastructure – Roads.

### *Zone SP2 Infrastructure - Planning assessment*

The submission is noted and there should be no alteration to the draft LEP arising from this submission.

### *Road noise mitigation - Submission summary*

The RTA requests planning controls for acoustic privacy for developments impacted by traffic noise. These should include design principles to guide development outcomes and the requirement for the preparation of an acoustic report.

*Road noise mitigation - Planning assessment*

State Environmental Planning Policy (Infrastructure) 2007 addresses the need to ensure that development with frontage to classified roads is designed and located to address these impacts.

Detailed design principles for development should be located in a DCP rather than the principal LEP. The draft Warringah Development Control Plan is addressed through a separate report to Council.

It is considered that there should be no alteration to the draft LEP arising from this submission.

*Promoting increased use of sustainable modes of travel - Submission summary*

Development controls in Warringah should promote high density and mixed use around public transport infrastructure.

*Promoting increased use of sustainable modes of travel - Planning assessment*

The draft Warringah LEP 2009 provides for medium density residential development and mixed use centres along the major north south transport corridor of Pittwater Road.

Further strategic work in this regard is currently underway with the development of a housing strategy to accommodate future growth in Warringah. This may result in future amendments to the LEP addressing the strategic location of residential and employment land uses.

It is considered that there should be no alteration to the draft LEP arising from this submission.

*Developer contributions for regional transport improvements - Submission summary*

The LEP should make provisions for developer funding for transport infrastructure required as a result of additional development in the LGA.

*Developer contributions for regional transport improvements - Planning assessment*

Section 94 of the Environmental Planning and Assessment Act (soon to be reviewed and replaced by NSW Government reforms to the Act) establishes Council's powers and responsibilities in regard to developer contributions. In order to give effect to these provisions Council's must prepare developer contribution plans that are separate from LEPs.

Warringah Council regularly reviews and updates its developer contribution plans. Certain traffic related infrastructure improvements, when directly attributable to a new development, can be required by way of conditions of development consent.

It is considered that there should be no alteration to the draft LEP arising from this submission.

## 2.12 Housing NSW

*Submission summary*

Housing NSW is seeking to maintain or improve the development potential of its assets. With the draft LEP Housing NSW expects options for increasing housing density, including the supply of affordable housing and protecting existing affordable housing stock.

The submission supports the aims of the draft LEP but suggests the inclusion of an aim addressing housing diversity and affordability. It also suggests the inclusion of objectives that promote a greater range of housing types, size and tenures in residential zones. The submission suggests an objective in higher density residential zones that encourages amalgamation of sites to create development opportunities in well located areas.

With specific regard to Narraweena the following is submitted. Housing NSW owns a significant number of properties in Narraweena. If redevelopment potential is sufficient precincts can be reconfigured to improve the quality, design and layout of housing; contribute to affordability and contribute to meeting the housing targets of the Department of Planning's North East Subregional Strategy.



The submission requests consideration of changing the R2 Low Density Residential zone for Narraweena to R3 Medium or R4 High Density Residential either at this draft stage or at any upcoming amendment stage.

#### *Planning assessment*

Council recognises the importance of the issues raised by Housing NSW in terms of meeting both the housing targets and directions of the Metropolitan Strategy and the expectations of the Warringah community as expressed through the Warringah Strategic Community Plan.

The Strategic Planning branch is currently undertaking a review of housing strategy in Warringah. The review will develop a strategy for growth in the housing sector to meet the future needs of the Warringah community. It will address housing targets, range and mix of housing types, housing densities, affordability and sustainable land use and transport relationships.

In March 2007 Council resolved to prepare draft Warringah LEP 2009 by translating the existing land use planning provisions of Warringah LEP 2000 into the new Standard Instrument LEP format. At the same time it sought and gained agreement from the Department of Planning to undertake strategic work to respond to the dwelling and employment capacity targets of the Metropolitan Strategy as separate bodies of work. The issues raised by Housing NSW will be addressed through the Warringah Housing Strategy and, to this end, the submission by Housing NSW has been referred to the housing strategy working group of Council.

It is envisaged that when the Warringah Housing Strategy is complete any resultant changes to the LEP will be made by way of an amendment to Warringah LEP 2009. Such changes might include the addition of aims and objectives around housing diversity and affordability; zoning changes for certain lands; introduction of additional defined housing types within certain zones; changes to building heights for certain land and provisions around minimum lot sizes for certain types of housing. Any such changes are likely to be accompanied by additional provisions within the Warringah Development Control Plan to guide and control suitable development outcomes.

It is considered that there should be no alteration to the draft LEP arising from this submission.

#### 2.13 Land and Property Management Authority (formerly the Department of Lands)

##### *Submission summary*

Through Council's 'e' services portal the Land and Property Management Authority (LPMA) advised that it had no record of being notified of the public exhibition of the draft Warringah LEP 2009 and advised that due to resource constraints a comprehensive submission would be made as a late submission.

A submission was received on 31 March 2010 and submits several matters as detailed below.

##### *Planning assessment*

A response has been provided to Land and Property Management Authority attaching a copy of Council's letter (dated 22 October 2009) advising of the public exhibition of the draft LEP. It would appear that, due to the reorganisation of the Department of Lands, the Council's advice was not received.

- Waterway zonings

The LPMA supports the proposed Narrabeen Lagoon zoning as W1 Natural Waterways and comments that Dee Why, Curl Curl and Manly Lagoons should also be zoned W1 Natural Waterways, not RE1 Public Recreation.

##### *Planning assessment*

The translation from the WLEP 2000 to the Standard LEP in accordance with Council's resolution has resulted in what appear to be anomalies such as the zoning of Dee Why, Curl Curl and Manly Lagoons as RE1 compared to Narrabeen Lagoon zoning of W1. These can be considered in detail as part of the future review of WLEP 2009.

- Griffith Park

The perimeter of Griffith Park should be zoned E2 Environmental Conservation in accordance with the draft Plan of Management and to meet the need to protect and enhance the scenic values of environmentally sensitive significant coastal headlands in Warringah.

Dee Why Headland and other significant Crown reserve headlands should be zoned E2 Environmental Conservation.

*Planning assessment*

The zoning of the perimeter of Griffith Park, Dee Why headland and other significant Crown reserve headlands to E2 Environmental Conservation can be considered as part of the future review of WLEP 2009.

- Long Reef Golf Club building

Proposed to be zoned RE2 Private Recreation but should be RE1 Public Recreation

*Planning assessment*

Council zoned the golf club building RE2 in accordance with instructions from the Department of Planning because it is a registered club; but for consistency the RE1 zoning has been reinstated (see detailed discussion and recommendation under Internal Comments, item 7).

- Food and beverage outlets

The draft LEP unnecessarily restricts the permissibility of food and beverage outlets to kiosks and restaurants on Crown reserves.

The LPMA suggests that food and beverage outlets be an additional use under Schedule 1 for Crown reserves. The community expects café style or restaurant facilities, not merely kiosks which are better suited to sportsgrounds.

*Planning assessment*

There may be some confusion regarding different definitions. Under the Standard LEP the definition of 'food and drink premises' is: *retail premises used for the preparation and retail sale of food or drink for immediate consumption on or off the premises, and includes restaurants, cafes, take away food and drink premises, milk bars and pubs.*

Under the draft Warringah LEP, kiosks are limited to 50 square metres in size, however the definition for restaurants allows takeaway meals and beverages as well as consumption on the premises. Cafes are not defined.

While the community may expect cafes or restaurants on Crown reserves, it is unlikely that the pubs would be expected and therefore no change is recommended.

- Schedule 2 Exempt Development

Outdoor seating [*sic*] for approved restaurants is listed as Exempt Development, however the occupation of a Crown reserve requires a licence under the Crown Lands Act, and where Council is a Reserve Trust manager, outdoor seating is covered by a Trust licence, not a lease.

*Planning assessment*

A third 'Note' can be added to Outdoor eating areas (associated with an approved restaurant) to clarify this matter as in the recommendation below.

**Recommendation:**

That Council resolve to alter Schedule 2 Exempt Development of the draft Warringah LEP 2009 to include under the heading "Outdoor eating areas (associated with an approved restaurant)" 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

- Low impact camping

A separate definition of 'camping ground' is required.

#### *Planning assessment*

The Department of Planning is the responsible authority for changes to definitions in the Standard LEP, and therefore no change is recommended.

- Surf Clubs on Crown Reserves

The LPMA comment that surf clubs are a form of community facility generally acceptable on Crown reserves, subject to development consent. Multiple use of surf clubs should be encouraged, and food and beverage outlets, toilets as well as surf lifesaving facilities should be incorporated.

#### *Planning assessment*

Surf clubs generally incorporate such facilities, and are subject to the relevant Plans of Management, and therefore no change is recommended.

- Waratah Park

The LPMA rejects the 20ha minimum subdivision proposed, considers that reference to a Lot Size Map constitutes concealment, considers that the RU4 zoning is too restrictive and supports either a SP3 Tourist zoning or the addition of relevant eco-tourism land uses to Schedule 1 Additional permitted uses for the site.

#### *Planning assessment*

The reference to a Lot Size Map forms part of the requirements under the Standard Instrument, the proposed RU4 Rural Small Holdings zoning is consistent with the Council's resolution for translation of the WLEP 2000, and re-exhibition would be required if the zoning were to be changed to SP3 Tourist or eco-tourism land uses were to be applied to the site.

#### Recommendation

That Council liaise with the LPMA on the advice received in regard to the zoning of Waratah Park as part of the future review.

- Belrose Quarry

The LPMA considers that the proposed E3 Environmental Management zone is inappropriate if not provocative, and concurs with the substantive points made in the submission by Warringah Gravel and Stone Supplies Pty Ltd (see submissions under section 4B.4)

#### *Planning assessment*

The proposed zone is consistent with the surrounding land uses. Recommended changes to Schedule 1 Additional permitted uses are contained in the assessment of the submissions referred to above.

- Crown land adjacent to Harbord Diggers

The proposed RE1 Public Recreation zoning prohibits carparking which is unacceptable and constrains the realisation of land tenure arrangements under the Crown Lands Act. The LPMA requires that carparking be added to Schedule 1 Additional permitted uses.

#### *Planning assessment*

Ancillary uses to the permitted uses within zones are not prohibited. However the carparking area is zoned RE1 Public Recreation and Harbord Diggers Club is zoned R2 Low Density Residential.

It appears that a licence is held by the Club, but that application has been made to the LPMA for a lease over the land.

**Recommendation:**

That Council liaise with the LPMA to further discuss the need for additional uses associated with the Harbord Diggers Club to be included in the zoning as part of the future review.

- Par 3 Mini Golf Course Myoora Road

The proposed RE1 Public Recreation zone does not provide enough flexibility. The LPMA requests that 'function centre' and 'place of public entertainment' be added to Schedule 1 Additional permitted uses.

*Planning assessment*

Such a change would require re-exhibition and goes beyond translation in accordance with Council's resolution.

**Recommendation:**

That Council consider the proposed additional uses of 'function centre' and 'place of public entertainment' at the Par 3 Mini Golf Course at Myoora Road as part of the future review.

- Crown land in Jersey Place Cromer

The LPMA is finalising the grant of easements for Asset Protection Zones over land adjacent to Maybrook Manor Retirement Village in accordance with Land and Environment Court orders. Lot 2406 DP 752038 is proposed to be zoned E3 Environmental Management, but should be zoned to accommodate prospective residential development as under the Oxford Falls Regional Crown Reserve this lot may be suitable for 'multiple use' and disposal by the Crown.

*Planning assessment*

A planning proposal may be submitted at such time as the Crown wishes to dispose of or utilise this lot for multiple uses.

**Recommendation:**

That the submission of a Planning Proposal for Lot 2406, DP 752038 (under Part 3 Division 4 of the Environmental Planning and Assessment Act) be made at an appropriate time by the LPMA.

## 2.14 Pittwater Council

*Submission summary*

Warringah Council should ensure that the draft LEP is consistent with the objectives of the draft North East Sub Regional Strategy with particular regard to the housing and employment targets contained therein.

*Planning assessment*

Council recognises the need to address the housing and employment targets of the draft North East Sub Regional Strategy.

In March 2007 Council resolved to prepare draft Warringah LEP 2009 by translating the existing land use planning provisions of Warringah LEP 2000 into the new Standard Instrument LEP format. At the same time it sought and gained agreement from the Department of Planning to undertake strategic work to respond to the dwelling and employment capacity targets of the Metropolitan Strategy as separate bodies of work.

Strategic Planning is currently undertaking the development of the Warringah Housing Strategy and work has commenced on the Brookvale Employment Lands Study. It is envisaged that when these bodies of work are complete any resultant changes to the LEP will be made by way of an amendment to Warringah LEP 2009.

It is considered that there should be no alteration to the draft LEP arising from this submission.

## 2.15 Manly Council

### *Zones, land use table, objectives and permitted uses - Submission summary*

Attached *secondary dwellings* are not permitted in the R2 Low Density Residential zone but are permitted in the R3 Medium Density Residential zone. This is not consistent with State Environmental Planning Policy (Affordable Rental Housing) 2009.

Consider adding public transport accessibility objectives for the R3 Medium Density Residential zone.

In addition to shop top housing Council might consider providing greater incentives to encourage higher densities in B1 Neighbourhood Centres and other centres.

The submission notes that it is unusual that within the B5 Business Development zone retail and office premises are prohibited.

### *Zones, land use table, objectives and permitted uses - Planning assessment*

*Secondary dwellings* have not been included as a permitted land use in any zone under the draft LEP. When the draft LEP was prepared the Standard Instrument LEP did not make provisions for *secondary dwellings*. The definition was introduced into the Standard Instrument LEP with a later amendment. At the time of its introduction Council had commenced the preparation of its Housing Strategy and decided to include the matter of *secondary dwellings* as one for consideration with the Housing Strategy. It is envisaged that, after completion of the Housing Strategy, amendments may be required to the Warringah LEP to address the outcomes of the strategy. This may include the introduction of *secondary dwellings* as permitted uses within the LEP. In the interim the provisions of State Environmental Planning Policy (Affordable Rental Housing) will prevail over the LEP and allow secondary dwellings in Warringah.

The R3 Medium Density Residential zone is a translation of like areas currently identified by Warringah LEP 2000. Should the Housing Strategy currently being prepared by Council identify the need for, and appropriate location for, additional medium density residential areas, amended zone objectives may be developed to address such decisions.

Council is currently undertaking the development of a Housing Strategy that will address, amongst other matters, growth in the housing sector in and around existing centres. After completion of the strategy, amendments may be required to the Warringah LEP to address its outcomes. This may include variation to the existing provisions for identified centres.

Whilst the land use table indicates that *retail premises* and *office premises* are prohibited uses, Schedule 1 Additional Permitted Uses (item 5) makes these uses permitted within an identified area of the B5 Business Development zone that corresponds to the F1 Brookvale Centre locality under the current Warringah LEP 2000.

It is considered that there should be no alteration to the draft LEP arising from this submission.

### *Adjoining LGA boundaries and land uses - Submission summary*

Manly Council is concerned to ensure that zones proposed in the draft LEP are compatible with the zonings in the Manly LGA. Particular reference is made to the B2 Local Centre zone for Manly Vale shops. Particular reference is made to the existing light industrial zone in Manly LGA between Condamine and Roseberry Streets.

### *Adjoining LGA boundaries and land uses - Planning assessment*

The B2 Local Centre zone for the Manly Vale commercial precinct is consistent with the current provisions of Warringah LEP 2000 and is consistent with the draft North East Subregional Strategy that identifies Manly Vale as a 'small village'.

At its northern extent, the commercial precinct is characterised by smaller scale retail and business operations whilst at the southern extent there is a greater incidence of bulky goods retailing. Department of Planning Practice Note PN 06 – 003 indicates that bulky good premises, depending on the nature of the development, may be a form of retail premises. Having regard to the circumstances outlined above, the B2 zone is appropriate for the Manly Vale commercial precinct.

It is considered that there should be no alteration to the draft LEP arising from this submission.

*Heritage - Submission summary*

It is noted that the draft LEP does not identify Aboriginal heritage sites in Schedule 5. Manly Council continues to pursue resolution of this issue with the Department of Planning and the Aboriginal Heritage Office. It anticipates that the Department will address inconsistencies in the Standard Instrument LEP provisions in consultation with DECCW and the Aboriginal Heritage Office.

*Heritage - Planning assessment*

No response required and no alteration to the draft LEP arising from this submission.

*Public open space and bushland - Submission summary*

It is noted that the draft LEP applies the RE1 Public Recreation zone to most public land including bushland, rather than the E2 Environmental Conservation zone. Concern is raised in relation to the statutory protection that this approach will afford to bushland.

*Public open space and bushland - Planning assessment*

With the preparation of the draft LEP the Department of Planning advised that the RE1 Public Recreation zone should be used for all land that is held by Councils as public land for the purposes of a public reserve. The RE1 zone under the draft LEP includes local objects around protection and management of ecological, scientific, cultural and aesthetic values. Further, Warringah Council has adopted plans of management for its various bushland reserves. These address the intentions of Council for the future use and management of the specific areas to which they relate.

It is considered that there should be no alteration to the draft LEP arising from this submission.

*Exempt and complying development - Submission summary*

It is noted that a revision of the exempt and complying development provisions of the draft Warringah LEP 2009 may be needed given the introduction of State Environmental Planning Policy (Exempt and Complying Development Codes).

*Exempt and complying development - Planning assessment*

Since Council adopted the draft Warringah (Standard Instrument) LEP and submitted this to the Department of Planning for certification the NSW Government has introduced State Environmental Planning Policy (Exempt and Complying Development Codes) 2008. Whilst the SEPP does not apply to Warringah at present, it will upon the commencement of Warringah LEP 2009.

The Standard Instrument LEP includes compulsory provisions that allow Councils to identify exempt development (Schedule 2) and complying development (Schedule 3) in their LEPs. However, only development that is not addressed by the SEPP can be included. That is, the provisions in an LEP can only identify development as exempt or complying if this is over and above the provisions of the SEPP.

Accordingly, the Department has advised that it will require the review of Schedules 2 and 3 to ensure that there is not duplication between Warringah's LEP and the SEPP.

This matter is addressed elsewhere in this report under the heading, *Internal comments*. A recommendation to Council is included under that heading to make appropriate alterations to the draft LEP to remove duplication between Warringah's LEP and the SEPP.

## **Part 3 Submissions requesting site specific rezoning**

### **Part 3A Small sites**

#### **3A.1 21 Park Street, Collaroy (Lot 24 DP843218)**

##### *Submission summary*

Submission requests that the subject site is rezoned to allow medium density housing as it lies on the border of a current medium density area and there is no apparent reason why the zone stops where it does.

##### *Planning assessment*

The draft LEP has been prepared to translate the existing provisions of Warringah LEP 2000 and currently the site does not lie within a medium density area. The site lies at the foot slope of Collaroy Plateau escarpment which contributes to the definition of the extent of medium density precincts in this area.

Council is currently reviewing its housing strategy and, amongst other matters, this work will consider future options for increasing in the supply of medium density housing in Warringah. When complete, the strategy will establish future directions for both the location and timing of the delivery of various options required to meet Warringah's future growth in the housing sector.

It is considered that there should be no alteration to the draft LEP arising from this submission.

#### **3A.2 36 Monash Parade, Dee Why (Lot 52A DP 101690)**

##### *Submission summary*

Submission requests that the subject site is rezoned to R3 Medium Density Residential on the basis of that the unique topography of the site will accommodate suitable development and consistency with the State Government's policy of urban consolidation.

##### *Planning assessment*

The draft LEP has been prepared to translate the existing provisions of Warringah LEP 2000 and currently the site does not lie within a medium density area. Nor does it lie in proximity to a medium density area.

Council is currently reviewing its housing strategy and, amongst other matters, this work will consider future options for increasing in the supply of medium density housing in Warringah. When complete, the strategy will establish future directions for both the location and timing of the delivery of various options required to meet Warringah's future growth in the housing sector.

It is considered that there should be no alteration to the draft LEP arising from this submission.

#### **3A.3 19 and 20 Frazer Street, Collaroy (Lot 64 DP 746823 and SP 2663)**

##### *Submission summary*

Submission requests that the subject sites be rezoned to R3 Medium Density Residential on the basis that they lie adjacent to the current medium density area and consistency with the State Government's housing targets. Also, rezoning will also accommodate the inclusion of 19A Frazer Street in a redevelopment site. (19A currently lies within the medium density area but site topography and site access present constraints to development.)

##### *Planning assessment*

The draft LEP has been prepared to translate the existing provisions of Warringah LEP 2000 and currently the site does not lie within a medium density area. The sites lies at the foot slope of

Collaroy Plateau escarpment which contributes to the definition of the extent of medium density precincts in this area.

Council is currently reviewing its housing strategy and, amongst other matters, this work will consider future options for increasing in the supply of medium density housing in Warringah. When complete, the strategy will establish future directions for both the location and timing of the delivery of various options required to meet Warringah's future growth in the housing sector.

It is considered that there should be no alteration to the draft LEP arising from this submission.

#### 3A.4 1 – 5 Coastview Place, Freshwater (Lot 57, 58 and 59 DP 305102)

##### *Submission summary*

Submission requests rezoning of the subject sites to R3 Medium Density Residential on the basis that the proposed R2 Low Density Residential zone does not give due regard to existing medium density housing developments in the vicinity. The submission notes that the subject sites are centrally located relative to public transport, schools, neighbourhood shops and recreational facilities including parks and beaches.

##### *Planning assessment*

The draft LEP has been prepared to translate the existing provisions of Warringah LEP 2000 and currently the site does not lie within a medium density area, nor does it lie in proximity to a medium density area. Development within the area includes medium density housing, however, detached dwelling houses predominate.

Council is currently reviewing its housing strategy and, amongst other matters, this work will consider future options for increasing in the supply of medium density housing in Warringah. When complete, the strategy will establish future directions for both the location and timing of the delivery of various options required to meet Warringah's future growth in the housing sector.

It is considered that there should be no alteration to the draft LEP arising from this submission.

#### 3A.5 60 Carrington Parade, Curl Curl (Lot 3 DP 5209)

##### *Submission summary*

Writers advise the site is flanked by residential flat buildings (50,50A, 52-58 and 62, 64). They request that their zoning be changed from R2 to R3 to enable the property to be redeveloped consistent with adjoining land uses.

Submission requests rezoning of the subject site to R3 Medium Density Residential on the basis that the site is flanked by residential flat buildings and the rezoning would allow that site to be developed consistent with its neighbours. The submission notes that the site is well located in relation to public transport, shops, services and recreational facilities, in particular Curl Curl Beach.

##### *Planning assessment*

The draft LEP has been prepared to translate the existing provisions of Warringah LEP 2000 and currently the site does not lie within a medium density area, nor does it lie in proximity to a medium density area. The proportions of the site are restrictive to attaining a medium density outcome that is consistent with the relevant controls. Development within the area includes medium density housing, however, detached dwelling houses predominate.

Council is currently reviewing its housing strategy and, amongst other matters, this work will consider future options for increasing in the supply of medium density housing in Warringah. When complete, the strategy will establish future directions for both the location and timing of the delivery of various options required to meet Warringah's future growth in the housing sector.



It is considered that there should be no alteration to the draft LEP arising from this submission.

3A.6 67 and 69 Albert Street, Freshwater (Lots 2 and 1 DP 1105885)

*Submission summary*

Submission states that two shops with attached residential apartments have been operating from the subject site since they were built around 1915. Current improvements for No 67 are a retail shop consisting of a general store with a residential flat to the rear. At No 69 there is a retail coffee shop and laundry with a residential flat to the rear. The proposed residential zoning does not reflect the existing or recently approved land uses thereby creating an anomaly. Submission requests rezoning of the sites to B1 Neighbourhood Centre.

*Planning assessment*

The draft LEP has been prepared to translate the existing provisions of Warringah LEP 200). Under the current provisions the sites do not fall within a Local Retail Centre and are zoned residentially.

The site lies approximately 250 metres from Freshwater Village which is proposed to be zoned B2 Local Centre. The combined site is small and cannot wholly fulfil the role and function of a business zone as presented in the Standard Instrument LEP and Metropolitan Strategy. Provisions to allow the continuation of business uses at the site exist within Part 4 Division 10 Existing uses, of the Environmental Planning and Assessment Act.

Formalisation of a business zoning over the site is not necessary to allow its continued use nor is it appropriate having regard to site circumstances. It is considered that there should be no alteration to the draft LEP arising from this submission.

3A.7 42 Carrington Parade, Curl Curl (Lot 32 DP 14040)

*Submission summary*

Submission that the proposed R2 Low Density Residential zone is not suitable as it will impact on the properties resale value and future options. Submission states that the subject property was zoned commercial when purchased it in 1983 and retained that zoning up to 1999. The zoning is inconsistent with current land uses in the immediate area which is dominated by several large apartment complexes, the Stewart House facility and South Curl Curl Surf Club with its various facilities. Submission that the zoning also excludes granny flats / dual occupancies and discriminates against the elderly. Submissions suggests that the two Local Retail Centres (under Warringah LEP 2000) on Carrington Parade should be zoned a composite R3 Medium Density Housing zone and B1 Neighbourhood Centre zone.

*Planning assessment*

Under Warringah LEP 2000 two Local Retail Centres (LRC) exist on Carrington Parade, Curl Curl. Nos 66 – 72 (5 lots) form the northern LRC and no's 39 – 41 (3 lots) form the southern centre. With the adoption of the draft LEP (November 2007) Council resolved to remove both to these commercial zones on the basis that all properties are developed with dwelling houses and historical records do not support previous commercial use of the sites. Report no. 8.3 to Council meeting of 13 November 2007 includes further discussion on this matter. .

The subject site does not lie within either of the LRCs. Rather, it adjoins the southern one at its northern boundary. Further, a search of Council's records indicates that under both the Warringah LEP 1985 and the Warringah Shire Planning Scheme (1963) the subject site was zoned residentially.

The R2 Low Density Residential zone translates the provisions of the Curl Curl F5 Locality for the site. Development within the area includes medium density housing, however, detached dwelling houses predominate. Council is currently reviewing its housing strategy and, amongst other matters, this work will consider future options for increasing in the supply of medium density housing in Warringah. When complete, the strategy will establish future directions for both the

location and timing of the delivery of various options required to meet Warringah's future growth in the housing sector.

It is considered that there should be no alteration to the draft LEP arising from this submission.

3A.8 27 Oliver Street, Freshwater (Lot A DP 443739)

*Submission summary*

Submission requests rezoning to R3 Medium Density Residential on the basis that:

- the lot is surrounded by existing residential unit buildings
- Council has previously approved five units for aged and disabled housing
- surrounding lots to the north, east and west are zoned medium density

*Planning assessment*

The draft LEP has been prepared to translate the existing provisions of Warringah LEP 2000 and currently the site does not lie within a medium density area, nor does it lie in proximity to a medium density area. Development in close proximity to the site includes medium density housing, however, detached dwelling houses predominate.

Council is currently reviewing its housing strategy and, amongst other matters, this work will consider future options for increasing in the supply of medium density housing in Warringah. When complete, the strategy will establish future directions for both the location and timing of the delivery of various options required to meet Warringah's future growth in the housing sector.

It is considered that there should be no alteration to the draft LEP arising from this submission.

3A.9 397 Condamine Street, North Manly (Lot 1 DP 624845)

*Submission summary*

The subject site is currently developed with a two storey commercial building used as the Warringah Golf Club. The site has an area of 4,021m<sup>2</sup> with frontage to Condamine Street and James Street. Under the draft LEP it is proposed to be zoned R2 Low Density Residential.

The site has a re-development potential at present for 6 low density residential allotments. The submission includes details addressing issues such as future character, existing infrastructure, relationship to strategic planning framework, context and planning justification.

The submission seeks to change zone to R3 Medium Density Residential. Alternatively, it seeks to allow, using Schedule 1, additional permitted uses on the site being multi dwelling housing and residential flat buildings.

*Planning assessment*

The draft LEP has been prepared to translate the existing provisions of Warringah LEP 2000 and currently the site does not lie within a medium density area, nor does it lie in proximity to a medium density area. Low density residential development surrounds the site.

Should the site become surplus to the club's needs, the concept of infill medium density housing is worthy of further consideration. However, as with all infill housing, the difficulty is to demonstrate how the site will interact with surrounding established low density residential housing. The submission is silent on this aspect. Should the author wish to pursue this proposal this should be addressed by the submission of a Planning Proposal (under Part 3 Division 4 of the Environmental Planning and Assessment Act) for Council's further consideration.

Council is currently reviewing its housing strategy. Hence, any planning proposal in relation to this submission should be made after the making of Warringah LEP 2009 thereby giving Council the benefit of further investigation and development of strategic objectives for the delivery of housing in Warringah to assist in its consideration of the proposal.

It is considered that there should be no alteration to the draft LEP arising from this submission.

### 3A.10 Warringah Golf Course (District Park), Condamine Street, North Manly

#### *Submission summary*

The Warringah Golf Club occupies a site that is physically divided by Kentwell Rd. Improvements to the site include a 18 hole golf course, the Warringah Golf Club pro shop, kiosk and work shed. District Park consists of the area known as Nolan, Passmore, Millers and David Thomas Reserves as well as the Golf Course. The following facilities are also located within District Park: North Manly Bowling Club; Manly Christian Brothers Old Boys Football Club; Manly Small Bore Rifle Club; Manly Vale Bowling Club; Manly Warringah Touch Football Association and District park tennis centre.

The existing location of the Warringah Golf Club premises (397 Condamine Street – opposite the golf course) is at a significant distance from the golf course and is becoming unviable due to the physical separation. Fewer golfers are now patronising the club after their game. The submission seeks support to relocate the club building from its current location to golf course site.

#### *Planning assessment*

The draft LEP proposes to zone the subject site RE1 Public Recreation. With certification of the draft LEP the Department of Planning removed *registered clubs* as permitted uses from the RE1 zone and required Council to identify existing *registered clubs*, located on public land, as RE2 Private Recreation. Hence, the proposed zone will prohibit the future location of the club building. Further, the current Plan of Management does not include consideration for the relocation of the club building within the golf course area.

A submission to the exhibition of the draft LEP is not the appropriate means of addressing this matter. In the first instance, the Warringah Golf Club should initiate discussions with Council's Property and Commercial Development branch. Should Council's agreement in principle be given to the request, a process that includes community engagement should be undertaken to investigate an appropriate solution and to address all the necessary requirements under the Local Government Act in relation to the management of public land. The details of any land to be rezoned will be identified through this process.

It is considered that there should be no alteration to the draft LEP arising from this submission.

### 3A.11 638 Pittwater Road, Brookvale - (Lot 1 DP 1001963)

#### *Submission summary*

The St. Vincent de Paul Society has occupied these premises since 1979 and intends to remain. Under Warringah LEP 2000 the site is located within two localities being F1 Brookvale Centre Locality (that portion of the site having frontage to Pittwater Road) and F3 Brookvale Industrial Locality (that portion of the site having frontage to Charlton Lane to the rear).

Consistent with the translation of Warringah LEP 2000, the draft LEP 2009 has carried forward the B5 Business Development B5 zone at the Pittwater Road frontage and the IN1 General Industrial zone to the balance of the site. The St. Vincent de Paul Society is actively pursuing redevelopment proposals for the whole site which will retain a mixed use development with retail and offices at ground level. The split zoning is presents a constraint to development and the submission seeks a single zone, being B5 Business Development, for the whole of the site.

#### *Planning assessment*

The subject site at approximately 2650m<sup>2</sup> in area and is not one title. It occupies a significant site at the entrance to Brookvale. Approximately one third of the site is to be zoned B5, the balance to

be zoned IN1. All other properties that have a frontage to Pittwater Road and Carlton Lane at the rear and lying north of the site are to be zoned B5 Business Development.

The proposed alternate zoning of the site is not consistent with Councils' resolution to translate the provisions of Warringah LEP 2000 into the Standard Instrument LEP. However, the submission is worthy of further consideration, particularly having regard to the site's dual frontage to Pittwater Road and Carlton Lane and the role of the Brookvale Centre supporting that of Dee Why as the major centre for the sub region. Should the author wish to pursue this proposal this should be addressed by the submission of a Planning Proposal (under Part 3 Division 4 of the Environmental Planning and Assessment Act) for Council's further consideration.

Council is currently undertaking the Brookvale Employment Land Study which, when complete, will assist decision making about the future location, scale and mix of uses in the area and the role that Brookvale will play in the supply jobs for the subregion. Hence, any planning proposal in relation to this submission should be made after the making of Warringah LEP 2009 thereby giving Council the benefit of these investigations to assist it in its consideration of the proposal.

It is considered that there should be no alteration to the draft LEP arising from this submission in this process to finalise the Warringah LEP 2009.

3A.12 762 - 770 Pittwater Road, Brookvale (Lot 101 DP 1007178) and no. 10 and 12 West Street, Brookvale (Lot 10 DP 12962 Lot 11 DP 12962)

*Submission summary*

Submission that the subject sites are adjoining and are held in the same ownership. In combination they have a frontage to Pittwater Road and to West Street. Under Warringah LEP 2000 the lots fall into two localities (F1 Brookvale Centre and F3 Brookvale Industrial localities). This is reflected by the draft LEP. The largest lot fronting Pittwater Road (lot 101) is located within the B5 Business Development zone and the two smaller lots (lots 11 and 12) are located within the IN1 General Industrial zone. Approved uses on the site include motor showrooms, bulky goods retail, warehousing, parking and vehicle servicing. The author requests that the whole site is zoned B5 Business Development to rationalise the approved uses and building infrastructure.

*Planning assessment*

The B5 zone reflects the current planning instrument whereby land flanking Pittwater Road is zoned differently to the adjacent industrial land to the east. The underlying principle supports locating business uses on the main arterial road and maintaining industrial uses in the adjacent areas. The submission seeks to align zone boundaries based on ownership patterns.

The split zoning of the owners land holdings has occurred, in part, due to successive purchase of additional lots and amalgamation of these into one title. The removal of the split zoning as requested raises significant issue around the management of the Brookvale employment lands. Should the author wish to pursue this proposal this should be addressed by the submission of a Planning Proposal (under Part 3 Division 4 of the Environmental Planning and Assessment Act) for Council's further consideration.

Council is currently undertaking the Brookvale Employment Land Study which, when complete, will assist decision making about the future location, scale and mix of uses in the area and the role that Brookvale will play in the supply jobs for the subregion. Hence, any planning proposal in relation to this submission should be made after the making of Warringah LEP 2009 thereby giving Council the benefit of these investigations to assist it in its consideration of the proposal.

It is considered that there should be no alteration to the draft LEP arising from this submission in this process to finalise the Warringah LEP 2009.

3A.13 1056 - 1058 Pittwater Road, Collaroy (Collaroy Services Beach Club)

### *Submission summary*

Submission requests that Council initiate reclassification of the public car park that adjoins the subject site and lies immediately to the south of the club premises. Re-classification from 'community' to 'operational' land (under the Local Government Act) would facilitate the Club enacting development consent 2007/0870 and allow the Club to update and modernise its on-site facilities.

### *Planning assessment*

The Standard Instrument LEP includes provisions in respect of the reclassification of public land. However, in accordance with Council's decision to translate the provisions of the existing instrument into the standard instrument format, no reclassification of land has been included.

The process to reclassify public land is established under the Local Government Act and requires steps that have not been undertaken with preparation of the draft LEP. In particular, reclassification of public land must be the subject of public hearing and a separate report to Council in this regard.

The requested reclassification cannot be undertaken as part of the preparation of the draft LEP without causing significant delays to the progress of the Plan. Should the Club wish to pursue this matter, it is better addressed as a separate planning proposal that would be managed outside of the process to prepare the comprehensive LEP for Warringah.

It is considered that there should be no alteration to the draft LEP arising from this submission.

## 3A.14 Lot 5 Kamber Road, Terrey Hills (Lot 5 DP 25194)

### *Submission summary*

Submission requests change of zone for the subject site from E3 Environmental Management to RU4 Rural Small Holdings. On the basis of the particular circumstances of the site and its location amidst the existing semi-rural land at Terrey Hills it is submitted that the nature and type of uses in the RU4 zone are more suitable to continue to reflect the semi – rural character.

### *Planning assessment*

The draft LEP has been prepared to translate the existing provisions of Warringah LEP 2000. The site is located in the B9 Mona Vale Road East locality which, together with four other localities, has been translated as the E3 Environmental Management zone. The site (and its neighbours) shares a boundary to Garigal National Park and the zone, in part, reflects this circumstance. The range of land uses permitted in the E3 zone is consistent with those that are currently classified as Category 1 and Category 2 land uses in the B9 locality.

It is considered that there should be no alteration to the draft LEP arising from this submission.

## 3A.15 16, 18, 20 and 26 Roger Street, Brookvale

### *Submission summary*

The submission argues against the proposed Business Development B5 in this area on the basis that it is overly restrictive and proscriptive for a Major Centre. Brookvale Centre is far more compact than Dee Why, meaning that a mixed use zoning, including residential development in the centre, would not significantly affect nor compromise the Dee Why town centre, the employment lands in Brookvale centre nor the industrial employment lands east and west of the Brookvale centre.

Therefore provision of a B4 Mixed Use zoning is more appropriate.

### *Planning assessment*

Council's resolution is to transfer existing controls as a 'best fit' into the new planning template, without new initiatives or any major changes. It is considered that for the subject properties the nominated B5 zoning is appropriate at this time.

The Brookvale Employment Lands Issues Paper is underway and will form the background to a Brookvale Employment Lands Strategy which will indicate the most appropriate zonings to achieve employment goals in the area.

Changes such as those proposed would require re-exhibition of the draft LEP, notwithstanding that there has been insufficient documentation to date to justify any change.

### 3A.16 822 Pittwater Road Dee Why

#### *Submission summary*

Objection raised to Height of Buildings map as applying to 822 Pittwater Road Dee Why:

- i) The site has an 89.8 metre frontage to Delmar Parade. The western portion of the site has a 21 metre (category R) maximum building height; the rear of the site has a 13 metre limit (category N). The adjacent property in Delmar Parade has recently developed (former Dee Why Fruit World site) to a mixed 4 storey retail / commercial and residential flat building. The rear component of no 822 should have its height limit changed to match that site (13 metres up to 17 metres).
- ii) The boundary of the two building height controls is parallel to Pittwater Rd; a control that is changed 90 deg to Delmar Parade is preferred.

#### *Planning assessment*

In relation to Dee Why Town Centre, on Friday 28 November 2008, Warringah Local Environmental Plan 2000 (Amendment No.21) was published in the Government Gazette. Council's resolution is to transfer existing controls as a 'best fit' into the new planning template, without new initiatives or any major changes. Changes such as this would require re-exhibition of the draft LEP.

#### *Submission summary*

Nos 4, 6, and 8 Innes Road appear to be a park, but on the maps are treated differently.

#### *Planning assessment*

The land in Innes Road, Manly Vale has been purchased by Council for the provisions of a public reserve. This matter is addressed in Attachment Booklet 5 *Internal Comments*, and is contained in the recommendations of this report.

## **Part 3 Submissions requesting site specific rezoning**

### **Part 3B Large sites**

#### **3B.1 Planned major centre at Frenchs Forest - Capital Investment Group**

##### *Submission summary*

With the exhibition of the draft LEP Council has received a submission that proposes the changing of the draft North East Subregional Strategy to realise the classification of land at Frenchs Forest as a Planned Major Centre. It is understood that the submission has been made to the Department of Planning and that the submission to Council seeks to inform and to advance the notion of a planned major centre at Frenchs Forest.

The proposal would escalate Frenchs Forest to a similar regional planning status as Brookvale / Dee Why. The area, subject of the submission, corresponds to the current G4 Rodborough Road Locality under Warringah LEP 2000 and is generally bounded by Wakehurst Parkway, Frenchs Forest Road, Aquatic Drive and the interface with residential properties at the end eastern extent of Rodborough Road.

##### *Planning assessment*

In recent years, the Department of Planning has released a number of strategic planning documents that have been prepared which will directly impact on future development in Warringah being the NSW Government's Metropolitan Strategy and the draft North East Subregional Strategy. The subject submission is one which proposes changes to the State Government's draft North East Subregional Strategy rather than any specific changes to the draft LEP.

In response to the State Government's strategies Council, in conjunction with the other SHOROC Councils has prepared the SHOROC Regional Employment Study. It has also commenced three significant projects to assist in informing its response to the Metropolitan and Subregional Strategies being an urban form review for the Dee Why Town Centre; review of housing strategy in Warringah and an employment study for the Brookvale employment lands. It is envisaged that should changes to Council's planning instrument be required to give effect to the outcomes of this work, such amendments will be made at a future time after the finalisation of the draft LEP.

The submission has far reaching planning implications for the north east subregion and is external to the parameters of Council process to translate the current planning provisions of Warringah LEP 2000 into the Standard Instrument LEP.

It is understood that the Department of Planning has had discussions with the authors of the submission, their clients and their consultants. Should Council officers receive further advice from the Department of Planning in this matter, it will be brought to Council separately to the draft LEP process.

There are no alteration to the draft LEP arising from this submission.

#### **3B.2 5 – 19 Lawrence Street and 18 Marmora Road, Freshwater**

##### *Submission summary*

The subject sites have a combined area of 8,653m<sup>2</sup> and lies generally on the northern side of Lawrence Street. Currently they contain a mix of 2 storey retail and commercial premises with primary frontage to Lawrence Street and Albert Street.

Matters of concern that are raised in the submission are – village centre opportunities; nature of draft LEP (general) and lack of residential strategy; limitations as a result of the zoning boundary; housing targets and lack of incorporation of Council's housing strategy into the Plan; restrictive height controls; re-classification of community land to the west and lost opportunities for a key strategic centre.

The author has attached a detailed urban design study to explore the development potential of the village centre.

The writer advises that the Draft Comprehensive LEP as exhibited does not rely on any supporting documentation, such as housing and employment strategies or any site specific urban design analysis. The view is expressed that the preparation of any Standard Instrument LEP that does not address the pre-requisite requirements of the new Section 117(2) direction 7.1 'Implementation of the Metropolitan Strategy' issued on 1 October 2009, which seeks to ensure consistency with the vision, land use strategy, policies, outcomes or actions of the Metropolitan Strategies, must fail.

The author notes that the draft LEP seeks fundamentally no change to the current Warringah LEP2000. In making no changes, the draft LEP is already a minimum 10 years out of date and is expected to fulfil the role of encouraging growth in 5 year increments to 2031.

The submission suggests changes to the draft LEP that primarily address:

- amendment of the Land Zoning Map to re-align the B2 Local Centre zone to include nominated land zoned R2 Low Density Residential adjoining to the north and publicly owned land (being the public car parks within the centre)
- amendment of the Height of Buildings Map to accommodate a maximum height of 18m (for a limited area within the centre) with an associated floor space ratio of 1.75:1
- incorporation of appropriate detailed development guidelines into a site specific development control plan
- reclassification of the public car park from 'community' to 'operational' land

#### *Planning assessment*

In the process to prepare the draft LEP Council gained agreement from the Department of Planning to its undertaking a translation of the existing provisions of Warringah LEP 2000 into the Standard Instrument LEP format and concurrently to carrying out strategic work to address the housing and jobs capacity targets of the Metropolitan Strategy.

Council is currently reviewing its housing strategy and Freshwater Village is one of the centres identified for consideration in this process. It is envisaged that after development of the housing strategy and completion of appropriate community consultation, any amendments to the Warringah LEP that may be necessary to give carriage to the strategy will be undertaken as a separate process. Any process to amend the Warringah LEP as a consequence of the housing strategy will provide a forum for the author to put forward an argument for review of zones and principal development standards for the subject site.

The process to reclassify public land is established under the Local Government Act and requires steps that have not been undertaken with preparation of the draft LEP. In particular, reclassification of public land must be the subject of public hearing and a separate report to Council in this regard.

The requested reclassification cannot be undertaken as part of the preparation of the draft LEP without causing significant delays to the progress of the Plan. Should the author wish to pursue this matter, it is better addressed as a separate planning proposal that would be managed outside of the process to prepare the comprehensive LEP for Warringah.

It is considered that there should be no alteration to the draft LEP arising from this submission.

3B.3 563 Pittwater Road and 2 – 4 Federal Parade, Brookvale - Manly Warringah Rugby League Club site (Lots 563 and 565 DP 707422)

#### *Submission summary*



The submission addresses both the site of the Manly Warringah Leagues Club and the adjacent car park. The author expresses the opinion that the proposed B5 Business Development zone is not appropriate and seeks a change to the B3 Commercial Core zone on the basis of the potential for an expansion of permissible land uses that this would achieve. It is submitted that the changed zoning for the site would facilitate employment creation, economic development and seed urban renewal in Brookvale's Pittwater Road corridor.

To accompany the change of zone the submission seeks a change to the Height of Buildings Map to allow a maximum building height of 30m (9 storeys) on the basis that this will allow for viable commercial development.

#### *Planning assessment*

The draft LEP has been prepared to translate the existing provisions of Warringah LEP 2000 into the Standard Instrument LEP. The B5 Business Development zone (together with Schedule 1 Additional Permitted Uses) has been developed, in terms of zone objectives and permitted land uses, to reflect the existing provisions within the F1 Brookvale Centre and F2 Brookvale Service Centre localities of Warringah LEP 2000. The submission seeks a significant variation from the existing provisions.

Council has commenced a study of the Brookvale employment lands with a view to informing decisions in relation to meeting the jobs capacity targets of the Metropolitan and draft North East Subregional Strategies. The development of a holistic approach to identifying the location, scale and infrastructure support needs for future commercial/ employment activity in Warringah must occur. The suggested rezoning is premature and potentially prejudicial to this process.

It is considered that there should be no alteration to the draft LEP arising from this submission.

### 3B.4 Harbord Diggers Club site Lumsdaine Drive, Freshwater

#### *Submission summary*

A submission has been received in regard to this property that requests confidentiality.

#### *Planning assessment*

Among other matters raised is an incorrect property description.

#### Recommendation:

That Council resolves to update the property description in Clause 14 of Schedule 1 Additional Permitted Uses:

Delete subclause (1) and replace with (1) *This clause applies to land in Lumsdaine Drive, Freshwater, being Lot 100 DP 1136132.*

#### *Submission summary*

The draft LEP zones the Harbord Diggers Club site as R2 Low Density Residential which is impracticable and unacceptable. It is submitted that an appropriate zone for the club is RE2 Private Recreation.

#### *Planning assessment*

The draft LEP is consistent with the current provisions of Warringah LEP 2000 and meets the constraints of the Standard Instrument. It is considered that there should be no alteration to the draft LEP arising from this submission.

### 3B.5 Salvation Army site - 23 Fisher Road, Dee Why

### *Submission summary*

The present facility is no longer suitable to accommodate the existing Salvation Army facility as it does not meet the requirements of State Environmental Planning Policy (Housing for Seniors or People with a Disability). A consultant has been engaged to evaluate the site and a concept plan for redevelopment has been prepared. It is intended to lodge this with Council for its consideration. The concept proposal includes:

- demolition of certain buildings;
- retention and refurbishment of heritage item;
- erection of five medium rise apartment buildings comprising 2 buildings of 4 storey, 2 buildings at both 5 and 3 storeys and 1 building at 4, 5, and 7 storeys;
- new access point and internal circulation;
- basement parking; and
- landscaping.

The total floor area will be 10,190m<sup>2</sup> with a yield of approximately 100 apartments (to include a mix of 1-3 bedrooms) with an average floor area for each apartment of 100m<sup>2</sup>. Several design options are proposed.

It is submitted that this proposal provides Council with an opportunity to provide an intensity of development to reinforce the role of Dee Why in the Metropolitan Strategy and to meet planning considerations identified by Council in its Housing Issues Paper and Strategic Community Plan.

The submissions request amendment to the draft LEP in relation to height of buildings to allow a maximum building height for the site to be 30m.

### *Planning assessment*

In the process to prepare the draft LEP Council gained agreement from the Department of Planning to its undertaking a translation of the existing provisions of Warringah LEP 2000 into the Standard Instrument LEP format and concurrently to carrying out strategic work to address the housing and jobs capacity targets of the Metropolitan Strategy.

Council is currently reviewing its housing strategy which will include consideration of the future role of Dee Why as the major centre for the subregion. It is also undertaking a review of urban form for the Dee Why commercial area. After completion of these strategic projects it is envisaged that any amendments to the Warringah LEP that may be necessary to give carriage to the projects' outcomes will be undertaken as a separate process.

Under the draft LEP the maximum building height for the site is 13m. The request to increase this to 30m represents a significant departure from the proposed standard. Consideration of this request before the completion of the Dee Why urban form study and the housing strategy is premature and should not be supported on this basis.

It is considered that there should be no alteration to the draft LEP arising from this submission.

## 3B.6 Austlink Business Park

### *Submission summary*

Additional land uses in Zone B7 Business Park should include Recreation (indoor) facility, Industrial Retail outlet (especially if light industry and bulky goods retailing is permitted), Timber and Building Supplies (as per the existing Bunnings and the SupaCentre) and uses beyond light industry and office park employment activities. 'Built Form' controls such as site cover, building height and minimum lot sizes also need to be reviewed

### *Planning assessment*

Council's resolution is to transfer existing controls as a 'best fit' into the new planning template, without new initiatives or any major changes. Changes such as this would require re-exhibition of the draft LEP.

## Part 4 Issues arising from translation process

### Part 4A Land zoned RE2 Private Recreation

#### 4A.1 General discussion of issues

The following submissions raise the matter of appropriate zoning of privately owned and operated recreation facilities. Currently, Warringah LEP 2000 does not include a category for 'private recreation'. Rather, it addresses such sites on a locality by locality basis. In relation to the submissions addressed under this heading, all sites are located either within the E2 Dee Why Lagoon Suburbs locality or the C1 Middle Harbour Suburbs locality. The relevant desired future character statements state that these sites will continue to be used only as recreation facilities. Also, the land use categories for the relevant localities list only recreation facilities as Category One uses on the nominated sites.

In contrast, the Standard Instrument LEP includes the RE2 Private Recreation zone. The Department of Planning LEP Practice Note PN 06 – 002 Preparation of LEPs using the standard instrument: standard zones, provides guidance in relation to the application of standard zones. In relation to the RE2 zone it states:

*This zone is generally intended to cover a wide range of recreation areas and facilities on land that is privately owned or managed.*

The standard zone includes compulsory objectives and compulsory permitted land uses that are deemed by the State Government to achieve these objectives. Having regard to the relevant locality statements that identify recreation facilities for continued use, the RE2 Private Recreation zone represents an appropriate translation of the Warringah LEP.

The following submissions raise the issue of the loss to the community of private recreation facilities from the local area. Should these sites be zoned to allow alternate uses (such as residential or commercial uses), it is likely that market forces will see the demise of the recreation facilities and their eventual loss to the community. Should this occur, the higher returns to land owners afforded by the residential or commercial uses will not be directed to providing alternate recreation facilities and these assets will be lost albeit that the alternate land uses may contribute to an increased need for recreation facilities in the community.

#### Recommendation

That proponents of rezoning or other 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.

#### 4A.2 26 Campbell Avenue, Dee Why (Lot 61 DP 611195) - Tennis Centre

##### *Submission summary*

This site accommodates a recreation facility that is locally known as the Evergreen Tennis Centre. The author advises that there is insufficient public demand for the continued provision and maintenance of the facility and that there is an adequate supply of publicly owned tennis court facilities in the vicinity of the site. Opportunities to change the nature of the facility are not apparent. The current use and improvements on the land do not enhance the natural setting and there is no requirement for the land to be retained as recreational facility within the context and setting of the site or the locality.

Rezoning of the land to R3 Medium Density Residential is warranted and is consistent with the established form and pattern of development in the local area. Further, the site is located favourably in relation to transport, employment and retail facilities and to recreation and leisure activities. A site survey and indicative redevelopment plans are attached.

### *Planning assessment*

As discussed above, the application of the RE2 Private Recreation zone is an appropriate means of translating the existing provisions of Warringah LEP 2000 into the Standard Instrument LEP for the subject site.

Should the author wish to pursue this proposal this should be addressed by the submission of a Planning Proposal (under Part 3 Division 4 of the Environmental Planning and Assessment Act) for Council's further consideration.

Council is currently reviewing its housing strategy. Hence, any planning proposal in relation to this submission should be made after the making of Warringah LEP 2009 thereby giving Council the benefit of further investigation and development of strategic objectives for the delivery of housing in Warringah to assist in its consideration of the proposal.

It is considered that there should be no alteration to the draft LEP arising from this submission.

#### 4A.3 223 Fisher Road, Dee Why (Lot 32 DP 868310) - Dee Why Bowling Club site

##### *Submission summary*

The Dee Why Bowling Club owns and occupies a 1.15 hectare site at Fisher Road of which approximately 8,700m<sup>2</sup> is used to accommodate the bowling greens and the club building. The remaining 2,800m<sup>2</sup> is under utilised and is currently informally used as 'spill over' parking. The Club is contemplating redevelopment of part of this site and seeks to have a wider range of permissible uses. Uses suggested include child care centres, health consulting rooms, veterinary hospitals and seniors housing. It is suggested that such uses could be added to the Private Recreation RE2 zone as permissible uses or as additional permitted uses solely for this site through Schedule 1 Additional Permitted Uses.

##### *Planning assessment*

As discussed above, the application of the RE2 Private Recreation zone is an appropriate means of translating the existing provisions of Warringah LEP 2000 into the Standard Instrument LEP for the subject site. The author contends that the RE2 zone does not appropriately translate the prevailing permitted uses for the site under Warringah LEP 2000. This contention overlooks the provisions of the relevant desired future character statement as set out above under the heading 4A.1 *General discussion of issue*.

Further, should Council decide to expand range of permitted uses in the RE2 zone or use Schedule 1 Additional Permitted Uses to expand the range of permitted uses on the subject site as submitted, there will be no means available through the LEP to ensure that the recreation facility at the site is retained. That is, the suggested changes to the draft LEP will allow for the whole of the site to be developed for any of the permitted uses. This is contrary to the provisions of Warringah LEP 2000 and the intentions of the draft LEP.

It is considered that there should be no alteration to the draft LEP arising from this submission.

#### 4A.4 101 South Creek Road, Dee Why - Manly Warringah District Soccer Club

##### *Submission summary*

Submission requests the rezoning of the site from RE2 Private Recreation to IN1 General Industrial together with use of Schedule 1 Additional Permitted Uses to allow *registered clubs (ordinarily incidental or ancillary to recreation facilities (indoor) or Recreation facilities (outdoor))* on the site.

The basis for the request is that the site does not currently accommodate recreation facilities, rather, it accommodates a club building. The club building is a financial burden requiring \$430,000.00 for an upgrade and is poorly located with respect to the football fields and grandstand.

It occupies only 500m<sup>2</sup> of the 3,575m<sup>2</sup> site area. The industrial zoning would be consistent with current land use to the north, south and west.

*Planning assessment*

The requested rezoning will not provide for the continued use of the site for the purposes of a recreation facility (or ancillary use) and hence the existing planning provisions would not be maintained. Should the club premises be removed from the land uses on the site, it relocation more suitable to the football fields and grandstand is likely to involve use of public land.

It is considered that there should be no alteration to the draft LEP arising from this submission.

4A.5 146 Forest Way, Belrose (Lot 2 DP 851739) - Belrose Bowling Club

*Submission summary*

Submission requests rezoning of the site from RE2 Private Recreation to a zone that allows the provision of a child care facility.

*Planning assessment*

Refer to *Part 4A.1 General discussion of issues*. The rezoning of the site from RE2 Private Recreation will not provide for the continued use of the site for the purposes of recreation facilities and hence the existing planning provisions within Warringah LEP 2000 would not be maintained.

The suggested rezoning will allow for the whole of the site to be developed for any of the permitted uses within the alternate zone. This is contrary to the provisions of Warringah LEP 2000 and the intentions of the draft LEP.

It is considered that there should be no alteration to the draft LEP arising from this submission.

## Part 4 Issues arising from translation process

### Part 4B Land zoned SP1 Special Activities

#### 4B.1 General discussion of issues

The Standard Instrument LEP includes the SP1 Special Activities zone. The land use table for the zone includes the following as a compulsory permitted use in the zone:

*The purpose shown of the Land Zoning Map, including any development that is ordinarily incidental or ancillary to development for that purpose.*

Accordingly, Council developed descriptors of the various sites to be zoned SP1 and included these on the Land Zoning Map.

However, prior to certification of the draft LEP, the Department of Planning advised Council that the uses shown on the Land Zoning Map must be standard instrument defined terms. Hence, each site was reviewed and a list of standard instrument defined terms developed to describe the respective site activities. Given the 'special' nature of these sites, it was not always possible to fully describe the existing lawfully established activities using the standard definitions. A number of submissions have been received that seek review the list of defined terms used to describe the permitted site activities.

#### 4B.2 187 Allambie Road, Allambie Heights The Spastic Centre of NSW

##### *Submission summary*

Submission advises that previous considerations by Council for redevelopment of the site have included the terms *community facility, housing for older people or people with a disability, further education and subdivision*. Under the draft LEP the site is zoned 'Special Activities' SP1. Permitted uses indicated on the Land Zoning Map are *health services facilities; school; seniors housing and development that is ordinarily incidental or ancillary to development for that purpose*. The standard permitted uses do not adequately capture current uses of the site. Specifically, further education and community facilities are excluded albeit available under the established planning principle of existing use rights. Submission requests Council to add *community facilities and educational establishments* to the Land Zoning Map (deleting school) which would be consistent with the objectives of the zone.

##### *Planning assessment*

The requirement by the Department of Planning that only standard definitions can be used has limitations and does not always allow the special nature of some activities to be articulated. In this instance, it is considered that the requested additional standard definitions are consistent with the current planning provisions for the site and the requested change to the site descriptors on the Land Zoning Map is supported.

##### Recommendation:

That Council resolves to make the following changes to the list of descriptors on the Land Zoning Map for SP1 Special Activities zone at the site occupied by the Spastic Centre of NSW and known as 187 Allambie Road, Allambie Heights:

Delete *schools* and add *community facilities and educational establishments*.

#### 4B.3 RSL ANZAC Village, Veterans Parade, Narrabeen

##### *Submission summary*

1) The site is zoned part SP1 Special Activities (Seniors Housing and Health Services Facility) and part E2 Environmental Conservation and these zones cover most existing and proposed uses for the site. The draft LEP also provides for development that is *ordinarily incidental or ancillary* to the development nominated on the Land Zoning Map. It is submitted that a range of existing uses on site may not fall within the latter terminology and lists these as the Diggers

Inn (restaurant and licensed bar), the Dugout café, the Dardanelles café, a small goods shop, a hair and beauty salon, a 250 seat auditorium, function rooms, meeting rooms, heated pool and spa, a craft workshop, lawn bowls facilities, croquet facilities, a chapel, a therapy and lifestyle centre, a gymnasium, a billiards room, a clothing and opportunity shop, a war museum and a village museum. It is also submitted that similar uses are likely to be intensified across the site and additional uses such as a pharmacy and shop/small convenience store are future desired uses. A proposal for a child care centre has also been lodged with Council.

The submission seeks greater certainty that the current and future planned uses will be permitted and lists 20 additional uses that it the author requests Council to include in Schedule 1 Additional Permitted Uses. These include signage, restaurants, neighbourhood shops, information and educational establishments and child care centres.

- 2) A component of the RSL ANZAC Village site is zoned E2 Environmental Conservation. Within this area there are currently walking tracks, access roads and sewer and drainage works that service the village. Such uses are not permitted within the zone and should be included within Schedule 1 Additional Permitted Uses for the site.
- 3) The boundary between the SP1 Special Activities zone and the E2 Environmental Conservation zone has minor inconsistencies with site infrastructure. Overlaying the Land Zoning Map with an aerial view of the site development shows an existing building within Cutler Village and another within the Friendship Court have are located within the E2 Environmental Conservation zone. The author has also provided survey information to assist in the delineation of zone boundaries.

#### *Planning assessment*

Although there exists some subjectivity in applying *development that is ordinarily incidental or ancillary to development for that purpose*, it is accepted planning terminology and part of the Standard Instrument LEP. The activities nominated in the submission for inclusion in Schedule 1 can be regarded as meeting these criteria provided that future applications for development demonstrate the manner in which the use is integral to the nominated primary use (being seniors housing and health care facility). The inclusion of additional permitted uses in Schedule 1 is not appropriate for SP1 zones as the primary permitted uses for such sites are to be nominated on the Land Zoning Map. It is considered this component of the request should not be supported.

Within the E2 Environmental Conservation zone, the permitted uses are limited to environmental protection works and roads. Footways or walking tracks are part of roads. With the preparation of the draft LEP Council sought to include public utility undertakings in the land use table to most zones. However, this use was removed by the Department of Planning on the basis that State Environmental Planning Policy (Infrastructure) facilitates the provision of services. Part 4 Division 10 of the Environmental Planning and Assessment Act makes provisions that manage lawfully established uses should these cease to be permitted in a subsequent planning instrument. It is considered the issues raised by this component of the request are appropriately addressed by the draft LEP and prevailing legislation.

The boundaries of the E2 zone have been previously determined (through Warringah LEP 2000) to manage visually and ecologically sensitive vegetation and natural landforms. The building encroachments referred to are minor and do not warrant redefining the boundaries as a component part of the draft LEP process. Any lawfully established encroachments will not be prejudiced by the draft LEP provisions.

Various submissions to the draft LEP suggest review of the E2 Environmental Conservation zone. If such review is to be undertaken by Council it should be carried out holistically after the making of Warringah LEP 2009.

It is considered that there should be no alteration to the draft LEP arising from this submission.

4B.4 Lot 2 DP 1139826 Crozier Road, Belrose - Warringah Gravel and Stone Supplies P/L

#### *Summary submission*



A quarry and recycling facility operate from the subject site. Under Warringah LEP 2000 the site lies in the C8 Belrose North locality and the uses specifically identified as Category One land uses. Under the draft LEP the site will be zoned E3 Environmental Management and the uses will be inconsistent with the objectives of the zone. The author raises concerns that any expansion of the current quarry / recycling area will be questionable and requests that the site be zoned SP2 Infrastructure.

The author also requests that Schedule 1 Additional Permitted Uses is changed to modify the property description by referring to the real property description and the (updated) Department of Lands lease number and to add "recycling resource recovery and utilisation" to the nominated additional permitted uses.

#### *Planning assessment*

Department of Planning LEP Practice Note PN 08 – 002 Zoning for infrastructure in LEPs, does not recognise extractive industry as infrastructure. Hence, zoning of the site SP2 Infrastructure is not considered to be appropriate in this instance.

Under the draft LEP the site has been zoned E3 Environmental Management, this being consistent with surrounding land. Consistent with Warringah LEP 2000 the draft LEP has made provision for the quarry operation by the listing of the leased area of the site within Schedule 1 Additional Permitted Uses and permitting extractive industries, recreation facilities (indoor) and recreation facilities (outdoor) as additional permitted uses. This enables the continuation of the extractive industry within the approved lease area.

Also, Warringah LEP 2000 limits the area of land to be used for extractive industry by nomination of the relevant leased area. The draft LEP has adopted the same approach and limited the area to which the additional permitted uses apply by reference to the lease issued by the Department of Lands. It is appropriate that this approach continue and that Schedule 1 Additional Permitted Uses is changed to identify the current lease as advised by the author (Lease RE 412 592 issued by the Department of Lands).

The current consent under which the site operates is 2001/0456DA and was granted 7 May 2002. The consent allows the following development: *Processing and recycling facility for construction and demolition waste and a concrete batching plant*. As this consent was granted under the provisions of Warringah LEP 2000 it is appropriate to include the permitted use in Schedule 1.

#### Recommendation:

That Council resolves to make the following changes to Clause 2 of Schedule 1 Additional Permitted Uses:

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

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

## Part 4 Issues arising from translation process

### Part 4C Permitted and prohibited uses

#### 4C.1 General discussion of issues

Warringah LEP 2000 is a model that is based on the premise that (almost) no land uses are prohibited. Rather, land uses that are deemed to be unsuitable in a locality are Category Three land uses. These are permitted. However, the development of such a land use must pass a more rigorous test to determine whether or not consent will be granted than do Category One or Category Two land uses.

The standard instrument does not afford Council the same mechanisms to undertake a higher level of testing of development that is deemed unsuitable when determining development applications. Hence, the land use tables within the draft LEP include a significantly greater range of prohibited land uses than currently exists under Warringah LEP 2000. In translating Warringah LEP 2000, for the purposes of determining the permissibility status of land uses in the new LEP, a rule of translation was applied whereby Category One and Category Two land uses are (subject to development consent) permitted, and Category Three and Prohibited land uses are prohibited.

This 'rule' is consistent with the explanatory note to Clause 12 of Warringah LEP 2000. However, this rule cannot be applied rigidly. The Standard Instrument LEP includes a dictionary which is a compulsory definition of terms. It includes a significantly greater number of terms than are defined by Warringah LEP 2000. Many terms are defined differently to the definitions contained in Warringah LEP 2000. For example, Warringah LEP 2000 contains a single definition for *recreation facility*. The Standard Instrument LEP contains four definitions being: *recreation area*, *recreation facility (indoor)*, *recreation facility (outdoor)* and *recreation facility (major)*. Under Warringah LEP 2000, within typical low density residential suburban localities, *recreation facilities* are generally Category Three land uses. However, with review of the multiple definitions of the Standard Instrument LEP, it is considered that whilst it is appropriate to prohibit most of these uses in the R2 Low Density Residential zone, it is appropriate to permit *recreation areas*.

The translation of permitted and prohibited land uses is further complicated by the mandatory status of the Standard Instrument LEP which provides that, in each zone, certain land uses must be permitted.

Warringah LEP 2000 includes 74 localities whilst the draft LEP adopts 20 standard zones. It follows that the proposed zones within the draft LEP are made up of multiple localities. Due to the place based nature of Warringah LEP 2000, the categorisation of land uses is not wholly consistent across like localities. When localities are grouped together into zones, certain land uses may be Category Two in some of these localities and Category Three in others. When this occurs, the permissibility status has been determined on the basis of majority fit. However, in some instances it has been deemed appropriate to identify localities as 'Areas' on the Additional Permitted Uses Map and use Schedule 1 to carry forward the permitted status of the Category 2 land uses in that locality that differ from the majority.

Some submissions are based on the premise that Category Three land uses are currently permitted and this status should be retained in the draft LEP. Should this logic be applied throughout the translation process almost all zones would permit the same range of land uses. For example, the C1 Middle Harbour Suburbs locality is a typical low density residential suburban environment. However, if Category Three uses were to remain permitted in the R2 Low Density Residential zone agriculture, bulky goods shops, industries, motor showrooms, vehicle repair stations and warehouses (to name a few) would be permitted. Clearly this is not the intention of a land use zone based model that includes no desired future character statements against which to measure performance.

The logic of the rule of translation is sound. However, it will result in some uses that have been lawfully established as Category 3 land uses under Warringah LEP 2000 becoming prohibited by the new planning instrument. Part 4 Division 10 (Existing uses) of the Environmental Planning and Assessment Act operates to allow the continuance of such uses. It also affords a limited range of future development rights for those uses.

In the draft LEP, Schedule 1 Additional Permitted Uses is available to make additional uses permitted on a site or precinct basis, over and above those permitted by the relevant land use table. This has not been used to carry forward the permitted status of all lawfully established Category Three uses. These uses are acknowledged as being generally unsuitable within the zone. They have been granted consent under Warringah LEP 2000 only because the particular characteristics of the proposed development have been assessed as being consistent with the desired future character of the locality. These characteristics have been managed by the conditions of consent to ensure that the use continues to operate in a manner that is suitable. It does not follow that any future alteration or expansion of the land use would continue to be suitable. Further, the Department of Planning has advised that Schedule 1 should not be used widely to accommodate lawfully established land uses that would otherwise be prohibited. Rather, the provisions of Part 4 Division 10 of the Act exist to address these situations.

Another important issue in relation to determining permitted and prohibited development is the management of innominate uses. Innominate uses are ones that are not defined in the dictionary and therefore are not specifically referenced in the land use tables. For each land use table, the range of permitted uses has been developed to nominate those uses that are regarded as being consistent with the achievement of the land use planning objectives for the zone. Warringah LEP 2000 includes mechanisms that allow Council to apply rigorous testing to both Category Two and Category Three uses. The Standard Instrument LEP does not include this feature. Hence, the draft LEP has been prepared on the basis that innominate uses are prohibited. It should be noted however, with its certification of the draft LEP, the Department of Planning has changed this position and has made innominate uses permitted in all business and industrial zones.

#### 4C.2 B7 Business Park zone at Frenchs Forest

##### *Submissions summary*

Submissions propose an expanded range of permitted uses to include:

boat repair facilities; business premises; bulky goods premises; educational establishments; funeral homes; health consulting rooms; health service facilities; home industries; home occupations; hospitals; industrial retail outlets; information & education facilities; medical centres; places of public worship; registered clubs; restaurants; retail premises; shops; storage premises; veterinary hospital; wholesale suppliers.

These uses are suggested both in terms of expanding the permitted range of land uses to broaden the scope of the zone and in terms of making developments that have been approved under Warringah LEP 2000 (Category Three land uses) permitted under the draft LEP. It is argued that without these additional uses the business park will be poorly serviced and employment generation will be stifled.

One submission references a specific site where development consents (granted under Warringah LEP 2000) exist for Category Three land uses and requests that the site and the permitted land uses be carried forward using the provisions of Schedule 1 Additional Permitted Uses.

The submissions refer to apparent anomalies as follows:

- Under Warringah LEP 2000 *industries* are a Category One land use, however, within the B7 zone only *light industries* are to be permitted.
- Under Warringah LEP 2000 restaurants and take away food premises are Category Three land uses, however, within the B7 zone these will be permitted.
- Under Warringah LEP 2000 there are a number of Category Two uses that are either prohibited in the B7 zone or are not specified as permissible with consent. Uses include brothels, community facilities, hire establishments, housing (where used in conjunction with industries or warehouses), places of worship and recreation facilities. The author would like these land uses specifically identified as permitted uses.

It is also submitted that the nomination of Frenchs Forest as the new hospital site presents opportunities to expand the scope of the zone and that Council should consider using the B4 Mixed

Use zone for the area. A suggested additional objective is put forward as: *To provide a range of facilities and services to satisfy the needs of the wider community and, in particular, residents in the vicinity of the business park.*

#### *Planning assessment*

Consistent with resolution of Council the draft LEP has been prepared to translate the existing provisions of Warringah LEP 2000 into the Standard Instrument format. The draft LEP is not underpinned by strategic work upon which to base changes to employment lands in Warringah. Hence, the expansion of the scope of the zone, the addition of new objectives to support this and the change of zone to B4 Mixed Use is not supported. Further consideration of the role of the area in response to the NSW Government's announcement of the site for a new hospital at Frenchs Forest should be undertaken when there is certainty about the timing and detail of the infrastructure to be delivered.

Much of the content of submissions is addressed under the above heading *4C.1 General discussion of issues*. In relation to submissions about the status of industries in the zone, reference is made to the matter of changed definitions. Warringah LEP 2000 contains one definition for *industry* whilst the dictionary to the Standard Instrument LEP separately defines *light industry* and *heavy industry*. In undertaking the translation of the existing provisions consideration was given to the compatibility of these uses with the objectives of the zone, the range of land uses permitted therein and the established uses.

In relation to retail premises, Warringah LEP 2000 permits, as innominate uses, a range of shops that would meet the day to day needs of workers in the area. Restaurants are Category Three land uses. Under the draft LEP neighbourhood shops (compulsory in the zone) and take away food and drink premises have been included in response to the zone objective. Restaurants are prohibited as they fall within the group term of retail premises.

With the preparation of the draft LEP, the Department of Planning has advised Council officers that it does not support inclusion of a full list of all sites in the LGA which contain lawfully established development that will become prohibited under the new planning instrument within Schedule 1 Additional Permitted Uses. The existing use provisions of Part 4 Division 10 of the Environmental Planning and Assessment Act, are in place to address these situations. Prior to the certification of the draft LEP, the Department reviewed Schedule 1 and for consistency with this position.

It is considered that there should be no alteration to the draft LEP arising from this submission.

#### 4C.3 IN1 General Industrial zone at Brookvale (western side of Pittwater Road)

##### *Submissions summary*

Submissions raise concerns with changes to the Brookvale industrial areas, particularly as they affect properties on the western side of Pittwater Road, specifically:

- Removal of offices in their own right.
- Retailing of goods where they are manufactured on the site. Currently and historically, the sale of goods which are being manufactured on the site has been permitted if sold from the premises.
- Sale of goods used by businesses or industries within the zoning. Currently and historically, premises which sold goods to industries or businesses that are permitted within the zone are permitted.
- Prohibition of boat repairs which is considered a staple of the Northern Beaches industrial precinct.

The introduction of Warringah LEP 2000 made extensive fundamental changes to that part of the Brookvale industrial area that lies within the G10 Brookvale Industrial West locality by permitting (with consent) commercial premises. The area has been re-vitalised with the establishment of a number of exclusively commercial office developments and/ or mixed use, office developments.

These have low vacancy rates reflecting the demand for the accommodation as well as the changing nature of industry in the area.

Under the draft LEP lawfully established premises that are exclusively occupied by office premises will become prohibited within the IN1 General Industrial zone and will therefore have to rely on the existing use rights provisions of Part 4 Division 10 of the Environmental Planning and Assessment Act to legitimise their continued operations. It is noted that the provisions of State Environmental Planning Policy (Exempt and Complying Development) that allow change of use from one commercial use to another do not apply to premises that are an existing use under the Act. Hence, a development application will be required each time a change of occupancy of an office occurs. Such an outcome will be unduly restrictive and time consuming in terms of the future leasing in this precinct.

The site would be more suitably zoned B7 Business Park permitting the continued use of offices, warehouses and light industries.

Built form controls such as site cover, height of buildings, and minimum lot sizes should be reviewed.

#### *Planning assessment*

Under the draft LEP the IN1 General Industrial zone is made up of three localities from Warringah LEP 2000. The range of permitted land uses for the zone was developed by reference to the land use categories for these localities and is described in more detail under the heading *4D.1 General discussion of issues*. The Brookvale industrial area west of Pittwater Road has been deemed appropriate to translate as an industrial zone as the Category One land uses for the G10 Brookvale Industrial West locality are limited to *industries* and *warehouses* (as are those for the other two localities that make up the zone). However, it is noted that whilst *offices* is a Category Two land use in the G10 locality, it is a Category Three land use in the two other localities that make up this zone. Referring again to *4D.1 General discussion of issues*, the use has therefore been made a prohibited one in the zone. (It is also noted that *business premises* is a Category Three land use in all three localities that make up the IN1 General Industrial zone).

Council has commenced a study of the Brookvale employment lands with a view to informing its future decisions in relation to meeting the jobs capacity targets established by the Metropolitan and draft North East Subregional Strategies. This study will include review of built form controls among other matters.

However, the draft LEP is not underpinned by strategic work upon which to base changes to employment lands in Warringah and the suggested rezoning of the Brookvale west area to B7 Business Park is not supported.

The submissions' content in relation to the uptake of offices in the G10 Brookvale Industrial West locality under Warringah LEP 2000 is acknowledged. Having regard to the extent of take up of the land use and the resultant regeneration that has occurred in recent years and the issues raised in respect of the application of State Environmental Planning Policy (Exempt and Complying Development) it is agreed that there is a case to be made for permitting *office premises* in the Brookvale west area. This can be achieved by identifying the area covered by the G10 Brookvale West locality as "Area 10" on the draft LEP Additional Permitted Uses Map and permitting *office premises* as an additional permitted use within this area.

*Industrial retail outlet* is a defined land use in the Standard Instrument LEP and is permitted throughout the IN1 General Industrial zone. This allows the sale of goods that have been manufactured on the premises.

*Wholesale supplies* is a defined land use in the Standard Instrument LEP and is permitted throughout the IN1 General Industrial zone. This allows the sale of goods or materials by wholesale to businesses.

*Boat repair facility* is a defined land use in the Standard Instrument LEP. No equivalent exists in Warringah LEP 2000. Rather, under Warringah LEP 2000 the repair of boats falls within the definition of *industry*. Whilst the definition of *industry* under the Standard Instrument LEP also

accommodates the repair of boats it is agreed that the new definition *boat repair facility* should be added as a permitted use in the IN1 General Industrial zone to ensure the on going permitted status of the use. This position is consistent with Warringah LEP 2000.

**Recommendation:**

That at the first opportunity for review of WLEP 2009, Council:

1. Identify the G10 Brookvale Industrial West locality as "Area 10" on the Warringah Local Environmental Plan 2009 Additional Permitted Uses Map, and include the following clause to Schedule 1 Additional Permitted Uses:

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.

2. Delete *boat repair facilities* as an Item 4 use in the land use table for the IN1 General Industrial zone.

#### 4C.4 Warringah Mall

##### *Submission summary*

The submission is generally supportive of the draft LEP but raises three issues of concern.

Firstly, the land use table for the B3 Commercial Core zone prohibits three uses which currently exist on site being, *bulky goods premises*, *timber and building supplies* and *vehicle repair stations*. It is submitted that these uses should be permitted in the B3 zone.

Secondly, it is submitted that the B3 zone should be extended to property known as 123 Old Pittwater Road on the basis that the property forms part of the Warringah Mall site in terms of ownership, management and function.

Thirdly, it is submitted that the Peninsula Industrial Estate and Warringah Mall should be identified as flood planning land on the draft LEP Flood Planning Area Map.

##### *Planning assessment*

The matter of permitted and prohibited uses is addressed under the heading *4C.1 General Discussion of issues*. The categorisation of these land uses as Category Three under Warringah LEP 2000 indicates that the current planning provisions do not support these uses as being generally suitable to the area. Their existence does not justify making further similar uses permitted. The provisions of Part 4 Division 10 of the Act exist for the future management of existing lawfully established uses.

Property known as 123 Old Pittwater Road does not currently lie within the G9 Warringah Mall locality. Rather, it lies within the G10 Brookvale Industrial West locality. The proposed alternate zoning of the site is not consistent with Council's resolution to translate the provisions of Warringah LEP 2000 into the Standard Instrument LEP. The site currently remains on separate title to the Warringah Mall and rezoning to B3 should not be considered without certainty that future development of the land will be carried out in a manner appropriately integrated into the existing Warringah Mall complex. However, the submission is worthy of further consideration as an extension of the existing Warringah Mall precinct.

Should the author wish to pursue this proposal this should be addressed by the submission of a Planning Proposal (under Part 3 Division 4 of the Environmental Planning and Assessment Act) for Council's further consideration after for Council's further consideration after the making of Warringah LEP 2009.

When Council undertakes a flood study it does so in accordance with NSW Government guidelines. The process includes undertaking the work, public exhibition of the results and adoption by Council of the final position. Land is identified on the draft LEP Flood Planning Area Map only after the completion of this process. Council is currently undertaking the Manly flood study which will include the areas referenced in this submission. It is anticipated that this will be complete in 2 – 3 years. After completion of this study amendment of the Warringah LEP Flood Planning Area Map can be addressed.

It is considered that there should be no alteration to the draft LEP arising from this submission.

#### 4C.5 7 – 9 Federal Parade, Brookvale

##### *Submission summary*

Submission that the subject site is specifically referenced in the F2 Brookvale Service Centre locality statement, making *offices* as a Category Two land use for that site. This provision has not been carried over into the draft LEP. The site is zoned B5 Business Development and *offices premises* are prohibited. It is submitted that the existing right to develop the site with *office premises* should be maintained.

##### *Planning assessment*

Under Warringah LEP 2000 *offices* are a Category Three land use in the F2 locality. Hence, *office premises* are prohibited in the B5 Business Development zone. However, in 2005 Amendment 11 to Warringah LEP 2000 was gazetted, and amongst other matters, made *offices* a Category Two use on the subject site. That is, an exception was made in respect of the subject site and a 'spot rezoning' made.

With the preparation of the draft LEP the Department of Planning has advised Council that it is not appropriate to use Schedule 1 Additional Permitted Uses to address every instance in Warringah of non conforming activities. Rather, the provisions of Part 4 Division 10 of the Environmental Planning and Assessment Act, exist to address these uses.

It is considered that there should be no alteration to the draft LEP arising from this submission.

#### 4C.6 Various service station sites: 176 Warringah Road, Beacon Hill; 153 Forest Way, Belrose; 236-238 Condamine Street, Manly Vale; 793 Pittwater Road, Dee Why and 740-742 Pittwater Road, Brookvale.

##### *Submission summary*

Submission advises that all five (5) service stations are operating under valid consents and within the conditions of approval. With the exception of the Brookvale site the draft LEP prohibits *service stations* for the subject sites. The submission acknowledges that the draft LEP provisions are a like for like translation of the provisions of Warringah LEP 2000 but is of the view that Council should take the opportunity to rationalise the legitimacy of these uses.

##### *Planning assessment*

The Brookvale site is located within the B5 Business Development zone and service stations are permitted in the zone. However, the other four (4) sites are located on sites zoned R2 Low Density Residential (Warringah Road, Beacon Hill and Pittwater Road, Dee Why); R3 Medium Density Residential (Condamine Street, Manly Vale) and E3 Environmental Management (Forest Way, Belrose).

Each of these sites is zoned consistent with Warringah LEP 2000 and consistent with surrounding land. In order to address the author's concerns, the draft LEP could identify the service station sites within Schedule 1 Additional Permitted Uses. However, with the preparation of the draft LEP the Department of Planning has advised Council that it is not appropriate to use Schedule 1 to address every instance of non conforming activities. Rather, the provisions of Part 4 Division 10 of the Environmental Planning and Assessment Act, exist to address these uses.

It is considered that there should be no alteration to the draft LEP arising from this submission.

#### 4C.7 Zone E3 Environmental Management

'Extensive agriculture' has been retained in the E3 zone. Unless an existing use, how can 'extensive agriculture' be consistent with protecting the ecological values of E3 zone or with low impact use?

##### *Planning Assessment*

Council will need to consider the objectives of the zone in regard to any future application for extensive agriculture.



## Part 5 Issues arising from translation process - Precinct specific

### Part 5A B2 Oxford Falls Valley Locality

#### Seniors housing - Submissions summary

It is submitted that the E3 Environmental Management zone is not a translation of the existing provisions of Warringah LEP 2000 in the B2 Oxford Falls Valley locality because *seniors housing* is prohibited in the zone. This will reduce the availability of land within the LGA for the purposes of *seniors housing*. It is a down zoning of the land. It is contrary to the Metropolitan and the draft North East Subregional strategies.

The authors make reference to sites that are (under the provisions of Warringah LEP 2000) land that adjoins land within a locality used primarily for urban purposes. Hence, *seniors housing* is currently a Category Two use (on these sites) and therefore should be a permitted use under the draft LEP.

It is submitted that Council has not elected to utilise provisions in the Standard Instrument LEP which would ensure a direct translation of Warringah LEP 2000 including allowing *seniors housing*. It is submitted that *seniors housing* should remain permitted in the area on land that adjoins land used primarily for an urban purpose. The B2 locality forms a transition between the urban and non urban areas of Warringah and extensive natural bushland areas to the north. Submissions request Council to zone all land in the Oxford Falls Valley RU6 Transition.

#### Seniors housing - Planning assessment

Draft Warringah LEP 2009 is a translation of the existing provisions of Warringah LEP 2000. Whilst *housing for older people or people with disabilities* is a Category 2 land use (on certain land) in the B2 Oxford Falls Valley locality under Warringah LEP 2000, *seniors housing* is prohibited in the E3 Environmental Management zone under draft Warringah LEP 2009 because:

- If not for the inclusion of provisions in Warringah LEP 2000 that replicate those of the now repealed State Environmental Planning Policy No.5, the use would be prohibited in the B2 Oxford Falls Valley locality.
- State Environmental Planning Policy (Housing for Seniors or People with a Disability) which has replaced the repealed SEPP 5, does not allow *seniors housing* on environmentally sensitive land.
- The Standard Instrument LEP mandates this as a prohibited use in E3 Environmental Management zone.

Warringah LEP 2000 is a 'place based' model that also incorporates the notion of 'one stop planning shop'. That is, at the time of its preparation, provisions replicating (then) current SEPPs and REPs were incorporated into the LEP and the relevant SEPPs and REPs ceased to apply to Warringah.

For this reason SEPP 5 like provisions were included in the Warringah LEP 2000 and *Housing for older people or people with disability* was made a permitted land use in a manner that was consistent with the (then) provisions of SEPP 5 for both urban and non urban land. Hence, within the B2 Oxford Falls Locality (and certain other non urban localities) *housing for older people or people with disability* is permitted (under certain circumstances) in the locality.

The Standard Instrument does not incorporate SEPPs into LEPs, rather, these sit outside of LEPs and operate independently of them. Therefore, in translating Warringah LEP 2000 into the Standard Instrument LEP, all provisions that exist in the Warringah LEP 2000 as a direct consequence of its incorporating SEPP and REP provisions were identified and removed.

The Standard Instrument LEP includes *seniors housing* as a compulsory prohibited land use in the E3 Environmental Management zone. This position would be consistent with the provisions of Warringah LEP 2000 where it not for the inclusion of SEPP 5 provisions. Hence *seniors housing* will not be a permitted land use in the E3 Environmental Management zone and SEPP (Housing

for Seniors or People with a Disability) will prevail to determine permissibility (or otherwise) of the land use in the zone.

The draft Warringah LEP 2009 was forwarded to the Department of Planning in November 2007 for certification. It was certified on 9 September 2009. During the process for certification the Department of Planning has not raised issues with Council in relation to its use of Environmental Management zones and the relationship to State Environmental Planning Policies.

It is considered that there should be no alteration to the draft LEP arising from these submissions.

### E3 Environmental Management zone - Submissions summary

Various authors submit, for varying reasons, that the E3 Environmental Management zone is not a translation of the current provisions of Warringah LEP 2000. It is submitted that the zone does not respond to the existing situation or to owners' expectations for future use of their land. Some authors argue that the environmental values expressed through the zone objectives are not relevant to their sites. It is also submitted that the zone represents a down zoning of the land.

Some submissions also make reference to the minimum subdivision lot size provisions of the draft LEP which, for this area, establish a minimum subdivision lot size of 20 hectares. Submissions note that many existing lots are less than the proposed minimum.

The following range of suggestions for alternate zones and uses is put forward through the various submissions.

- RU4 Rural Small Holdings zone;
- RU6 Transition zone;
- R2 Low Density Residential zone - this submission is made mostly in relation to properties at the existing urban/ non urban interface;
- R3 Medium Density Residential zone - this submission is also made mostly in relation to properties at the existing urban/ non urban interface;
- R5 Large Lot Residential zone;
- existing approved and operating businesses should be permitted; and
- centre for religious/ retreat purposes.

### E3 Environmental Management zone - Planning assessment

The E3 Environmental Management zone is not a change of land use planning policy for the area. To achieve the translation of existing provisions five localities (being the A7 Mona Vale Road North, the B2 Oxford Falls Valley, the B9 Mona Vale Road East, the C8 Belrose North and the C10 Mona Vale Road West localities under Warringah LEP 2000) form the E3 Environmental Management zone. The process to identify the appropriate Standard Instrument zone:

- looked at the compulsory Standard Instrument zone objectives;
- considered these against desired future character statements for all localities;
- included additional local zone objectives that capture the intent of the desired future character statements for the localities that will make up the E3 zone;
- identified Category 1 and Category 2 land uses as (generally) being permitted;
- identified Category 3 and prohibited land uses as (generally) being prohibited;
- considered the built form controls in terms of the outcomes that they are seeking;
- identified all provisions of Warringah LEP 2000 that are replications of State Environmental Planning Policies and removed these from the translation process;
- considered the Warringah Environmental Constraints Land Map.

Unlike the Standard Instrument, the Warringah LEP does not classify its localities into broad groups entitled Rural, Residential, Business, Industrial, Environmental etc... Rather, it is a 'place based' model in which localities are classified in accordance with waterway catchment areas. In undertaking the translation process the decision to apply the various environmental zones to certain localities/ areas is guided by (but not limited to) review of locality statements and consideration of such matters as desired future character statements and the built form controls contained therein.

In accordance with the above outlined process, the minimum subdivision lot size of 20 ha is consistent with the existing provisions of Warringah LEP 2000. The lot size/ housing density provisions for this area have been carried forward by successive planning instruments for over three decades and represent one planning tool for the management of environmental sensitivity in the Oxford Falls Valley.

Refer also to *Part 4C Permitted and prohibited development, heading 4C.1 General discussion of issues*. The range of permitted and prohibited uses within the E3 Environmental Management zone is consistent with the provisions of Warringah LEP 2000. Also, refer to the above heading *Seniors housing - Planning assessment* in relation to the permissibility status of *seniors housing*.

Department of Planning Practice Note PN 09-002 Environmental Protection zones was issued on 30 April 2009. The draft Warringah LEP 2009 was forwarded to the Department of Planning in November 2007 for certification and was certified on 9 September 2009. During the process for certification the Department of Planning has not raised issues with Council in relation to its use of Environmental Management zones.

Council is currently reviewing its housing strategy. This project will provide a forum for the various authors to put forward arguments for the up zoning of land for urban purposes.

It is considered that there should be no alteration to the draft LEP arising from these submissions.

#### Ministerial Direction - Submissions summary

Some authors make reference to the review undertaken by the Planning Assessment Commission (PAC), at the direction from the Minister for Planning, which was finalised in April 2009. It is submitted that the E3 Environmental Management zone is contrary to the findings of the review because the review finds that comprehensive studies of the area should be undertaken before land use planning policy in the B2 locality is changed. It is also submitted that the PAC review makes it clear that the B2 locality should not be rezoned in a blanket fashion to an environmental protection zone.

It is submitted that no environmental studies or land use strategies have been prepared to support the rezoning to an environmental zone and that the Department of Planning has issued practice notes to provide advice on the application of environmental protection zones. It is argued that given the absence of the studies recommended by the PAC, Council is acting contrary to its recommendations. The draft LEP should be amended to accord with the Ministerial direction by deferring the Oxford Falls Valley from the draft LEP until the recommended planning studies have been carried out.

One author requests that the zoning of the area and its deferment from the draft LEP should be the subject of a public hearing. This is addressed in *Part 1 Submissions requesting a public hearing*.

Alternatively, it is suggested that the area should be zoned either R5 Large Lot Residential, RU4 Rural Small Holdings or RU6 Transition which are not environmental protection zones and are more consistent with the current provisions and use.

#### Ministerial direction - Planning assessment

As described under the above heading *E3 Environmental Management zone* the use of the E3 zone for the Oxford Falls Valley is not a change of land use planning policy for the area. Rather, it is a translation of the existing provisions of Warringah LEP 2000 into the Standard Instrument LEP format.

Subsequent to the release of the PAC report, in May 2009, the Minister for Planning issued a news release advising that:

- *The PAC report advises that the relevant sites will not be capable of urban development for at least 10 years and until further studies are undertaken by Council.*
- *The PAC's assessment states these sites do not meet the sustainability criteria, particularly in relation to transport, access, housing diversity and some environmental and land use conflict restraints.*

- *Warringah Council is requested to undertake further studies to determine the cumulative impacts on the entire Oxford Falls Valley catchment area. These studies are to include transport and accessibility, management of bushfire hazard, water quality of the Narrabeen lagoon, flora and fauna protection and visual analysis.*

The Minister went on to acknowledge that *the Department of Planning advises an additional 10,300 dwellings will be required in Warringah by the year 2031, but can be met mostly through infill development in the existing urban area. The Government's North East Subregional Strategy states that there is no necessity for the development of non-urban lands-that is, lands not already identified on the Metropolitan Development Program.*

In June 2009, the Minister for Planning wrote to Council advising of the findings of the report and requesting Council to carry out a number of studies in the Oxford Falls Valley catchment. The Minister suggested that the studies be undertaken over the next five years. She further suggested that upon completion of these studies Council would be in a position to determine appropriate areas for environmental protection and, if appropriate, any areas suitable for urban development. With the process to certify the draft LEP neither the Minister nor the Department of Planning has suggested to Council that the use of the E3 Environmental Management zone is not a suitable translation of the existing planning provisions for the B2 Oxford Falls Valley locality. Nor does use of this zone in the draft LEP prejudice any review of zones in the future.

In August 2009 Council resolved to support the conclusions and recommendations of the PAC and the carrying out of further studies. In August 2009 Council also wrote to the Minister advising that it cannot commit to completion of the work within five years and requesting NSW Government assistance in resourcing the work.

It is not appropriate to defer consideration of this area under the draft LEP. The timing and resourcing of the above referenced work currently remains unclear. Further, Council is currently undertaking review of its housing strategy which will assist in its decision making in relation to release of non urban land for urban development. The application of the draft LEP to the land will not prejudice any future review of planning provisions. If the area is deferred from the draft LEP it will remain, for an unknown time frame, under the operation of the current LEP which does not integrate appropriately with the various initiatives of the NSW Government planning reform.

It is considered that there should be no alteration to the draft LEP arising from these submissions.

#### *Clause 6.18 Erection of dwelling houses in zone E3 Environmental Management - Submissions summary*

It is submitted that owners of lots having an area of less than 2 ha will not be eligible to lodged development applications to modify or rebuild their houses. This is a 'back' zoning of the area and will result in reduced property value.

#### *Clause 6.18 Erection of dwelling houses in zone E3 Environmental Management - Planning assessment*

These submissions are made in response to Clause 6.18 of the draft LEP which establishes restrictions on the size of allotments on which dwelling houses may be erected. These restrictions are a translation of the *existing parcels* provisions in Warringah LEP 2000.

Within Warringah LEP 2000 these restrictions include provisions for variation of the housing density standard. The authors raise concern that similar provisions for variations to the relevant development standard (being in this instance the minimum site area for erection of a dwelling house) have not been carried over into the draft LEP.

Clause 4.6 Exceptions to development standards, is a compulsory clause in the Standard Instrument LEP and, subject to the provisions of that clause, allows Councils to consider exceptions to development standards contained in the LEP. The minimum lot size restrictions in Clause 6.18 are development standards and hence, Clause 4.6 makes similar provisions to those contained in Warringah LEP 2000 and allows Council to consider development applications that contravene a development standard.

It is considered that there should be no alteration to the draft LEP arising from these submissions.

## **Part 5 Issues arising from translation process - Precinct specific**

### **Part 5B C8 Belrose North locality**

#### *E3 Environmental Management zone - Summary of submissions*

Some submissions express the view that the E3 Environmental Management zone is not suitable for the area. Others are of the view that it is suitable for certain parts of the area and not other parts. Suggested alternate zones are the E2 Environmental Conservation zone (for certain parts), the RU4 Rural Small Holdings and the E4 Environmental Living zone.

The arguments put forward to support the RU4 zone and the E4 zone address the range of existing uses (which includes such activities as retail plant nurseries, riding schools and schools); the degraded nature of the area; the lack of comprehensive study of the area to determine the appropriate zone and the accessible location of the area (proximity to Forest Way). Also, the question is raised as to whether Council took into account its non urban land study when undertaking the drafting of the LEP.

The arguments put forward to support use of the E2 zone address the presence of sensitive bushland areas; natural rock formations and aesthetic qualities. They also refer to loss of locality statements from the Warringah LEP and the resultant split of controls between the LEP and the DCP. These arguments seek, not only a change of zone, but additional local provisions in the LEP (rather than in the DCP) for the protection of trees and vegetation. They also seek more certainty of LEP provisions to ensure protection of residential amenity from the impacts of unsuitable existing uses and expansion or replication of these.

#### *Permitted and prohibited uses - Submissions summary*

It is submitted that the E3 Environmental Management zone is restrictive in relation to the range of permitted uses. It is a down zoning of the area and has no regard to the existing land uses and future redevelopment opportunities. It will result in a reduction in property values.

A range of additional uses should be permitted including retail plant nurseries, retail premises; food and drink premises, medical centres, churches, schools and a range of residential accommodation such as shop top housing, short term accommodation and some forms of multi dwelling housing.

It is submitted that it is unclear whether existing businesses that become prohibited can be rebuilt, extended or modified and that it is inappropriate that land holders and businesses must rely on existing use rights.

Other submissions support the prohibition of Category Three land uses (under the existing Warringah LEP 2000) in the area.

#### *E3 Environmental Management zone and permitted and prohibited uses - Planning assessment*

Refer also to *Part 4C Permitted and prohibited development, heading 4C.1 General discussion of issues*.

The draft LEP translates the existing provisions of the Warringah LEP into the new Standard Instrument LEP format. The various submissions seeking a change of zone or expansion of the range of permitted uses for the area are inconsistent with this process.

The first stage of the Warringah Non Urban Land Study was finalised in 1998. At that time Council prepared a Residential Development Strategy which took into account the findings of the Non Urban Lands Study. The Residential Development Strategy was incorporated into Warringah LEP 2000, and favoured a concentrated approach to housing growth rather than a dispersed one. Those same provisions are now being translated into the Warringah LEP. Concurrently, Council is now undertaking a review of housing policy in Warringah and the results of this project will inform Council's response to the dwelling targets of the Metropolitan Strategy. Should the results of the review of housing policy require changes to the Warringah LEP, this will be carried out as a future amendment process.

To achieve the translation of existing provisions five localities (being the A7 Mona Vale Road North, the B2 Oxford Falls Valley, the B9 Mona Vale Road East, the C8 Belrose North and the C10 Mona Vale Road West localities under Warringah LEP 2000) form the E3 Environmental Management zone. The process to identify the appropriate Standard Instrument zone:

- looked at the compulsory Standard Instrument zone objectives;
- considered these against desired future character statements for all localities;
- included additional local zone objectives that capture the intent of the desired future character statements for the localities that will make up the E3 zone;
- identified Category 1 and Category 2 land uses as (generally) being permitted;
- identified Category 3 and prohibited land uses as (generally) being prohibited;
- considered the built form controls in terms of the outcomes that they are seeking;
- identified all provisions of Warringah LEP 2000 that are replications of State Environmental Planning Policies and removed these from the translation process;
- considered the Warringah Environmental Constraints Land Map.

The existing land uses referenced in submissions are Category Three land uses in this area under Warringah LEP 2000 or, in the case of multi unit housing options, are inconsistent with housing density standards. Hence, in translating the provisions of the Warringah LEP 2000 into the draft LEP they become prohibited uses.

Part 4 Divisions 10 of the Environmental Planning and Assessment Act makes provisions that manage lawfully established uses should these cease to be permitted in a subsequent planning instrument. These provisions are made in respect of the property and the uses established thereon and apply irrespective of property ownership.

The E2 Environmental Conservation zone is the highest order environmental protection zone other than the E1 National Parks and Nature Reserves zone. The Department of Planning has advised that it is intended to be used for places of extremely high conservation value where very little development potential is intended. Within the draft LEP the E2 Environmental Conservation zone has been used to translate the land classified as 'Cross Hatched' under Warringah LEP 2000. Land that is so classified has been identified through the respective locality statements as being environmentally sensitive, albeit that the particular nature of that sensitivity may vary from one locality to another. Unlike most other proposed zones, the zoning boundary for the E2 zone does not always follow cadastre. This results in most allotments that are effected by the E2 zone being subject to split zonings, thereby allowing any development rights that exist under Warringah LEP 2000 to continue to apply.

Subsequent to the making of the LEP on going work may be undertaken that draws upon biodiversity data to investigate possible extension of the E2 zone and verification of existing boundaries. However, any additional provision to limit development rights over and above those established by Warringah LEP 2000 will require a separate process that ensures a consultative approach with all stakeholders, including affected property owners.

It is considered that there should be no alteration to the draft LEP arising from this submission.

#### *Seniors Housing - Summary of submissions*

Warringah LEP 2000 allows for housing for the aged and disabled to be established, with consent; in the area. This will be removed by the new LEP.

#### *Seniors Housing - Planning assessment*

Refer to discussion under Part 5A heading *Seniors housing - Planning assessment*.

It is considered that there should be no alteration to the draft LEP arising from these submissions.

#### *Clause 6.18 Erection of dwelling houses in zone E3 Environmental Management - Submissions summary*

It is submitted that owners of lots having an area of less than 2 ha will not be eligible to lodge development applications to modify or rebuild their houses. This is a 'back' zoning of the area and will result in reduced property value.

*Clause 6.18 Erection of dwelling houses in zone E3 Environmental Management - Planning assessment*

Refer to discussion under Part 5A heading *Clause 6.18 Erection of dwelling houses in zone E3 Environmental Management - Planning assessment*.

It is considered that there should be no alteration to the draft LEP arising from these submissions.

*Height of buildings - Summary of submissions*

The maximum height of buildings for the E2 Environmental Conservation area at the Belrose waste disposal site contradicts other LEP restrictions.

*Height of buildings - Planning assessment*

The matter to which this submission refers is a carry over of the built form control for building height for the C7 Bare Creek locality (under Warringah LEP 2000) which currently applies to the subject land albeit that the locality statement calls for the bushland area shown 'cross hatched' on the map to be preserved in its natural state.

It is considered that there should be no alteration to the draft LEP arising from these submissions.



## **Part 5 Issues arising from translation process - Precinct specific**

### **Part 5C A4 Myoora Road locality**

#### *Permitted and prohibited development - Summary of submissions*

It is submitted that the area cannot reasonably support many more businesses of the type that are currently permitted and that to facilitate development Council should broaden the additional uses permitted in the area. It is further submitted that the RU4 Rural Small Holdings zone and associated Clause 20 to Schedule 1 Additional Permitted Uses are silent on a number of existing lawfully established land uses within the area. In this regard reference is made to existing Category Three land uses that have been lawfully established. The view is expressed that the RU4 zone does not reflect the land uses present in the locality, nor does it reflect the existing character of the area which is extremely varied, comprising retail, commerce, business, recreation, rural industries and employment uses. It is acknowledged that certain developments will have existing use rights under the Environmental Planning and Assessment Act. However, submissions note that these rights are restrictive.

The view is expressed that the RU4 zone for the area lacks vision and fails to recognise that the area is a significant source of employment. Some submissions make reference to the release of housing blocks at Ingleside that is proposed (by the NSW Government) that will open up many more employment opportunities. Rezoning of this area should be considered as a strategic 'whole of locality' manner as part of the current LEP process. This will rectify the long standing land use/zoning anomaly in this area and will also assist to cater for the increase in infrastructure needed to serve the needs of future population growth in Warringah.

Some submissions seek a change of zone from RU4 Rural Small Holdings to B2 Local Centre. However, should Council not support this request it is submitted that additional uses should be included in Clause 20 to Schedule 1 Additional Permitted Uses.

The view is also expressed that the draft LEP has severely restricted future alternate site uses which will impact on the value of land holdings.

Taking into account the various submissions received in relation to this issue the following list of additional permitted uses is requested for the area. Note that some submissions request uses that are unqualified whilst others suggest those same use with qualifications.

- Bulky goods retailing;
- Business premises;
- Business premises (with a gross floor area not exceeding 200m<sup>2</sup>);
- Caravan parks;
- Entertainment facilities;
- Function centres;
- Neighbourhood shops
- Neighbourhood shops (with a gross floor area not exceeding 80m<sup>2</sup>)
- Office premises (with a gross floor area not exceeding 200m<sup>2</sup>)
- Office premises (with a gross floor area not exceeding 2,000m<sup>2</sup>);
- Retail premises (with a gross floor area not exceeding 200m<sup>2</sup>)
- Shops (with a gross floor area not exceeding 200m<sup>2</sup>)
- Transport depots;

#### *Permitted and prohibited uses - Planning assessment*

Refer also to *Part 4C Permitted and prohibited development, heading 4C.1 General discussion of issues*.

The draft LEP translates the existing provisions of the Warringah LEP into the new Standard Instrument LEP format. The various submissions seeking a change of zone or expansion of the range of permitted uses for the area are inconsistent with this process.

To achieve the translation of existing provisions three localities (being the A2 Booralie Road, the A4 Myoora Road and the A5 McCarrs Creek Road localities under Warringah LEP 2000) form the RU4 Rural Small Holdings zone. The process to identify the appropriate Standard Instrument zone:

- looked at the compulsory Standard Instrument zone objectives;
- considered these against desired future character statements for all localities;
- included additional local zone objectives that capture the intent of the desired future character statements for the localities that will make up the RU4 zone;
- identified Category 1 and Category 2 land uses as (generally) being permitted;
- identified Category 3 and prohibited land uses as (generally) being prohibited;
- considered the built form controls in terms of the outcomes that they are seeking;
- identified all provisions of Warringah LEP 2000 that are replications of State Environmental Planning Policies and removed these from the translation process.

Due to the different range of Category Two land uses in the A4 Myoora Road locality, this area has been included in Schedule 1 Additional Permitted Uses. Clause 20 to Schedule 1 identifies the A4 locality as "Area 1" on the Additional Permitted Uses Map and makes *educational establishments; hospitals; places of public worship; recreation facilities (indoor), registered clubs; restaurants and hotel or motel accommodation* permitted with consent. The additional permitted uses are those that are Category Two in the A4 locality but are Category Three in the A2 and A5 localities.

Council is mindful of its responsibilities to respond to the new dwellings and jobs capacity targets established by the NSW Government through the Metropolitan and draft North East Subregional Strategies. It is currently undertaking separate strategic projects in this regard which, when complete, may result in amendments to the Warringah LEP. Rezoning of the subject area in the manner requested by submissions without the benefit of appropriate strategic investigations should not be supported.

It is considered that there should be no alteration to the draft LEP arising from this submission.

#### Height of buildings - Submission summary

It is submitted that the 8.5m height limit is too restrictive to creative urban design outcomes for the land uses in this area. It is more applicable to residential development.

#### Height of buildings - Planning assessment

The height limit is consistent with the permitted land uses and desired outcomes as expressed through the objectives for the area. If an alternate zone were to be considered for the area, it would be appropriate to review the development standard for height of buildings at that time.

It is considered that there should be no alteration to the draft LEP arising from this submission.

#### Support for the RU4 zone - Submission summary

One submission, made on behalf of a local residents association, expresses support for the provisions of the draft LEP including zoning and development standards. Acceptance is indicated in relation to existing developments provided that no further changes to existing footprints are allowed unless in compliance with the draft LEP. The author states that the submission has been made in relation to the draft LEP (as exhibited) and that the author expects that any changes would not be contemplated or given any consideration at this time.

#### Support for the RU4 zone - Planning assessment

No discussion required.

## **Part 5 Issues arising from translation process - Precinct specific**

### **Part 5D Terrey Hills and Duffys Forest**

#### Zone objectives – Submissions summary

One of the objectives within the RU4 Rural Small Holdings RU4 zone is *to ensure low intensity of land use*. It is submitted that this be given greater impact by replacing it with *to ensure the use of the land is low intensity and low impact and is compatible with the non-urban character of the locality*.

An additional objective should be included that acknowledges the equine industry and that this should be included as a niche industry under Part 6 Additional Local provisions.

#### Zone objectives – Planning assessment

The wording of the local objectives for the RU4 zone has been developed with reference to all of the relevant desired future character statements for the localities that make up the zone (being the A2 Booralie Road, the A4 Myoora Road and the A5 McCarrs Creek Road localities under Warringah LEP 2000). The matter of compatibility with the character of the area is addressed through the second and the sixth objectives for the zone being:

- *To maintain the rural and scenic character of the land (compulsory), and*
- *To maintain and enhance the natural landscape including landform and vegetation.*

The singling out of the equine industry for promotion through the zone objectives and through Part 6 Additional Local Provisions is not consistent with the relevant desired future character statements of Warringah LEP 2000. It should not be supported without the benefit a review of the future planning objectives for the local area that includes involvement of all local stakeholders.

It is considered that there should be no alteration to the draft LEP arising from these submissions.

#### Permitted and prohibited land uses – Submissions summary

*Recreation uses:* The inclusion of recreation facilities (outdoor) as a permitted use is incompatible with the existing and future character of Booralie Rd as these uses typically generate traffic and noise impacts that are incompatible with surrounding land uses. The use should be prohibited or should be restricted to the A4 Myoora Road locality (Warringah LEP 2000).

*Equestrian activities:* The draft LEP does not satisfactorily address the issue of horse agistment and equestrian activities. These land uses create employment, business and recreational opportunities in the area. It is requested that Council clarifies the issue of horse agistment and equestrian activities so that all such uses are permitted with consent in the RU4 zone.

*Dams:* There is no clear definition of dams in the draft LEP and it is assumed that these rely on the dominant use of the land and whether that use is permitted. Dams can have significant impacts in relation to downstream water quality. The draft Warringah DCP should include specific provisions relating to such development.

*Restriction facilities:* Such facilities are inappropriate in the RU4 zone and should be prohibited as intensive piggeries and feedlots would have an undesirable impact on the amenity of the area.

*Landscape and garden supplies:* The sale of landscape supplies in the RU4 zone should be prohibited or restricted to the area that is the A4 Myoora Road locality under Warringah LEP 2000. The use is unsuitable in the area due to potential impacts on the amenity of the area caused by machinery used to carry out the activity.

#### Permitted and prohibited land uses – Planning assessment

Refer also to *Part 4C Permitted and prohibited development, heading 4C.1 General discussion of issues*.

*Recreation uses:* Warringah LEP 2000 contains one definition for *recreation facility* whilst the draft WLEP 2009 contains four definitions being: *recreation area*; *recreation facility (indoor)*; *recreation facility (outdoor)* and *recreation facility (major)*. As the new definitions provide greater ability to regulate different aspects of recreation facilities, it is appropriate to reconsider the suitable locations for the various parts of the land use currently known only as *recreation facility*.

As a general rule of translation it is appropriate to include *recreation areas* and *recreation facilities (outdoor)* as a translation of the current definition of *recreation facilities*. The suitability of *recreation facilities (indoor)* and *recreation facilities (major)* was considered on a zone by zone basis.

Recommendation:

That Council resolves to

1. delete *recreational facilities (outdoor)* from Zone RU4 Rural Small Holdings in the Land Use Table,
2. add *recreational facilities (outdoor)* to Subclause 2 of item 20 Use of certain land in the vicinity of Mona Vale and Myoora Roads, Terrey Hills, and
3. add *recreation areas* to Subclause 2 of item 20 Use of certain land in the vicinity of Mona Vale and Myoora Roads, Terrey Hills

*Equestrian activities:* Neither horse agistment nor equestrian activities is a defined term under the draft LEP. Councils are not able to include new definitions (or to alter definitions) when preparing their Standard Instrument LEPs. The definition of *animal boarding or training establishments* specifically excludes the agistment of horses. However, the definition of *extensive agriculture* includes the grazing of livestock for commercial purposes and is permitted in the RU4 zone.

*Dams:* Advice from the Department of Planning confirms that dams are generally constructed as ancillary to a primary purpose. Within the RU4 zone this might be, for example, ancillary to a dwelling house or to an agricultural use. Provided the primary use is permitted in the zone, so too is the ancillary use.

*Restriction facilities:* Intensive piggeries and feedlots fall within the definition of *intensive livestock agriculture* which is prohibited in the RU4 zone. *Restriction facilities* includes a range of circumstances where animals are held for management purposes such as milking sheds, feed stalls and holding yards. Such facilities could be complimentary to *extensive agriculture* in the management of horses in the Duffys Forest and Terrey Hills area.

*Landscape and garden supplies:* Retail plant nurseries are a Category One or Two land use in two of the three relevant localities that make up the RU4 zone. Hence, these have been made permitted uses in the draft LEP. The request to prohibit these uses (or limit the locations in which they are permitted) should not be supported without the benefit a review of the future planning objectives for the local area that includes involvement of all local stakeholders.

It is considered that there should be no alteration to the draft LEP arising from these submissions.

*Ku-Ring-Gai Chase National Park - Submissions summary*

Submissions suggest the addition of local provisions that ensure the continuation and improvement of public access to the national park and bushland reserves. A draft clause is suggested and proposes that consent must not be granted to development unless the consent authority has considered the maintaining and improving of public access and the identification of opportunities for improving public access to the national park.

The submissions also identify certain land in the vicinity of Yanderra and Durumbil Roads that has been incorporated into the national park and submit that this land should be zoned E1 National Parks and Nature Reserves.

*Ku-Ring-Gai Chase National Park - Planning assessment*

The suggested local clause to address public access to the national park does not replicate any current provisions within Warringah LEP 2000. Rather, it would introduce new provisions. It raises questions that require investigation in relation to a range of matters including (but not limited to) the land to which the clause should apply (mapping of relevant land would be required); lawfulness or otherwise of existing public access opportunities; acquisition and management responsibilities and consultation with affected property owners. The request should not be supported without the benefit of appropriate investigations.

Land known as Lot 117, DP 752017 (and adjoining parcel to the north east) has been relatively recently incorporated into the Ku-Ring-Gai Chase National Park. A search on the relevant website (provided by the Department of Environment Climate Change and Water) has identified that, since the preparation of the draft LEP maps, the subject land has been incorporated into the Ku-Ring-Gai Chase National Park. Hence, it is appropriate to update the draft LEP maps to reflect this position.

See further discussion of this issue under the heading *Submissions discussion, Part 2 Submissions made by public authorities, item 2.8*. The Department of Environment Climate Change and Water has requested that Council make a number of alterations to the draft LEP in relation to land zoned E1 National Parks and Nature Reserves. The land known as Lot 117, DP 752017 is one of these sites and a recommendation to Council in this regard is at item 2.8.

#### Public reserves - Submissions summary

Submissions make reference to land at the end of Joalah Road that has been dedicated to Council and therefore should be zoned RE1 Public Recreation.

#### Public reserves - Planning assessment

The subject land is known as Lot 1 DP 1132323. It has recently been created as a consequence of subdivision of Lot 446 DP 48650 and, in accordance with the applicable development consent, has been transferred to Council as a public reserve. The mapping for the draft LEP was prepared prior to the creation of the subject lot. It is now appropriate to amend the draft LEP to zone the land RE1 Public Recreation and to make the appropriate associated changes to the draft LEP Minimum Lot Size and Height of Buildings Maps.

#### Recommendation:

That Council resolves to alter the draft Warringah LEP Land Zoning Map by changing the zone of Lot 1 DP 1132323 from RU4 Rural Small Holdings to RE1 Public Recreation, and

That Council resolves to alter the draft Warringah LEP Minimum Lot Size Map and Height of Buildings Map by identifying Lot 1 DP 1132323 with a nil value on both maps.

#### Environmental zones - Submissions summary

It is submitted that various land within the RU4 zone should be zoned E2 Environmental Conservation or E3 Environmental Living. Land identified by the submissions includes land owned by the Gun Club at Duffys Forest; portions of Lots 446 and 447 and Waratah Park. It is submitted that the identified lands have conservation values particularly in relation to the Duffys Forest Ecological Community.

#### Environmental zones - Planning assessment

In the process to translate the Warringah LEP 2000 into the Standard Instrument LEP format the E2 Environmental Conservation zone has been used to carry over the restricted development provisions of the areas identified as 'cross hatched' under Warringah LEP 2000.

Various submissions to the draft LEP suggest review of the E2 Environmental Conservation zone. If such review is to be undertaken by Council it should be carried out in a holistic manner after the making of Warringah LEP 2009. This could include research into any private land that has been specifically set aside for conservation purposes.

It is considered that there should be no alteration to the draft LEP arising from these submissions.

### Heritage matters - Submissions summary

It is submitted that the Waratah Park ranger's cottage should be included as a heritage item in the draft LEP. In this regard, reference is made to the decision of Council (13 October 2009) to investigate the opportunity for the inclusion of the ranger's cottage into the State Heritage Register. For consistency with this decision it would be appropriate to recognise the ranger's cottage as a heritage item in the draft LEP.

### Heritage matters - Planning assessment

As a consequence of Council's decision the matter of inclusion of the ranger's cottage on the State Heritage Register has been referred to the NSW Heritage Office.

It is not appropriate that any property is included in the draft LEP as a heritage item until the appropriate investigations, including consultation with the property owner, have been carried out. The process to identify properties as heritage items in LEPs also includes consultation with the NSW Heritage Office.

Having regard to Council's resolution it is appropriate that this matter is considered with the upcoming community heritage review that is anticipated will be undertaken within the next 18 months.

It is considered that there should be no alteration to the draft LEP arising from these submissions.

### Bush fire provisions - Submissions summary

Concern is raised with planning issues as they relate to bush fires. The draft LEP includes little in relation to bush fires but identifies Council's responsibilities in relation to such matters as flooding of low lying areas and sea level rise.

It is submitted that Council, through the draft LEP, should look carefully at land to be developed into the future and that inappropriate locations such as ridge tops jutting into bushland, deep gullies, steep slopes and westerly aspects are all dangerous in the context of proximity to large areas of bushland.

### Bush fire provisions - Planning assessment

As the author points out management of development in bush fire prone land is addressed through the development application process. This is guided by NSW Government's policy that is established through the Rural Fires Act and associated mapping of bush fire prone land and publication titled Planning for Bush Fire Protection.

Warringah Council has the required Bush Fire Prone Land Map. However, with the preparation of the draft LEP, the Department of Planning has advised that this map and the provisions of Planning for Bush Fire Protection sit outside of the draft LEP. Council cannot include provisions in its draft LEP that are in conflict with NSW Government policy. The matter of whether or not a standard clause in relation to development in bush fire prone land areas is warranted within LEPs is one for the Department of Planning and other relevant state agencies to determine.

The draft LEP has been prepared to translate the existing provisions of Warringah LEP 2000 into the Standard Instrument LEP. Hence, it does not newly identify any land as being suitable for development nor does it increase the existing development potential of land. Council is currently undertaking a review of housing policy in Warringah. Amongst other matters, bush fire risk will be a matter for consideration if land is being considered for new urban development or increased density of development.

It is considered that there should be no alteration to the draft LEP arising from these submissions.

## **Part 6 Submissions on the draft LEP clauses and provisions**

### 6.1 Land use table

#### *Submission summary*

The writer raises several issues including the proposed non-notification by Council to the adjoining owner of either significant renovations or re-building of a property. Submission requests that all the nominated prohibited uses be identified in the land use table for Zone R2 Low Density Residential. Submission does not agree with Home Occupations taking place without consent; and wishes to be advised when such businesses are being conducted.

#### *Planning assessment*

State Environment Planning Policy (Exempt and Complying Development Codes) will apply to the vast majority of renovations and simple building erections. Owners will have to comply with guidelines and performance criteria which do include notification, but only advising of commencement of any work (2 days notice Clause 3.39A)

The prohibited uses in the R2 Low Density Residential land use table are there by exception. If the uses are not nominated as permitted uses with or without consent then they are prohibited. This is a standard way of drafting planning instruments.

Home Occupations are a mandated use under 'Permitted without consent' in zone R2 Low Density Residential as contained in the Standard Instrument LEP.

#### *Submission summary*

The author considers that the LEP is not clear or easily understood by ratepayers. Currently there are existing uses in different areas that are not covered in 'Permitted with consent'; or 'Prohibited' classifications.

Also questions why Zones E3 and RU4 have different land use tables when the same land is basically separated by a road.

#### *Planning assessment*

Councils are obliged to use the State Government's Standard Instrument, which contains certain mandatory provisions and uses. It is acknowledged that the legal drafting of such documents is not easily read, however Council is constrained by the legislation.

Zone RU4 Rural Small Holdings is located only in the Terrey Hills / Duffy's Forest area while the Zone E3 Environmental Management is more extensive. The landuses in these zones, together with the provisions of the DCP, most accurately reflect the localities and controls under the previous WLEP 2000.

### 6.2 Clause 3.3(2)(g) Environmentally sensitive areas excluded

#### *Submission summary*

Land identified as being of high Aboriginal cultural significance or high biodiversity significance, is excluded from exempt and complying development provisions.

In the draft WLEP2009 only areas identified with high biodiversity significance are zoned E2. Many additional areas should be identified to protect biodiversity values from exempt and complying development. The E2 zone needs to be extended to include core bushland, and other environmentally sensitive sites.

#### *Planning Assessment*

WLEP 2009 is a translation of existing controls into the standard LEP template. Provisions have therefore been made to reflect the existing controls as closely as possible, while complying with the constraints of the Standard Instrument.

### 6.3 Clause 4.1 Minimum subdivision lot size

Land known as Belrose Road Corridor

#### *Submission summary*

Submission requests that the draft LEP Lot Size Map apply (which is given effect by Clause 4.1) is changed to show the minimum lot size for subdivision for the land known as Belrose Road Corridor as 700m<sup>2</sup>. The submission notes that Warringah LEP 2000 includes a housing density standard for this land of 1 dwelling per 700m<sup>2</sup>.

#### *Planning assessment*

Consistent with the provisions of Warringah LEP 2000, the draft LEP submitted to the Department of Planning for certification identified the subject land as having a minimum subdivision lot size of 700m<sup>2</sup>. However, the section 65 certificate issued by the Department of Planning to allow public exhibition of the draft LEP included, amongst other matters, the following condition:

*Amend the Minimum Lot Size map for Belrose Corridor West to change the minimum lot size from 700m<sup>2</sup> to 600m<sup>2</sup>.*

Whilst the minimum subdivision area for the land has been changed from 700m<sup>2</sup> to 600m<sup>2</sup>, Clause 6.20(3) carries over the current LEP provisions that limit the number of lots that can be created with future subdivision of the land to 54.

Refer also to discussion elsewhere in this report under the heading *Matters arising from the Department's changes to the draft LEP – Belrose Road West*

It is considered that there should be no alteration to the draft LEP arising from this submission.

### 6.4 Clause 4.3 Height of buildings

#### *Submissions summary*

Submissions raise concern that due to differences in the way maximum building height is defined in Warringah LEP 2000 compared to that in the draft LEP, the translation of existing maximum building heights is not appropriate for buildings in the B4 Mixed Use zone, B5 Business Development zone and IN1 General Industrial zone.

For land that will be zoned B5 under the draft LEP the maximum building height under Warringah LEP 2000 is 11 metres. However, under the current LEP the building height is measured to the underside of the ceiling. The 11 metre maximum building height has been carried over into the draft LEP. However, due to differences in the way in which building height is defined, this is to be measured to the highest point on the building including plant and lift over runs.

The differences in the manner in which building height is defined could result in the loss of one or perhaps two storeys in building height when redeveloping. The standard in the draft LEP will be too restrictive and may render redevelopment of sites unattractive to land owners.

To address this issue submissions suggest that the maximum height limit for the B4, B5 and IN1 zone should be changed to 15 metres.

#### *Planning assessment*

Under Warringah LEP 2000 building height is defined differently in different localities. Most notably, it defines building height to the top most point of buildings in some localities and to the



underside of ceilings in others. In some localities it also uses number of storeys and/ or floor to ceiling heights in conjunction with the measurement of overall height. The definition in the draft LEP is the standard one required by the Standard Instrument LEP and cannot be changed by Council. It is as follows:

*building height (or height of building)* means the vertical distance between ground level (existing) at any point to the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

The B5 Business Development zone is limited to land generally aligning Pittwater Road in Brookvale. Council is currently investigating the employment land in Brookvale with a view to developing a strategy to address future employment needs. When complete this may give rise to the review of planning provisions in the area.

The B4 Mixed Use zone is limited to the Dee Why commercial area and the maximum building heights vary across the zone generally allowing greater building height toward the centre of the commercial area. A blanket 15 metre building height limit is not a translation of the provisions of the current LEP.

In translating the provisions of Warringah LEP 2000 into the Standard Instrument LEP, the existing maximum height limits have been applied regardless of the variations in how this is determined. Limitations in the translation process in relation to maximum building height and the authors concerns in this regard are acknowledged. The Standard Instrument LEP does not provide the same level of flexibility and 'place based' diversity of planning provisions as does Warringah LEP 2000. However, Clause 4.6 Exceptions to development standards is a compulsory clause that does allow Council to exercise some flexibility in applying development standards, subject to meeting the requirements of the clause.

In order to progress the plan making process it is considered that there should be no alteration to the draft LEP arising from these submissions. However, detailed investigation of, amongst other matters, the most appropriate building heights for Warringah's employment lands should be undertaken with Council's strategic work to respond to the employment targets of the Metropolitan Strategy.

#### *Submission summary*

There is difficulty interpreting the Height of Buildings Map as it affects the Forestway Shopping centre. The colours for the 11 metre and 12 metre key are similar but are usually separated by a key. In this case either 'L' (11m) or 'M' (12m.)

GPT welcomes gazettal of the plan which will also facilitate minor alterations and fit outs through the Exempt and Complying SEPP.

#### *Planning assessment*

The closeness of the colours (stipulated by the State Government) is acknowledged. Review of all mapping polygons will be undertaken to ensure that all are appropriately lettered.

### 6.5 Clause 5.1 Relevant acquisition authority; and Clause 5.1A Development on land intended to be acquired for a public purpose.

17B Crown Road, Queenscliff - Lot 1, DP 960506

#### *Submission summary*

The author expresses concern that the subject property has been zoned as RE1 Public Open Space which is a significant down-zoning. It is submitted that although the site is reserved for future acquisition by the Department of Planning recent correspondence confirm that the Department has no plans in short or medium term to acquire the site. The author is of the opinion

that it is unconscionable to apply a reservation to land then subsequently down zone the land to give it a lesser value under the Land Acquisition (Just Terms Compensation) Act.

#### *Planning assessment*

Under Warringah LEP 2000 the site is classified as Regional Open Space Reservation. This imparts a responsibility for purchase of the site, by the Department of Planning, for the purposes of public open space. In respect of this site, the prevailing provisions of Warringah LEP 2000 are consistent with those of successive planning instruments for more than 30 years. To translate the current provisions into the Standard Instrument LEP format the site must be zoned RE1 Public Recreation (this being the intended use after purchase) and identify the site on the Land Reservation Acquisition Map and nominate this as 'Regional open space' on the map.

The reservation of the subject site for public open space purposes was first introduced in the late 1970's when the site and a significant number of its neighbours were identified for purchase to create a public reserve linking Freshwater Beach and Freshwater View Reserve on the Queenscliff headland. In the intervening years much of the reserved land has been purchased, however, a few parcels, including the subject site, remain in private ownership. Over more than 30 years substantial public resources, both State and Local, have been expended to achieve this objective.

The existing dwelling on the site predates the above referenced planning provisions, is small and is in a poor state of repair. Council's records indicate that the site has no legal means of access.

The department of Planning has considered the circumstances of this site and has certified the draft LEP in the manner exhibited. It is considered that there should be no alteration to the draft LEP arising from this submission.

### 6.6 Clause 5.3 Development near zone boundaries

#### *Submissions summary*

The only site to benefit from this clause is Kimbriki which is using this clause to expand. This clause should apply to assist seniors housing and expand neighbourhood centres recreation.

Zones RE1, RE2, E2, E3, and W1 have been excluded from this clause. Given the rationalisation of the 73 [sic] Locality Statements all zones should be included.

#### *Planning assessment*

The suggested application of this clause goes beyond the translation of WLEP 2000 into the Standard Instrument format.

### 6.6 Clause 5.9 Preservation of trees or vegetation

#### *Submission summary*

Clause 5.9 Preservation of trees or vegetation provides no guidance as to what criteria is applied by Council officers in respect of an application to remove a tree. Council officers have exercised their own views as to what the criteria should be. Officers are likely to be conservative and cautious in making decisions due to the likelihood of litigation.

#### *Planning assessment*

Clause 5.9 is a standard, optional clause. Further details on prescribed vegetation are included in the development control plan. External issues such as litigation do not impact on officer assessment processes.

#### *Submission summary*

This clause does not prevent development consent being granted for the removal of native vegetation. Areas of native vegetation and environmentally sensitive areas require additional statutory protection from development.

#### *Planning Assessment*

The WLEP 2009 is as close as possible to a translation of the provisions under WLEP 2000

#### *Submission summary*

Section devoted to Tree Preservation is ambiguous and needs clarification.

#### *Planning Assessment*

Clause 5.9 is a standard, optional clause. Further details on prescribed vegetation are included in the development control plan (WDCP 2009).

### 6.7 Clause 5.11 Bush fire hazard reduction

#### *Submission summary*

This clause reinforces the requirement for a statutory control in WLEP2009 to discourage or prohibit inappropriate development in bush fire prone areas, particularly core bushland. New development that requires extensive bush fire hazard reduction should be avoided. Land use conflicts are likely to result from the inclusion of permissible uses that could compromise key objectives e.g. to protect the natural environment.

#### *Planning Assessment*

Permissible and non-permissible uses in bushfire and non-bushfire areas have in some cases been mandated by the Department of Planning and otherwise have been selected to match as closely as possible the LEP 2000.

#### *Submission summary*

### 6.8 Clause 5.12 Infrastructure development and use of existing buildings of the Crown

This clause allows a road to be constructed but a public road built to standard requirements for the purposes of private vehicular access would not be consistent with the environmental objectives for non-urban land. In addition, allowing public vehicular access would change the character of an area and have a significant adverse impact on the amenity and recreational use of non-urban land.

#### *Planning Assessment*

This is a compulsory clause in the Standard Instrument. The State Environmental Planning Policies (SEPPs) override the provisions of LEPs in the event of any conflict. In this instance SEPP (Infrastructure) 2007, allowing roads and other necessary infrastructure, would override WLEP 2009 if there was any conflict in their respective provisions.

### 6.9 Clause 6.5 Design excellence within Dee Why Town Centre

#### *Submission summary*

Clause 6.5: provisions for design excellence in Dee Why Town centre should extend to all of Warringah.

### *Planning assessment*

Clause 6.5: The design excellence provisions are site specific in the LEP and respond directly to this building in Dee Why. The current task is for the best fit or translation of current controls into the LEP and DCP.

#### 6.10 Clause 6.12 Provisions promoting retail activity

##### *Submission summary*

Clause 6.12(2): why are medical centres prohibited as a ground floor use; also office premises from the first floor of the buildings.

##### *Planning assessment*

Clause 6.12(2): The objective of this clause is to promote retail activity at ground and first floor levels. Neither medical centres nor office premises are retail operations.

#### 6.11 Clause 6.13 Mobility, traffic management and parking

##### *Submission summary*

Clause 6.13: provisions relating to the location of parking are overly prescriptive and do not allow for design evolution and refinement over time.

##### *Planning assessment*

Clause 6.13: The objective of this clause is to ensure improved vehicle access and circulation. Parking controls are important in achieving this objective.

#### 6.12 Clause 6.18 Erection of dwelling houses in Zone E3 Environmental Management

##### *Submission summary*

The author is of the view that the clause is ambiguous and poorly worded.

##### *Planning assessment*

Clause 6.18 translates existing housing density provisions within the A7 Mona Vale Road North, the B2 Oxford Falls Valley, the B9 Mona Vale Road East, the C8 Belrose North and the C10 Mona Vale Road West localities under Warringah LEP 2000. The clause provides that, within the E3 zone, a dwelling house must not be constructed unless the site area is 20 hectares or more. At subclauses (3) and (4) the clause makes exceptions to this provision. It is the interpretation of subclauses (3) and (4) that the author questions.

The wording of the clause was the subject of discussions between officers of the Department of Planning and officers of Council and, prior to certification, was reviewed by the NSW Parliamentary Counsel.

It is considered that there should be no alteration to the draft LEP arising from this submission.

#### 6.13 Clause 6.20 Subdivision of certain land

##### *Submissions summary*

Clause 6.20(2) is unreasonable and should be removed from the draft LEP for the following reasons.

- The requirements of the clause are derived from the character statement of the B12 Perentie and Dawes Road locality (under Warringah LEP 2000) which applied to all

properties in the locality. Under Warringah LEP 2000 the wording of the desired future character statement is not strictly applied to all sites but rather the locality as a whole. The desired future character statement does not translate into site specific outcomes for development as in doing so, this places undue emphasis on protecting such things as the rock outcrops on the specific sites. The desired future character statement (B12 locality) encourages particular outcomes on a locality basis but Clause 6.20(2) translates these into specific requirements for certain identified sites. This is an unfair burden on the owners of the identified sites.

- The clause is unnecessary as section 79C of the Environmental Planning and Assessment Act ensures due consideration of elements such as topography, geotechnical, environmental and bush fire issues on a merit basis for each site.
- The clause is predicated on the assumption that the land is constrained without detailed assessment of constraints or subdivisions potential of the land.
- The draft LEP proposes a minimum allotment size for the site that will not provide the best built form outcome. Warringah LEP 2000 has an averaging assessment which allows flexibility of lot boundaries.
- The clause is inconsistent with the Standard Instrument LEP and Department of Planning circular PS 06-008 which provides that local provisions within LEPs must be consistent with zone objectives and mandated land uses.

It is also submitted that the draft LEP has not been properly exhibited as residents and landowners directly affected by it were not personally notified.

#### *Planning assessment*

Clause 6.20 is a local clause that was included in the draft LEP to translate certain locality specific provisions in relation to subdivision of land that exist in Warringah LEP 2000. The clause contains three subclauses, each of which applies to separate land and contains provisions specific to the land to which the subclause applies. All three subclauses apply to land that generally lies at the interface between urban and non urban land and/ or that has not yet been subdivided in accordance with the prevailing planning controls. The subclauses translate 'place based' provisions that are specific to the locality statements of the respective land.

The submissions are made in relation to subclause (2) of the clause. The land identified in subclause (2) lies within the B12 Perentie and Dawes Road locality. The desired future character statement (DFC) for the locality, amongst other matters, requires that development is to be assessed with regard to a masterplan. The Perentie and Dawes Road Masterplan was adopted by Council and fulfils this role. Various provisions within the B12 locality statement are derived from the masterplan. The provisions contained in Clause 6.20(2) are a translation of the requirements of both the masterplan and the B12 locality statement.

The land identified in subclause (2) consists of two lots only. The subclause does not address the whole of the B12 locality. The two lots, subject of the subclause (together with the land identified in subclause (1) of Clause 6.20) are the sites that, at the time of the preparation of the draft LEP, remained undeveloped in terms of the provisions of the masterplan.

The authors argue that elements of the B12 Desired Future Character statement apply to the locality as a whole and will not always have equal relevance to all sites. For example the DFC includes requirements for, "...preserving the natural landscape, including rock outcrops,...". Sites which include no rock outcrops will be assessed differently against this statement to those which do. The authors argue that it is therefore incorrect to include such provisions as requirements within Clause 6.20(2) which applies to two specific lots.

This argument is not wholly supported. The content of Clause 6.20(2) is derived from the content of the B12 locality statement and the Perentie and Dawes Road Masterplan which, in combination, indicate differing provisions for various parts of the locality. However, it is recognised that these documents use language that is more descriptive than that of the draft LEP. To address these concerns it is proposed that Clause 6.20(2)(b) is altered as set out in the recommendation below.

Section 79C of the Act, establishes matters for consideration in determining development applications. It includes consideration of any environmental planning instrument applying to the

land. Section 26 of the Act, addresses the contents of environmental planning instruments and provisions relating to subdivision of land can legitimately be included in LEPs.

Warringah LEP 2000 includes development standards for housing density. For the most part, it does not include development standards for minimum allotment sizes. Clause 4.1 of the Standard Instrument LEP determines the manner in which Councils can address the issue of density of development and this is by way of the identification of minimum lot sizes when subdividing land. If Councils choose to include provisions to manage density of development in their LEPs, such provisions must be consistent with those of the Standard Instrument LEP.

Notification of the exhibition of the draft LEP was carried out in accordance with the provisions of the Environmental Planning and Assessment Act, 1979 and the Environmental Planning and Assessment Regulation 2000. Details of the manner in which this was carried out can be found under the heading *Public Exhibition* earlier in this report. The draft LEP is a comprehensive one applying to all land in Warringah. Accordingly, the notification process was undertaken in a way designed to reach the wider Warringah community rather than specific property owners.

**Recommendation:**

That Council resolves to make the following alteration to 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.*

## 6.14 Schedule 5 Environmental heritage

### *Submission summary*

Submission advises that there are some discrepancies in the description of seven heritage items listed in Schedule 5. The submission lists the items and makes suggested alterations to the descriptors.

### *Planning assessment*

As noted by the author Council has undertaken to carry out a heritage review in Warringah. Council staff has noted a number of discrepancies that will require updating of Schedule 5 for a variety of reasons (for example, changes to legal property descriptions and outdated item names).

This submission will be referred to the heritage review project team to ensure that the matters raised by the author are considered in conjunction with the wider review of heritage in Warringah.

### *Submission summary*

Submission requests the removal of property known as 35 Beach Road, Collaroy (Lot 72 DP 791319) from the heritage schedule of the draft LEP. The submission includes a heritage assessment of the property in support of this request. In summary it is submitted that the house has been extensively altered and extended which has reduced the physical and streetscape integrity below the threshold that justifies heritage listing.

### *Planning assessment*

In its submission to the exhibition of the draft LEP the Heritage Council of NSW advises (submission no. 2009/197254) that it raises no objection to the content and intent of the LEP. However, if the draft LEP is proposed to be further amended as a result of submissions, it requests the opportunity to review the proposed changes.

Council commissioned an independent heritage consultant to review this submission. In conclusion, the consultant states that "...while it would appear that the property once demonstrated attributes which would have supported its listing as a local heritage item, those attributes have been lost through the cumulative alteration of the house..."

#### Recommendation:

That Council resolve to alter Schedule 5 Environmental heritage of the draft Warringah LEP 2009 to delete Item no HI 8, being a house on Lot 72, DP 791319, 35 Beach Road, Collaroy

### 6.15 Various clauses

#### *Submission summary*

Would like revisions of the following:

- Clause 5.5 Development within the coastal zone...*Beaches and coastline should be included in catchment*
- Clause 5.5 (1) (b) (ix) improves the natural scenic quality...*definition needed for scenic quality which should not override health of ecosystems of natural physical processes.*
- Clause 5.5 (1) (b) (x), 5.5 (2) (f) & (g) *no definition of coastal processes*
- Clause 6.16 (3) (b) 'development on sloping land' .significant detrimental impacts from stormwater discharge...*define significant*
- Clause 6.17 (1) (a) 'Coastline Hazards' 'preserve and protect beaches as national assets for public recreation and amenity ...*add 'and ecology'*;
- Clause 6.17(b) when discussing consideration is made of current and future hazards...*stronger phrase for consideration needed.*
- Clause 6.18 Erection of houses in Zone E3 Environmental Management – 6.18 (1) (c) maintain the scenic quality of the zone...*scenic quality should not be a priority, ecology and natural processes should.* 6.18 (1) (d) *more detail needed on methods to minimise siltation and pollution of Narrabeen lagoon.*
- Clause 6.18 (b) to (d) Erection of dwelling houses in Zone E3 Environmental Management: what additional points from the desired future character statements could be included in the objectives? Various suggestions nominated.
- Clause 6.18: refers specifically to 'dwelling houses' in E3. Why is this, as other uses are also 'permissible with consent' in E3? The erection of dwelling houses may not be compatible with objectives relating to the E3 zone.

#### *Planning assessment*

Clause 5.5: The NSW Department of Planning provided the new LEP template structure including standard definitions which Council must follow. Should changes be made in the future by the Department, all Councils will automatically be subject to the same changes.

Clause 6.16: As 'significant' is not defined in the Standard Instrument, the meaning can be determined by reference to a common dictionary such as the Macquarie Dictionary (see LEP Practice Note PN06-003).

Clause 6.17: The State Government is addressing a standardised clause for Coastline Hazard

Clause 6.18: The methods of reducing siltation into Narrabeen Lagoon are more appropriately located in the development control plan.

The desired future character statements have been translated as closely as possible into aims, objectives and controls in both the draft WLEP 2009 and the draft Warringah Development Control Plan

This is as close as possible to a translation of WLEP 2000 to limit dwelling densities in this area

#### Recommendation

The aims of WLEP 2009 be reviewed for clarity and intention

## **Part 7 Submissions making general comments**

### *7.1 Submission summary*

The author notes that the draft LEP and DCP are a transfer of existing controls to the 'new' template format but the exhibited plans do not address the prospective needs of the community and known demand trends. Welfare pressure will be a significant economic impost to development and social activity. Concern is raised with the various levels of government as regards provision of services, extent of regulation and the relevance of Council's current planning instruments in delivering future community housing, employment, social and environmental needs.

He suggests as an alternative a Regional Plan (and Northern Beaches Council amalgamation) and Federal government intervention to look at all aspects of local government revenue and taxes.

#### *Planning assessment*

These issues are beyond the scope of a LEP. However Council is preparing a revised housing strategy and a Brookvale employment lands strategy as required to meet the State Government targets for housing and employment capacity in Warringah.

### *7.2 Submission summary*

The submission seeks confirmation that use of Permissive Occupancy PO 77/25 (which falls partly into the Garigal Park) will not be affected by the new provisions of the LEP or DCP.

#### *Planning assessment*

The provisions of the LEP 2009 and its associated DCP will not place additional constraints on the Society's activities

### *7.3 Submission summary*

This submission requests that alternatives to the re-development of Weldon Oval for Sydney Water stormwater works (retention tanks) be explored that do not involve the loss of recreational playing fields. There is already a shortage of grounds.

#### *Planning assessment*

The issue of stormwater retention proposed by Sydney Water is beyond the provisions of the LEP and would more appropriately be addressed to Sydney Water.

Similarly the adequacy and provision of open space areas within Warringah is beyond the current task of translating from WLEP 2000 to the draft WLEP 2009.

### *7.4 Submission summary*

Advises that there needs to be a greater diversity in block sizes to cater for smaller households such as older couples, single households, new families or for anyone that does not want to live in a unit or retirement home and wants the privacy of a smaller home with their own small garden on Torrens Title.

Warringah has become stereotyped, catering for the larger family, unit dwellers, or the old folk's home. We must consider the changing demographics.

#### *Planning assessment*

Diversity in housing and allotment size to meet the housing needs of our changing demography will be addressed in the housing strategy that is currently underway.



### 7.5 *Submission summary*

The LEP does not go far enough to address population increases. The concept of high rise development and duplexes throughout lower density residential areas is supported.

#### *Planning assessment*

Population issues *per se* are beyond the scope of a LEP. However, Council is preparing a revised housing strategy will look at housing options to achieve the State Government's current target of 10,300 additional dwellings by 2031.

### 7.6 *Submission summary*

The author advises that more than \$4000 a year is paid in rates and the LEP 2009 unfairly blocks any opportunity to eventually develop the property or allow it to be subdivided. The property is poorly serviced, roads are poor quality and rating system is unfair.

#### *Planning assessment*

The issue of rating, services and land speculation or review of the subdivision of non urban lands are beyond the current task of translating from WLEP 2000 to the draft WLEP 2009.

### 7.7 *Submission summary*

Is there a provision in the (draft) LEP that requires the development to be consistent with the objectives of the LEP?

#### *Planning Assessment*

Clause 2.3 (2) of the Standard Instrument requires the consent authority to have regard to the zone objectives.

### 7.8 *Submission summary*

How to ensure development is limited to low intensity, low impact use in non-urban areas that are bushfire prone or that would require new roads to provide access?

#### *Planning Assessment*

Permissibility is established in the land use table under Part 2 of the draft LEP. Development in bushfire zones is required to meet Rural Fire Service requirements. Intensity and impact of development is controlled through the LEP and DCP which are a translation from WLEP 2000.

### 7.9 *Submission summary*

How can natural areas be excluded from development unless zoned E2?

#### *Planning Assessment*

There are various legal mechanisms beyond the LEP that can be utilized to protect certain areas.

### 7.10 *Submission summary*

What controls prevent inappropriate developments in bushfire prone areas, as required in s117 (2) Directions? How are 'inappropriate developments' defined?

*Planning Assessment*

Council's response to the s117 Directions in this report has addressed bushfire prone areas. 'Inappropriate development' is not defined in the s117 Directions

*7.11 Submission summary*

Is there a definition of 'environmentally sensitive areas' referred to in s117 (2) Directions?

*Planning Assessment*

'Environmentally sensitive areas' is not defined in the s117 Directions; however the meaning is given in WLEP 2009 at clause 3.3 Environmentally sensitive areas excluded.

*7.12 Submission summary*

What objectives are included to conserve biodiversity and implement measures in the Commonwealth and NSW Biodiversity Strategies?

*Planning Assessment*

Clause 1.2 of the LEP contains the aim (2)(f)(v) to protect, conserve and manage biodiversity and the natural environment.

*7.13 Submission summary*

Add a major objective: 'To protect and enhance the natural landscape including landform, rock outcrops, soils, vegetation, waterways and scenic amenity.' Other aims to be included: To protect water quality, environmental flows and ecological values of waterways; To prevent fragmentation of bushland and habitat areas, including core bushland; To protect the natural landform and distinctive features such as rock outcrops; To protect the integrity and scenic amenity of natural areas; To protect environmentally sensitive catchments from vegetation clearance, soil disturbance, landfill, earthworks and excavation.

*Planning Assessment*

Recommendation

That a review of the objectives of the plan be included in a future review

*7.14 Submission summary*

Zone E3 Environmental Management:

The author raises concerns about the effectiveness of the E3 zone and the DCP compared to the E2 Environmental Conservation zone to adequately protect the values of non-urban land in Warringah, including the Narrabeen Lagoon Catchment. Subdivision, development and roads in our remaining bushland areas would result in fragmentation, loss of habitat and alienation of the natural landscape. How can we avoid this via the planning controls? E2 is the only applicable zone if an area is to be excluded from development for environmental reasons. We have endangered communities because of extensive clearance of habitat. The protection of remaining natural areas and habitat is not guaranteed if only a small subset of high conservation areas is zoned E2.

*Planning assessment*

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 Oxford Falls area (within the Narrabeen Lagoon catchment) 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

#### *7.15 Submission summary*

##### **Bushfire Prone Areas**

If the environment is to be protected, new development should be excluded where possible from bushland areas that would require significant clearance for APZ and hazard reduction purposes. If the environment is to be protected, it is important to avoid vulnerable and inappropriate development in bushfire prone areas.

##### *Planning assessment*

Permissibility is established in the land use table under Part 2 of the draft LEP. Development in bushfire zones is required to meet Rural Fire Service requirements. Intensity and impact of development is controlled through the LEP and DCP which are a translation from WLEP 2000.

#### *Submission summary*

Clause 5.11 Bush fire hazard reduction reinforces the requirement for a statutory control in WLEP2009 to discourage or prohibit inappropriate development in bush fire prone areas, particularly core bushland. New development that requires extensive bush fire hazard reduction should be avoided. Land use conflicts are likely to result from the inclusion of permissible uses that could compromise key objectives e.g. to protect the natural environment.

##### *Planning Assessment*

Permissible and non-permissible uses in bushfire and non-bushfire areas have in some cases been mandated by the Department of Planning and otherwise have been selected to match as closely as possible the LEP 2000.

#### *7.16 Submission summary*

'Roads' is not a compulsory permissible use within the E2 zone and its inclusion is contrary to the objectives of the E2 zone.

##### *Planning Assessment*

This is as close as possible to a translation of WLEP 2000. SEPP (Infrastructure) 2007 would override WLEP 2009 controls if a road was required infrastructure irrespective of the zoning.

#### *7.17 Submission summary*

Not all objectives from the desired future character statements in WLEP 2000 have been included in Zone E3 Environmental Management

##### *Planning Assessment*

Desired future character statements have been translated into aims, objectives and controls in both the draft WLEP 2009 and the draft Warringah Development Control Plan. Several submissions have raised issues with the aims and objectives, so a review is recommended.

#### Recommendation

That a review of the aims of the plan be included in a future review

#### 7.18 Submission summary

Will the proposed controls adequately reduce land use conflicts and protect watersheds? What statutory control will protect hydrological features such as hanging swamps, wet heath, natural drainage lines and soils?

#### Planning Assessment

More detailed aims, objectives and controls are contained in the Warringah draft Development Control Plan. Monitoring and review of this document will be regularly undertaken to ensure the contents are updated with best practice.

#### 7.19 Submission summary

There is concern that permissible land uses within the E3 zone including roads will result in the fragmentation and loss of biodiversity. The likely environmental impacts of the permitted land use need to be considered. The E3 zone is suitable for some areas of non-urban land but the E2 zone is required to protect other areas from inappropriate development.

The PAC has recommended that no new urban development take place in Oxford Falls Valley for at least 10 years, and that further studies be undertaken. However, within that time permitted land uses could result in the nibbling away of the environmental values of the area. The only effective way to take preventative action is via the statutory planning controls that protect the area from inappropriate development, including roads.

Environmental Constraints to Development does not identify bushfire prone land as a constraint. There is no apparent constraint to development in bushfire prone areas within the draft LEP, even though permissible development in some areas e.g. for a house, would result in substantial risk and / or clearance of native vegetation. Any development in core bushland areas would require extensive clearing of native vegetation, further eroding the natural values of the area.

#### Planning Assessment

As stated above at this stage Council is doing a translation from the existing LEP2000 to the new standard instrument.

#### 7.20 Summary of submission

'Granny flats' have been excluded from the provisions of LEP2009. Streets south of Banksia Street including Banksia (south side), Undercliff and Tasman should have a permissible allotment size similar to the medium density precinct north of Banksia (450m<sup>2</sup>).

#### Planning Assessment

Once WLEP2009 has been made by the Minister, 'granny flats'/ dual occupancy will be a permissible use within the medium density R3 zone. As part of its Housing Strategy Council will be looking at opportunities to supplement and expand on existing controls which will include not only diversity and affordability of housing types but also allotment sizes.

### *7.21 Summary of submission*

Council previously pledged to reduce the height of buildings within the Dee Why town centre (particularly Multiplex).

Objects to the rezoning of the community land incorporating Dee Why library, public car parks and the Civic Centre.

#### *Planning Assessment*

In relation to Dee Why Town Centre, on Friday 28 November 2008, Warringah Local Environmental Plan 2000 (Amendment No.21) was published in the Government Gazette

### *7.22 Summary of submission*

Most localities have had current land uses reduced significantly, examples include registered clubs, Benedict Sand and Gravel being included in the E3 Zone, blanket zoning of Oxford Falls Valley despite current uses.

#### *Planning Assessment*

Within the constraints of the Standard Instrument, Council has tried to achieve as close as possible to a translation from WLEP 2000. Additional permitted uses for specific sites are contained in Schedule 1 to WLEP 2009.

### *7.23 Summary of submission*

Granny flats or secondary dwellings have been excluded from all localities where granny flats are currently included.

#### *Planning Assessment*

Secondary dwellings will become permissible under State Environmental Planning Policy (Affordable Rental Housing) 2009 once WLEP 2009 has been made by the Minister.

### *7.24 Summary of submission*

Land Slip Risk: Why is the Land Slip Risk map included within the Draft LEP yet part of the DCP policy.

#### *Planning Assessment*

Land slip is referred to in clause 1.2(2)(f)(vii) of the WLEP 2009. More detailed objectives and controls are contained in the DCP.

### *7.25 Summary of submission*

The Sydney Regional Environmental Plan (Sydney Harbour Catchment) applies to land zoned R2 Low Density Residential. The R2 zone is not consistent with the requirements of the REP. The proposed R2 zone for this site should be replaced with an environmental zone that is consistent with the sensitivity of the location

#### *Planning Assessment*

The R2 Low Density Residential zoning is consistent with the Council's resolution for translation of the WLEP 2000, and re-exhibition would be required if the zoning were to be changed to an Environmental zone.

## Part 8 E-portal Submissions

PROVISION OF LEP	ISSUES RAISED IN SUBMISSION	OFFICER COMMENTS
Clause 1.2 Aims of Plan	Writer has forwarded 9 changes and supplements to the Aims of the Plan. The changes primarily reflect the natural environment and sustainability elements.	The aims of the plan are crucial in establishing the tone and thrust of the LEP and to assist in future Legal challenges and interpretation. Some of the changes have planning merit but are not critical to the integrity of the LEP drafting.  Recommendation: That the aims of WLEP 2009 be considered as part of the future review of WLEP 2009.
Land Use Zones	Better planned and a wider provision for medium and high density housing. Housing diversity, density and affordability are important Virgin bushland is to be treasured, additional Open Space is required.	Council has commenced work on a new housing strategy which will provide directions for Warringah. Enhancement and acquisition of additional open space takes place consistent with Open Space (S94) funds and Councils budgetary constraints.
Zone E3 Environmental Management	Good Objectives; Coastal cliffs, beaches, creek-lines or other vegetation corridors should have a zoning changed to Environmental protection (RE1-3) in recognition of their multi-function.	Department of Planning templates and guidelines determine the zone parameters. Most of these areas are zoned Public Recreation which acknowledges their public ownership and access and is more consistent with the objectives of that zone.
Zone R2 Low Density Residential	Zone should prohibit; - Group Homes, Exhibition Homes, Places of Public Worship. Uses are inconsistent with amenity and objectives of the zone. Earthworks should only be permissible if they are associated with an approved development.	Group homes are a mandatory provision in the zone. Exhibition Homes and Places of Public Worship are developments transferred across from LEP2000. Earthworks in the R2 zone are listed under 'Permitted with consent' and will therefore be required to go through the approval process.
Land Use Zones	It is not clear in the draft LEP the land use zones in which Secondary dwellings are permitted.	Secondary dwellings are permitted under the State Environmental Planning Policy (Affordable Rental Housing) 2009 which applies to the whole state. The SEPP sets out the zones where secondary dwellings are permitted (zones R1, R2, R3, R4 and R5).
Zone R3 Medium Density Zone Objectives	The natural environment of Warringah is for it to be almost entirely covered with trees. How are landscaped settings going to harmonious with that?	Both 'natural environment' and 'landscaped settings' encompass more than trees in the Warringah context.  Recommendation: That the aims of WLEP 2009 be considered as part of the future review of WLEP 2009
Clause 2.1 Zone RE1 Public Recreation	Need to add preservation of tree canopy and remnant bushland to objectives otherwise people will remove trees from parks and coastline to improve views.	Tree preservation is captured by Clause 5.9 of the LEP. Council is the caretaker of all trees on public land. Illegal removal of trees on public land by private individuals is a policing issue that is external to this document.
Clause 2.1 Zone B5 Business development	Properties fronting Old Pittwater rd between Pine Ave and Victor Rd are too small to take advantage of the B5 zone and should be B4 zone instead.	This matter can be addressed in Council's Brookvale Employment Lands Strategy (currently underway).
Clause 2.1 Zone B1,B2,B3 and B4	Retail garden supply shop should be a permitted use with consent in B1, B2, B3 and B4 zones.  Ambiguous as to whether a retail garden supply shop selling plants, pots, bags of potting mix and the like is permitted or prohibited from the B1 zone.	'Landscape and Garden supplies' is a prohibited use in Zones B1, B2, B3 and B4. Area and product characteristics dictate that such uses are better accommodated where there is no land use conflict such as within the Rural Small Holdings zone.
Clause 2.1 Zone	Warringah Council gave the Waves Youth	The B2 zoning is as close as possible to

PROVISION OF LEP	ISSUES RAISED IN SUBMISSION	OFFICER COMMENTS
B2 Waves Youth Club	Club site to the Harbord Diggers Club in 2000 on the basis that the club would build and operate a recreation facility for the youth of Harbord. Its proposed zoning of Local Centre B2 is inappropriate and it should be zoned public or private recreation.	translation from WLEP2000.
Clause B7 Business Park	Proponent is looking to establish a dementia day care centre and foster care office facility within the B7 zone but are unsure of definitions and permissibility.	The proponent needs to investigate permissibility and appropriateness of any proposed use in accordance with definitions.
Clause 2.1 Zone E3 Environmental Management	Considers that a B4 Mixed Use zone is more appropriate. As the lot is undersize will he have problems lodging applications for rebuilding or extensions	Draft WLEP 2009 contains an exceptions clause 4.6(2). Zone E3 Environmental management was determined to be the 'best fit' for the transfer from WLEP 2000.
Clause 2.1 Zone RE1 Public Recreation	Zone should incorporate 2 further objectives; preservation of residential amenity; and any development needs to be consistent with the objectives of Clause 5.5, Coastal Zone.	The first three of the Public Recreation Zone objectives are from the State Government's LEP template. These have been supplemented by Council objectives protecting ecological, scientific, cultural and aesthetic values, and preventing development that could have an adverse effect on these values. It is considered that residential amenity and objectives unique to development within the coastal zone are superfluous and should not be added.
Clause 2.6A Demolition requires consent	This additional clause looks like a grab for control. Suspicion that it is about control over heritage items.	Most demolition will utilise the provisions of the Exempt / Complying SEPP. Heritage items are specifically exempt from the SEPP. This clause will reinforce that provision and also apply to commercial / industrial buildings etc.
Clause 2.6B Temporary use of land (local)	This clause should state that any temporary use can only be a permissible use in the relevant zone.	This request is inconsistent with the intent of the clause, and therefore no change is recommended.
Clause 3.2 Complying Development	Typing error 'incompliance'	Noted and corrected!
Clause 4.1(1) Objective (h) Minimum subdivision lot size	Objective (h) reads "to manage biodiversity"  Manage should have positive attributes. It could be read to slowly reduce or rapidly eliminate.	In the context of the objectives the working expresses Council's intent, however the point is valid.  Recommendation: That the aims of WLEP 2009 be considered as part of the future review of WLEP 2009.
Clause 4.2A No strata plan or community title subdivision in certain rural, environmental zones	Part 2A could be deleted. If land has a lawfully created additional dwelling then that dwelling should be able to achieve the creation of a separate title.	The intent of the clause is expressed in first objective:-Subdivision to provide additional housing will be addressed in Council's Housing Strategy (currently underway).
Clause 5.3 Development near zone boundaries	Can this clause please make it clear what land it applies to?	The clause makes it clear that: <i>"This clause applies to so much of any land that is within the relevant distance of a boundary between any two zones. The relevant distance is 10 metres."</i>  It also makes it clear in which zones it does not apply. The format of the clause is part of the standard template.

PROVISION OF LEP	ISSUES RAISED IN SUBMISSION	OFFICER COMMENTS
Clause 5.5 development within the Coastal Zone	Must incorporate a clear objective that any proposed development must not negatively impact on residential amenity.	This clause is a standard template clause, for the coastal zone. The suggested objective is not appropriate.
Clause 5.9 Preservation of trees or vegetation	Additional objectives required; -*the environmental benefits, including sustainability that trees bring through energy minimisation *trees add to the character of the local neighbourhood *indigenous species add to the local biodiversity ....and strengthening a 'sense of place'.	The objectives to clause 5.9 are transferred directly from the State Government's LEP template  Recommendation: That the aims of WLEP 2009 be considered as part of the future review of WLEP 2009.
Clause 5.9 Preservation of trees or vegetation	If a property owner plants a tree they should be allowed to remove it later if they see fit. A person should not be deterred from planting trees if they cannot later undo the planting if it turns out to be a mistake.  What criteria do Council use as guidance for removal of trees?	Clause 5.9 and controls in the Development Control Plan guide tree removal.  No change is recommended.
Clause 5.9 Preservation of trees or vegetation	Responding to the above comment. Council officers are generally conservative about making decisions about a tree's removal. Suggestion about allowing people who planted a tree to remove them is impractical.	Comments are noted.
Clause 5.10 Heritage Conservation	Additional objective that heritage value of any building is a relevant consideration in the DA process. Many buildings have some or reasonably significant heritage value but are not listed.	Council will be undertaking a heritage review for the Warringah area, and additional information and controls for heritage may be included into Council's Development Control Plan.
Part 6 Additional local provisions	Curl Curl bay is unique in being dominated by 4 separate shorefront clubhouses as well as Stewart House. LEP needs a master plan or additional local provisions for the Curl Curl foreshore to ensure appropriate and unobtrusive development.	This is a translation of the existing LEP into the standard template LEP. No such master plan currently exists.
Clause 6.17 Coastline Hazards (local)	With sea level rise this clause should apply to all coastal land in Warringah and in particular all the beaches.	Council's original clause was amended by the Dept of Planning for exhibition, and remains under discussion at this time. The issue of sea level rise affects all coastal councils.
Schedule 1 Additional permitted uses / Registered Club Zoning	Issues raised with the zoning of registered clubs. Considers that to ensure their continuance as recreational facilities they should all be zoned either Public Recreation (RE1) or Private Recreation (RE2)	The draft WLEP 2009 is as close as possible to a translation of the existing LEP into the standard template LEP in this regard.
Schedule 1 Additional permitted uses	Just re-zone these properties rather than create a schedule for additional uses.	Schedule 1 allows uses to continue and will negate the need for ongoing rezoning requests when these properties abandon or change their current use.



PROVISION OF LEP	ISSUES RAISED IN SUBMISSION	OFFICER COMMENTS
Schedule 2 Exempt Development	<p>Schedule needs to make it clear garbage enclosures, projects such as refurbishment of medium density development are not exempt development.</p> <p>Can Council include an exempt development schedule in one area? LEP suggests a reduced list to that of WLEP 2000.</p>	<p>State Environmental Planning Policy (exempt and complying development code SEPP) is a State Government policy that upon gazettal of WLEP2009 will come into force within Warringah and overrides WLEP 2009.</p> <p>Schedules 2 and 3 provide for development additional to the Government's SEPP.</p>
Registered Club Zoning	<p>Issues raised with the zoning of registered clubs. Considers that to ensure their continuance as recreational facilities (If they existed in 2000) they should all be zoned Private Recreation (RE2). It would be unacceptable to allow private recreation land to be capable of any development other than private recreation.</p>	<p>The draft WLEP 2009 is as close as possible to a translation of the existing LEP into the standard template LEP in this regard.</p>
Clause 3.1 Exempt Development	<p>Spelling error 'sex servie'</p>	<p>Noted and corrected.</p>