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17 May 2013

Mrs K Jones
Director, Metropolitan & Regional Projects South
Department of Planning & Infrastructure
GPO Box 39
Sydney NSW 2001

(Your Ref: MP09_0162 MOD 4 & MP10_0177 MOD 13)

Dear Mrs Jones

Re: COUNCIL SUBMISSION TO MODIFICATION APPLICATIONS MP09_0162 MOD 4 & MP10_0177 MOD 13

I refer to your letter of 2 April 2013 advising Council of the modification application (MP09_0162 MOD 4 & MP10_0177 MOD 13) and inviting Council to make a submission.

Council contends any assessment of the development footprint and built form must account for the future use of the building as a childcare centre to accommodate up to 100 children. It is imperative that the Planning Assessment Commission must consider and determine the building and its use as a childcare centre together rather than imposing Council continue to be the consent authority for any future DA for the childcare centre use.

Council raises the following concerns with the modification applications:

- Insufficient information addressing the intensification of development
- Inadequate disclosure of all affected Approval conditions
- Implications with changes to site area and introduction of subdivision plan
- Other carpark related matters
- Impacts from proposed intensification of future childcare centre building and Use
- Proposed changes to the land for active and passive open space (on-site)

Detailed reasons for Council's objections are attached for your consideration.

Please contact me on 9970 1133 or Liza Cordoba on 9970 1150 if you wish to discuss any issues regarding this application.

Yours faithfully

Steve Evans

DIRECTOR, ENVIRONMENT PLANNING & COMMUNITY

Submission to Department of Planning & Infrastructure to MP09_0162 (MOD 4) & MP10_0177 (MOD 13) at 79-91
Macpherson Street, Warriewood

Prepared by Pittwater Council 16 May 2013





EXECUTIVE SUMMARY

Given the inter-relationship between the two Approvals issued under Part 3A, Council's submission deals with both modification applications.

The Modification Applications, MP09_162 MOD4 and MP10_177 MOD13 are again lodged with insufficient information and justification and do not disclose the full range of amendments it is seeking, as depicted on the submitted plans.

Additionally, the Applicant has ignored that the modification applications will affect other conditions, creating uncertainty in providing a 'full picture' to the modifications. The amendments themselves must be considered in full to address the cumulative impacts of the various modifications.

From a flood planning perspective, the proposed floor space and additional children at the facility represent additional lives at risk to injury, psychological impacts or at the most extreme, death, due to flood risks associated with flood isolation, difficult flood evacuations, fire and medical emergencies during a flood event. Council recognises that the Planning Assessment Commission, in approving the Project Approval MP10_0177, accepted reliance on sheltering-in-place as an acceptable emergency response strategy at the site. The current modification applications however significantly increases the risks of life and, in this instance, Council recommends that on-site vertical refuge (sheltering-in-place) should only be considered as a secondary or method of last resort.

Council contends any assessment of the development footprint and built form must account for the future use of the building as a childcare centre to accommodate up to 100 children.

It is imperative that the Planning Assessment Commission must consider and determine the building and its use as a childcare centre together rather than imposing on Council the consent authority role for any future DA for the childcare centre use.



DESCRIPTION OF THE MODIFICATION APPLICATIONS

Council understands that the applicant seeks to modify the approvals in the following manner:-

1. Amend Concept Approval MP09_162 as described in the application:-

"Change the building footprint of the child care building[s] and accommodate up to 100 childcare places; and

Amend the car parking layout including provision for 25 car parking spaces.

Amend condition 2 to incorporate the submitted amended plans."

2. Amend Project Approval MP10_177 as described in the application:-

"Change the building footprint of the child care building[s] and accommodate up to 100 childcare places; and

Amend the car parking layout including provision for 25 car parking spaces.

Amend the approved development description as relevant to the child care centre being 'Single-Two storey childcare centre (270 778m²)'

Amend condition A1 to incorporate the plans submitted with this modification application

Amend condition A6(1) insofar as changing the maximum number of children from 40 to 100."



MATTERS RAISED

1 Insufficient Information Addressing the Intensification of Development

The changes to the approved 'development footprint' and building for the future childcare centre operation are significant. The modification applications, in effect, propose a 200% increase in total site area, while the building's gross floor area is tripled (280%). The intensification of the development results in significant impacts detrimental to the future use of the building as a childcare centre, a use that is the subject of a future Development Application to be lodged with Council for its consideration and determination.

No detailed, cogent assessment has been made by the applicant to address the impacts from the significant increases in development footprint and building form.

Council contends any assessment of the development footprint and built form must account for the future use of the building as a childcare centre to accommodate up to 100 children.

It is imperative that the Planning Assessment Commission consider and determine the building and its use as a childcare centre together rather than imposing Council to be the consent authority for any future DA for the childcare centre use.

2 Insufficient identification of all affected Approval conditions

The applications have not adequately identified all the conditions affected by the modification applications. For example the amendments to the site area which are not clearly disclosed in the application form, plans and supporting documentation are:-

- a. The new site area comprises the northern portion of an overland flow path identified in the approved Brown Consulting Water Management Report for the overall development.
- b. The new site area is in fact, part of the land that the PAC has required to be dedicated to Council for open space on-site (8,920sqm) which was incorrectly credited as works-in-kind at a residential rate of \$325 per square metre.



- c. The modification applications should clearly articulate the proposed changes and clearly demonstrate how these changes impact on the conditions of the approvals including:-
 - Amendment to the development description in the Concept Approval and Project Approval to include subdivision to create proposed Lots 601 and 602.
 - How this affects the registered lot(s) created under an approved subdivision that, in turn, is referenced as the lot being dedicated to Council (in an already registered Section 88B Instrument and in respect of point (c) above).
 - Future utility of the land as an overland flow path given that the development footprint (& site area) has been extended across the overland flow path.
 - How the creation of proposed Lots 601 and 602 continues to be suitable for the purpose of active and passive open space area (on site), being the land to be dedicated to Council.

Council asserts that the above discrepancies with the current applications and the lack of disclosure of all amendments sought including conditions affected by the proposal that, from a procedural perspective, if not altered will be difficult to implement and administer via a future DA. Supporting information justifying all the changes and all conditions affected by these changes must, in the first instance, be addressed by the applicant.

3 Proposed change to Site Area and introduction of Subdivision Plan

The site area is to be extended to encompass the northern section of an overland flow path aligning the western boundary of the overall property, 79-91 Macpherson Street (formerly known as 14-18 Boondah Road) Warriewood, and seeks changes to recently registered Lot 502 and Part Lot 504 in DP 1175520 to create two lots (proposed Lots 601 and 602) as per the submitted plan of subdivision.

Council raises the following concerns:-

- a. Procedural implications with proposed Lots 601 and 602;
- b. Future utility of the overland flow path;
- c. Future dedication of the land that will contain private development;



d. Suitability of proposed Lot 602 and, part of proposed Lot 601, for open space purposes.

a. Procedural implications with proposed Lot 601

Subdivision of the land is included in the modification applications through the submission of plans however not clearly described in the application documentation.

In regard to the Concept Approval MP09_162 however, it seeks to introduce changes to the description of the approved development under MP09_162. Procedurally the following conditions will also need amendments, of which the application has chosen not to disclose, namely:-

- Schedule 2 Part A Condition 2 Development in Accordance with the Plans and Documentation
- Schedule 2 Part A Condition 3 Minimum Public Open Space
- Schedule 4 Statement of Commitments

Condition A6(2) of the Project Approval MP10_177 pertains to land subdivision and requires creation of a lot for single storey childcare centre building and lot for the "Public recreation and open space land", complied with through development consent and subsequently, registration of Deposited Plan 1175520 (Lots 502 and 504 respectively). Under this DP, Lot 504 is burdened by a Positive Covenant, being that this Lot is identified as the land to be dedicated to Council in accordance with MP10_177.

Council contends there are implications in approving the submitted plan of subdivision (creating proposed Lots 601 and 602) without conditions being inserted or amended in regard to MP10_177 and the already registered covenants under DP1175520 that the applicant has not disclosed and the Department must firstly address. For example if approved, conditions seeking land to be dedicated to Council for open space under Condition C12 must clearly reference proposed Lot 602.

This issue is inter-related with issue c. below, as it relates to the "Future dedication of the land that will contain private development".



b. Future Utility of the Overland Flow Path

Brown Consulting's Water Management Report, approved for the Concept Approval and Project Approval, modelled the impact of flood events up to the Probable Maximum Flood (PMF) event including the utility of the failsafe PMF overland flow path with no obstacles or impediment to flow conveyance along the flow path.

The modification applications do not demonstrate how the overland flow path will maintain its ability to contain flows as a result of building over the flow path. The future utility of the overland flow path may be reduced as a result of the modification. The proposal must ensure the functionality of the failsafe PMF overland flow path so that overland flows are conveyed from Macpherson Street to Fern Creek during the PMF event however, no details are provided of the necessary inlet structure to the covered channel or whether all overland flows will be contained within the channel.

An update of the Stormwater and Environmental Management Plan – Buffer Area 3 – 14-18 Boondah Road, Warriewood is required to reflect the changes to flood modelling and water management parameters such as site imperviousness and flood storage, and to demonstrate that there are no redirections of overland flows onto surrounding properties. This requirement needs to take account recent approval for the Stage 2 residential development based on MP09_162 when reassessing the impact of the carpark structure over the top of the overland flow path.

Further, Council does not consider any proposed structures over the failsafe PMF overland flow path to be drainage structures but are private structures over the top of the path. To protect the integrity of the failsafe PMF flow path, these structures will need to be maintained by the owner over the life of the development and should be enforced through the creation of an appropriate Section 88B instrument. The intent of this instrument is to restrict the alteration of surface levels and anything on the land which impedes or interferes with the overland flows unless approved by Council.



c. Future dedication of the land that will contain private development

As discussed in b. above, the building over the failsafe PMF overland flow path is not a drainage structure and the car park area, built over the overland flow path, and is a private structure that must be maintained along with the land underneath the structure by the proponent for the life of the development.

Council asserts that the utility of the failsafe PMF overland flow path is greatly compromised. Council will not be held responsible, in the future, for the overland flow path particularly if there is to be a private structure built over it. Council contends that if approved, the building over this land obviates the requirement for such land to be dedicated to Council for the purpose of public recreation and open space. Clearly, the new site area (Proposed Lot 601) proposes a private structure built over the failsafe PMF overland flow path and is private land. Notwithstanding that the modification applications propose that the northern section of the failsafe PMF overland flow path to be built upon, the southern section of the overland flow path will be vulnerable to future potential failure due to a compromised overland flow path upstream (see MAP 1). There is a high level of uncertainty with the utility of the failsafe PMF overland flow path and, in this circumstance, transferring the future maintenance problems to Council is onerous, unreasonable and financially unsustainable. This land, containing the overland flow path with a private structure over it, unreasonably increases Council's exposure to risk.

Council asserts that the land containing the failsafe PMF overland flow path with a private structure over it has no public benefit, and certainly cannot be utilised for public recreation and open space, being the purported purpose that this land is to be dedicated to Council (noting that Council never intended or accepted it as an offset for open space acquisition).

The full length of the failsafe PMF overland flowpath (see MAP 1) must be shown as part of the proposed Lot 601 as this flow path must be kept as a flood way and a suitable instrument to cover that use and its ongoing provision/maintenance by the developer/owner to retain it fit for the purpose



of a failsafe PMF overland flow path and this area not be dedicated to Council and a cash adjustment be made to the payable cash contribution.



MAP 1 – LOCATION OF THE FAILSAFE PMF OVERLAND FLOWPATH



Aerial Photography - May 2012

Proposed Child Care Centre Overland Flow Paths - Map 1





If the PAC is of the mind to approve the applications, Council asserts that as a minimum, that PAC amends the following:-

- The full length of the failsafe PMF overland flowpath (see MAP 1) must be shown as part of the proposed Lot 601 as this flow path must be kept as a flood way and a suitable instrument to covers that use and its ongoing provision/maintenance by the developer/owner to retain it fit for the purpose of a failsafe PMF overland flow path.
- All relevant conditions in the Concept Approval and Project Approval regarding the Statement of Commitments and land dedication be amended in the following manner:-
 - the amount of land dedicated for active and passive open space on-site (8,920sqm) being revised to 6,660sqm (being the amount less the land containing the failsafe PMF overland flow path as detailed in MAP 1); and
 - the cash contribution payable is recalculated at the rate in the approval taking account the reduced land to be dedicated (as works-in-kind).



MAP 2 – LOCATION OF THE OVERLAND FLOW PATH AND HIGHLY FLOOD AFFECTED LAND - OPEN SPACE AREA INTENDED TO BE DEDICATED TO COUNCIL



Aerial Photography - May 2012

Highly Flood Affected Land





d. Suitability of proposed Lot 602 and in effect, part of proposed Lot 601, for open space purposes

The land that the PAC has conditioned to be dedicated to Council for public open space includes in part the overland flow path (western portion of proposed Lot 601) adjoining the proposed Child Care Centre as well as other highly flood affected perimeter lands (proposed Lot 602). The modification applications and the intended commercial use of the land required by the PAC to be dedicated as public open space provides opportunity to reassess the suitability of all of the land intended to be dedicated.

Council contends that the land, intended by the PAC's previous decision, to be dedicated to Council for open space (being the western portion of proposed Lot 601 and proposed Lot 602, (identified in MAP 2) is:-

- very low lying, highly flood affected land which in part is an extension of Warriewood Wetlands or a floodway since a significant portion of the land is permanently inundated,
- narrow, elongated in shape (which combined with the above constraint, is not suitable for any form of open space),
- a modified, lowered parcel of land that was surplus to the applicant's development,
- overvalued in terms of the monetary value for that works-in-kind (being the credit offset in the total cash contribution).

All of the land in question does not meet the test of providing suitable public open space recreational benefit, particularly given its severe flood affectations, elongated shape, remoteness, etc. Given the severe constraints on the land, the land is not suitable for dedication. This has serious ramifications for conditions already imposed by the PAC, however not disclosed by the applicant to be affected by the modification applications (see section 6 of submission).



<u>To summarise.</u> Council strenuously objects to building over an overland flow path for the following reasons:-

- Uncertainty with likely impacts by placing an impermeable structure over an overland flow path.
- There is insufficient clearance for a maintenance vehicle to access underneath the car park structure.
- Council should not be made responsible for any ongoing responsibility over the <u>full</u> length (2260sqm) of the overland flow path (See MAP 1).
- The land containing the overland flow path was to be dedicated to Council for public benefit, which is greatly diminished by the modification applications.
- Council contends that the land containing the overland flow path can only be dedicated to Council with little or no liability or risk associated to it.

Council considers that, irrespective of whether or not the PAC agrees to the private use of part of the Floodway for private carparking, the whole of the overall dedication of land as open space must be revisited as to its suitability for usable public open space as well as what is being required to be paid for this land and the offset in the amount of cash contribution being allowed.

4 Other Carpark – related Matters (Private Structure over failsafe PMF overland flow path)

Building over an overland flow path, for the purpose of car parking, will result in a reduction in deep soil planting, adverse impact on adjoining residents, safety and congestion issues due to the car park design and visual impacts. These are discussed below.

a. The reduction in deep soil planting area

The car parking area, not considered a drainage structure, reduces the amount of deep soil area. No qualification is made in these applications regarding the change to the deep soil area, and its impact on Schedule 2 Part 2 Condition 2(b) (iii) of the Concept Approval.



b. Impact on adjacent residents (external of the total development)

Impacts generated by childcare traffic, with an estimated 80 vehicle trips per hour during the morning and evening peak times, adversely impacts the amenity of adjoining residents particularly to the west. The carpark area is devoid of appropriate landscaping along the western boundary and likely changes in carpark design to provide better functionality will negate any opportunity to establish an acoustic barrier between residential properties in the west and the childcare centre development on proposed Lot 601.



This photograph shows the overland flow path, over which the carpark area is to be located well above the existing ground floor height. carpark structure will have a similar floor level to the proposed childcare The privacy of adjoining centre. residents to the west will compromised due to the lack of effective screening. The modification applications make no attempt to maintain privacy between the two sites which is compromised as a result of the proposed side boundary setback to the west.

Increased childcare traffic also adversely affects the air quality of adjoining residential properties.

c. Safety and Congestion issues due to car park design

It is ludicrous to propose a childcare centre of this size without designated pick up and drop off points. As proposed, parents/carers need to enter the total development and into the designated childcare centre car park then park their car to drop off or pick up their children. This traffic congestion, particularly during the peak times, is further exacerbated by residential traffic entering and leaving via the same driveway and into the local road network.



The resultant traffic congestion combined with noise and air pollution generated by vehicular traffic has consequences in and around the childcare centre and associated carpark impacting the safety of childcare users and residents in the total development.

The internal parking aisle is too narrow for cars to safely exit the car park without obstructing cars entering the facility that, in turn, increases traffic congestion levels and safety considerations unnecessarily. The car park area at the southern end including the driveway width must be redesigned to ensure safety and functionality.

d. Visual implications

The car park area, a structure built over the failsafe PMF overland flow path, is generally at the same level as Macpherson Street and together with the childcare entre building will become a dominant feature in the streetscape which is otherwise residential in form and character, with landscaping planted along the street frontage. The proposal, as submitted directly contradicts Council's planning controls 'where a key outcome of landscaping is to soften the built form'.

5. Impacts from Proposed Intensification of Future Childcare Centre Building and Use

As discussed already, Council contends this intensification of the childcare building must be considered in conjunction with the use and operation of the childcare centre, as the proposed modifications have significantly implications on the streetscape and visual impacts, residential amenity (internal of the total development at 79-91 Macpherson Street and external) and increases risks to life and property. Discussion below will concentrate on streetscape and visual impacts, residential amenity (internal of the total development) and risk to life and property, given that residential amenity (external of the site) is discussed in 4(b) above.

a. Streetscape and Visual Impacts

The two storey building with little articulation now abuts the street boundary, leaving no room for any landscaping, and will dominate the streetscape. This building will be the only built form in front the established



street building setback with no opportunity for landscaping to be established to soften the bulk and scale of this building. In contrast, the residential buildings in the same development, 3 storeys in height, are setback 5m from the street with landscaping. Other development along Macpherson Street maintains significant front building setbacks which incorporate extensive landscaping including significant tree and shrub planting.

This is a non-residential building, commercial in its nature as a childcare centre, located within a residential setting. Approving a two storey building with little articulation along the front façade and located on the front boundary with no building setback is, in this location, grossly inappropriate. This building must be setback from the front boundary allowing for a front landscaped area to minimise visual and streetscape impacts and reduce the bulk and scale of this building.

b. Residential amenity (internal of total development)

Increasing the childcare building to two storeys, a 280% in gross floor area and commensurate car parking spaces combined with a 200% increase in total site area has consequences on the future amenity of residents within the total development.

Concerns have already been raised regarding the future utility of the failsafe PMF overland flow path particularly as the overland flowpath is part of the total water management regime for the complete development approved under MP09_162, and given there has been no assessment demonstrating that the failsafe PMF overland flow path has not been compromised by the proposal may result in water management issues across the whole development. These water management issues are the responsibility of owners within the whole development that, in turn, impacts on the future amenity and enjoyment of residents living within this development.

As discussed already, childcare centre-generated traffic and residents entering and leaving the site particularly during the peak times, will exacerbate traffic congestion due to the proposed increase in the childcare



centre. The resultant traffic congestion combined with noise and air pollution generated by vehicular traffic has consequences in and around the childcare centre and associated carpark impacting the safety of childcare users and residents in the total development.

The increased floorspace and building footprint to accommodate up to 100 children means that the outdoor play areas are on both levels of the building. The size and operation of the childcare centre including the location of outdoor play areas and lack of landscaping around the childcare centre means that operational noise from the childcare centre is greater. A boundary fence separates the childcare centre building from its western neighbours while an internal driveway is between it and the residents in 226 dwellings (being Stage 1 of the same development). Noise from the childcare centre needs to be considered as part of the proposed increase in floorspace and building footprint to minimise acoustic impacts from the childcare centre. If the noise cannot be ameliorated, this impacts on the amenity of adjoining residents.

c. Increased Risk to Life and Property

The proposed modifications, in effect, seek to increase the number of children able to be cared for in the childcare centre building, greatly adding more people exposed to the associated risks of flooding (including flood isolation and flood evacuation risks). The tripling in population to be accommodated in this building is proposed however, no consideration has been made of the additional risks posed by intensification of the site in terms of flood risks to life and property, and whether the flood risks may be adequately managed by flood mitigation and any future Flood Emergency Response Plans. This is a primary example of why the proposed changes to the building's size must be considered in concert with the use and operation of the building as a childcare centre.

A child care centre is recognised as a Special Flood Protection land use in Pittwater 21 DCP and it would be expected that the majority of occupants in a child care centre (100 children between ages 0 – 5 and an estimate of at least 15 staff] are generally unable to self evacuate in a flood emergency. Council's exhibited draft Pittwater LEP 2013 also recognises



the need to meet floodplain risk management objectives for child care centre uses, namely:-

- "(a) to ensure emergency response needs are adequately addressed on land to which this clause applies,
- (b) to maintain the operational capacity of emergency services and developments with particular evacuation or emergency response issues during extreme flood events,
- (c) to avoid material adverse impacts on flood behaviour and the environment.
- (d) to ensure development to which this clause applies is designed to minimise the risk to life from flood."

From a flood planning perspective, the proposed floorspace represents additional children at the facility represent additional lives at risk to injury, psychological impacts or at the most extreme, death, due to flood risks associated with flood isolation, difficult flood evacuations, fire and medical emergencies during a flood event. The additional numbers of parents and guardians seeking to access the childcare centre in attempt to reach their children in vehicles or by foot during a flood event could also be significant, with impacts that could result in injury or death, as well as vehicle damages.

Additionally, the modification applications have not demonstrated whether the additional risks posed by intensification of the use of the site is acceptable in terms of flood risks to life and property, and whether the flood risks may be adequately managed by flood mitigation and any future site Flood Emergency Response Plans.

Section L6.9.1 of the NSW Government's *Floodplain Development Manual* (2005) considers childcare facilities, along with aged and disabled facilities, mobile homes and caravan parks, isolated houses, schools, hospitals, and community centres, to have special evacuation needs and that it may well mean that "these development types are precluded from an area of the floodplain satisfactory for normal residential development".



Council recognises that the Planning Assessment Commission, in approving the Project Approval MP10_0177, accepted the reliance of sheltering-in-place as an acceptable emergency response strategy at the site. The current modification applications however significantly increases the risks of life and, in this instance, Council recommends that on-site vertical refuge (sheltering-in-place) should only be considered as a secondary or method of last resort.

It is also recognised that once Macpherson Street (low point) is raised to the 1% AEP + Climate Change level and the Boondah Road frontage to the development is raised to the 1% AEP flood level, the emergency route will improve and the potential time of isolation will reduce. However, the route will have limitations in that once completed, it will still not achieve a flood free evacuation route up to the Probable Maximum Flood.

Given the complexities of the special flood evacuation needs for occupants of the proposed development and the risks of flood isolation, and risks posed to visitors to the site in a flood situation, it is not appropriate for the childcare centre to increase its number of childcare placements. Council strenuously objects to the proposed modifications and requests that the Planning Assessment Commission not support the applications.

6. Proposed changes to the land for active and passive open space (on-site)

The applicant has not disclosed that the modification applications, in effect, privatise the land that the PAC identified to be dedicated to Council for open space and seeks to reduce the size of that land without increasing the monetary amount of cash contribution payable.

a. 'Privatisation' of part of land proposed to be dedicated as public open space

The applications seek to construct a private carpark over the northern part of this floodway to service a much expanded Child Care Centre. The carpark is an essential adjunct to allow the expansion of the childcare development. The private use of the land proposed to be dedicated to the public and now proposed in part to be used as a private carpark for private development draws into question the whole of the proposed land



dedication in regard to its suitability for community open space, its net community benefit, the monetary \$ value for this land and the associated value of works in kind versus the amount of cash contribution being provided to the developer.

What the developer is now doing is taking back part of this land to use for private purposes without any cash adjustment to compensate for reduced open space. This provides the ability for the proposed Child Care Centre (or any other future commercial use) to significantly increase in scale of development. Council never contended that this section of land and Lot 602, conditioned by the PAC to be dedicated to Council with a \$ offset to the cash contribution payable, had a recreational value and certainly not at the \$325/sqm rate applied by the PAC.

b. Land Fit for Purpose

The land PAC identified to be dedicated to Council for public open space relates to the failsafe PMF overland flow path (western portion of proposed Lot 601) and other highly flood affected perimeter lands irregular in shape and dimensions (proposed Lot 602). All of this land is not suitable as an open space area, given its severe flood affectations, elongated shape, remoteness, etc., is of nil recreational benefit in terms of the needs of the community as expressed in Warriewood Valley Section 94 Contributions Plan.

It is difficult to demonstrate how this land, not considered by Council to be fit for the purpose, is worth \$2,899,000¹. Council asserts that the land dedication, the valuation for that land, in turn, the total value attributed to it be reviewed.

¹ Value of the land, attributed as works in kind, under the Statement of Commitments in Schedule 4 of MP09_162.



c. The cash contribution payable and works in kind value must be reassessed

A condition affected by these modification applications, not disclosed by the applicant, is the Statement of Commitments and development contributions given there needs to be a recalculation of the cash contribution payable to Council and the commensurate 'works-in-kind' value attributed to a reduced parcel of land conditioned by the PAC to be dedicated to Council for active and passive open space (on-site).

Council reiterates its original position that this land, being the western portion of proposed Lot 601 and lands comprising Lot 602, was not required by Council or the Section 94 Plan for open space and if it were dedicated to Council then it should be free of charge or at a considerably lower value subject to independent valuation.

Council contends that proposed Lots 601 and 602 should remain in the private ownership. The removal of this land dedication then provides the developer the scope to use all of the subject land in a private context. This is a far cleaner arrangement for this overall development. Given that the flood way segment will still need to be kept as a flood way, a suitable instrument/restriction to cover that use and its ongoing provision/maintenance by the developer/owner to retain it in a fit for purpose condition needs to be applied.

Council therefore requests:-

- The PAC overturn its original position and not require this land to be dedicated to Council, being the western portion of proposed Lot 601 and proposed Lot 602, as this land is not suitable for public open space, offering no recreational or community benefit.
- The cash contribution amount be recalculated to add the total value attributed to this particular works-in-kind (being \$2,899,000 as stated in the Statement of Commitments in Schedule 4 of MP09_162).



CONCLUSION

If the two storey building is approved, with no assessment of likely impacts from an increased childcare centre operation, this seriously undermines the future assessment and any subsequent determination for the childcare operation being carried out within this building. At worse, a future development application for the building's use as a childcare centre catering for up to 100 children (as proposed by these modification applications in terms of the increased floorspace, development footprint and total site area) could be refused due to significant adverse impacts that should have been addressed as part of the current modification applications. Approval of this increase in child care development is not in the public interest.

Council strenuously objects to building over an overland flow path for the following reasons:-

- Uncertainty with likely impacts by placing an impermeable structure over an overland flow path.
- There is insufficient clearance for a maintenance vehicle to access underneath the car park structure.
- Council should not be made responsible for any ongoing responsibility over the <u>full</u> length (2260sqm) of the overland flow path (See MAP 1).
- The land containing the overland flow path was to be dedicated to Council for public benefit, which is greatly diminished by the modification applications.
- Council contends that the land containing the overland flow path can only be dedicated to Council with little or no liability or risk associated to it.
- Council considers that, irrespective of whether or not the PAC agrees to the
 private use of part of the Floodway for private carparking, the whole of the
 overall dedication of land as open space must be revisited as to its suitability
 for usable public open space as well as what is being required to be paid for
 this land and the offset in the amount of cash contribution being allowed.

Council seeks the PAC's support to reconsider the dedication of land identified for active and open space (on site) as expressed in the modification applications as part Lot 601 and Lot 602 as the land does not meet the test of providing suitable public open space recreational benefit, particularly given its severe flood affectations, elongated shape, remoteness, etc. Council also requests that PAC re-examine the cash contribution amount to account for the total value attributed to this particular



works-in-kind (being \$2,899,000 as stated in the Statement of Commitments in Schedule 4 of MP09_162). Any review by the PAC resulting in increasing the cash contribution payable to Council ensures financially sustainability for the Warriewood Valley Section 94 Plan, particularly as this land was never identified in the Plan for open space, and provides no benefit to the community for recreational purposes.

If the PAC is of the mind to approve the applications, Council asserts that as a minimum, that PAC amends the following:-

- The full length of the failsafe PMF overland flowpath (see MAP 1) must be shown as part of the proposed Lot 601 as this flow path must be kept as a flood way and a suitable instrument to covers that use and its ongoing provision/maintenance by the developer/owner to retain it fit for the purpose of a failsafe PMF overland flow path.
- All relevant conditions in the Concept Approval and Project Approval regarding the Statement of Commitments and land dedication be amended in the following manner:-
 - the amount of land dedicated for active and passive open space onsite (8,920sqm) being revised to 6,660sqm (being the amount less the land containing the failsafe PMF overland flow path as detailed in MAP 1); and
 - the cash contribution payable is recalculated at the rate in the approval taking account the reduced land to be dedicated (as works-in-kind).