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27 February 2017

Bruce Colman
Director, Land Release
NSW Planning and Environment
GPO Box 39
SYDNEY NSW 2001

Dear Mr Colman

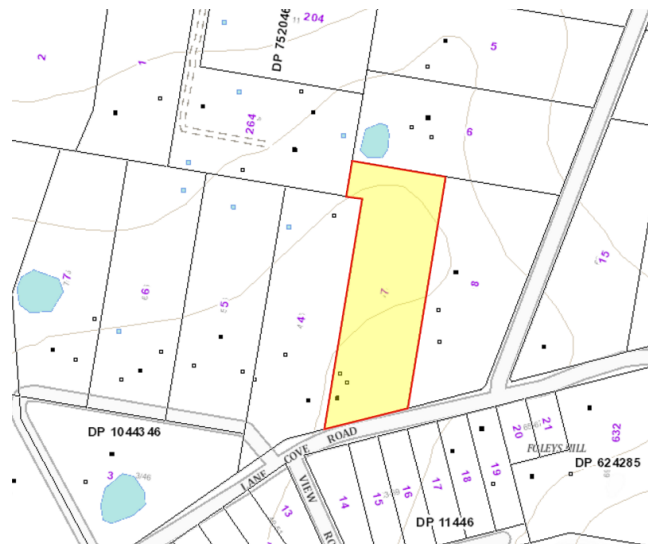
**RE: The Ingleside Precinct Draft Ingleside Strategy – Letter of Objection
48 Lane Cove Road, Ingleside**

Tomasy Planning Pty Ltd has been engaged by the owners of land known as 48 Lane Cove Road, Ingleside, to submit a letter of objection in respect to the Draft Structure Plan for the Ingleside Precinct, which shows the majority of the subject property as Environmental Conservation. The purpose of this submission is to demonstrate that the draft plan, in respect to our client's property, is in error and there is no rationale or environmental reason why the majority of this property falls within an environmental conservation classification.

Details of the property to which this submission relates are set out below:

Site Profile

Site Address:	48 Lane Cove Road, Ingleside
Legal Description:	Lot 7 in DP 30325
Site Area (Approx.):	20,303sqm
Local Government Area:	Northern Beaches Council (formerly Pittwater Council)
Owners Details:	J Montelone and L Montelone





Source: <https://six.nsw.gov.au/>

The subject property has been in our client's ownership for many decades and erected in the south western corner is a substantial, two-storey residence. As depicted in the photograph above, over 50% of the property is totally cleared and is levelled grass pasture land. This area is devoid of any substantial vegetation except for some minor tree growth on the eastern boundary. The rear of the site has some rock outcrops with scattered scrub.

Immediately to the west, east and north are significant residential dwellings located on landscaped, large semi-rural type lots. On the southern side of Lane Cove Road is a vegetated area which embraces four separate parcels of land.

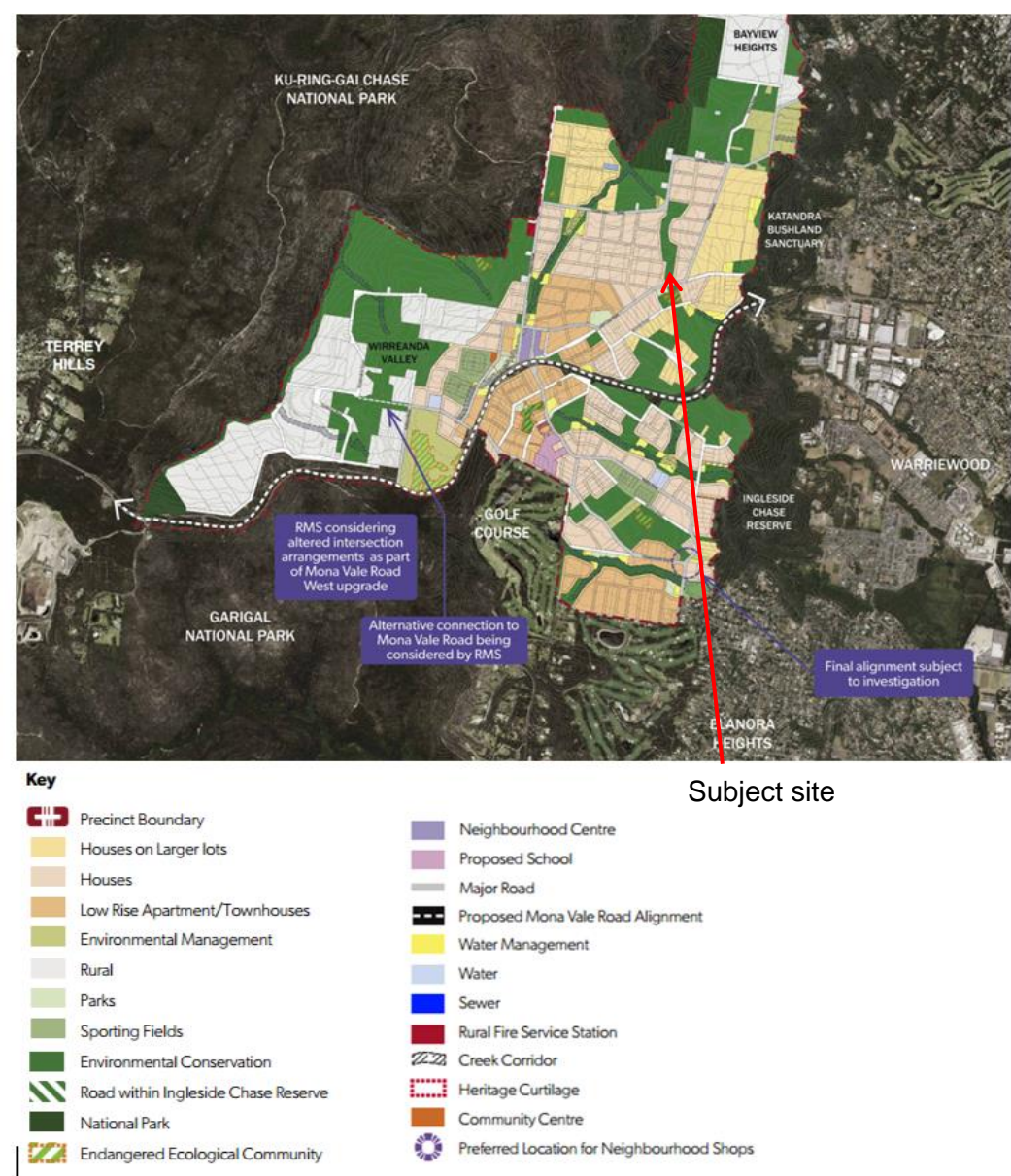
A number of the properties in this immediate locality have in recent times been purchased by large development companies in anticipation of the land being rezoned for urban purposes under the Ingleside Draft Structure Plan.

DRAFT STRUCTURE PLAN

The subject site falls within the proposed Ingleside Urban Release area. The Draft Structure Plan for Ingleside has been on public exhibition during January and February 2017 and all submissions are to be submitted prior to 28 February 2017. In preparing this letter of objection, a detailed site inspection has taken place of the subject property, and, more importantly, of the immediate locality.

The client attended the workshop on Saturday, 11 February 2017 at the Northern Beaches Council's Mona Vale Customer Service Centre in an endeavour to understand their predicament and why Council and other instrumentalities have shown the subject property as an environmental conservation area. As a result of attending the workshops our client, however, has no clearer direction on why this action has been taken.

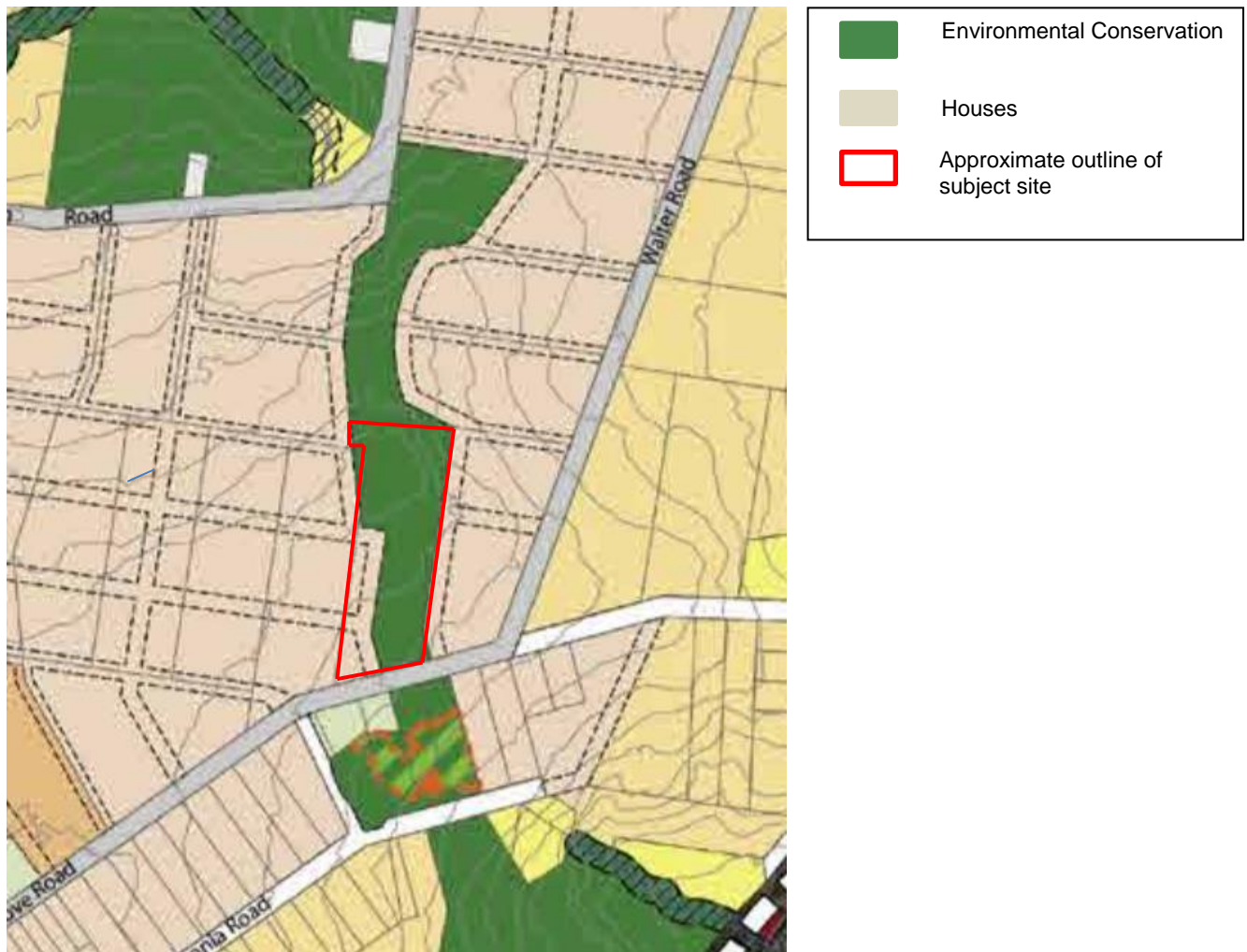
The Draft Ingleside Structure plan is shown below:



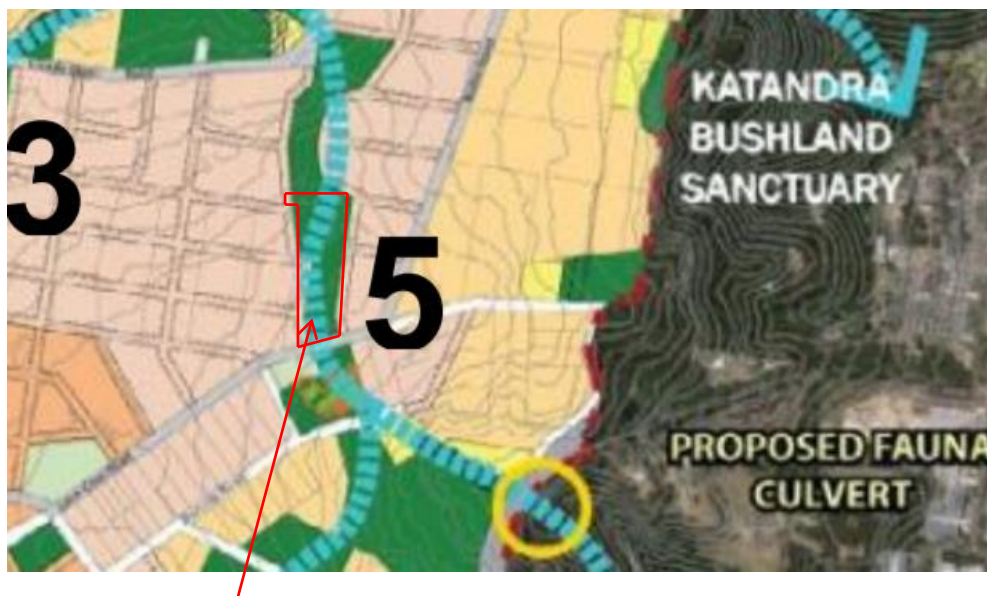
Source: Structure Plan – NSW Department of Planning 2016



Subject site on the current Draft Plan



Source: Extract from the Ingleside Structure Plan



Approximate location of subject site

Source: Extract from the Ingleside Precinct Ecological Corridors

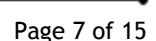
The current draft structure plan shows a major environmental conservation area over 90% of the subject property. It is essential for Council to acknowledge that over 60% of the subject land is devoid of any significant vegetation with the majority of the site being open, gently undulating grassed land. This is demonstrated by the two photographs that follow:



Subject property when viewed from Lane Cove Road



DRAFT STRUCTURE PLAN 4

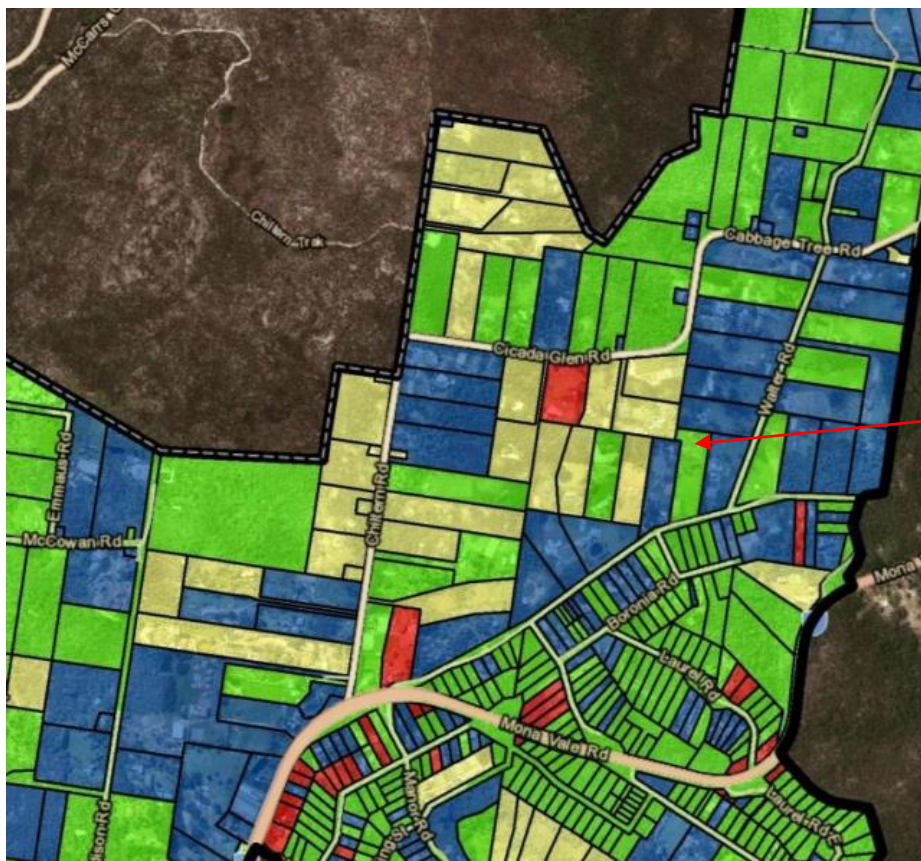


Grounds of Objection to proposed Structure Plan 2016/17

It is submitted that our client's property comprises 60% of the site devoid of any significant vegetation and represents an area of land ideal for residential purposes. It is also submitted that there are other viable options to allow for a vegetated wildlife corridor connecting environmentally sensitive areas in the north to the south of Lane Cove Road. These options will be elaborated upon later in this submission.


- To define 95% of the subject property as Environmental Conservation – Ecological Corridor, creates an unnecessary and financial burden upon the client's property without any justification for the need of such a corridor of this width (80m) over land which is unvegetated and is level grassed pasture land.
- This proposal flies in the face of sound planning objectives and in particular contravenes the objectives of *Section 5 of EP&A Act 1979* (as amended) in the following manner:
 - It fails to encourage the proper management and development of natural and artificial resources for the purpose of promoting the social and economic welfare of the community, in that, 60% of the subject site does not comprise any vegetated areas, landscape features, forests or the like;
 - The proposal fails to promote or coordinate the orderly and economic use and development of land as at least 80% of the subject site is ideal for residential purposes and to zone this section of the land for environmental conservation is absurd and without substance. The land suitable for residential purposes possesses the following essential characteristics for urban development, being:
 - Devoid of vegetation
 - Gently undulating land (ideal for construction of residential dwellings) with minimum cut and fill
 - Not flood prone
 - Drains towards Lane Cove Road and capable of being connected to future stormwater drainage infrastructure and sewage facilities
 - The protection of the environment and conservation of native animals and plants can be adequately accommodated by way of an ecological corridor some 20-40m wide shared on a common boundary as opposed to the imposition of placing it on one property over land which has no conservation or ecological value.
 - The location of the ecological corridor has been moved substantially from the west of our client's property to within the entire confines of their land, providing the opportunity for development to other properties, which have now been subject to acquisition provisions by large development corporations. This directly contravenes the social and economic welfare of the community.
 - It is evident that the Department of Planning, in consultation with Council, have taken the easy way of not showing a future wildlife corridor in a north-south direction traversing through our client's land without having due regard to Council's corridor mapping or vegetation mapping for this precinct. It is also evident based on Figure 5, property access for vegetation survey, from the Eco Logical Australia Report, that properties in close proximity to the subject land were not physically inspected, and in some cases, access from a public road resulted in low visibility due to the topography of the properties and their size and shape.

- The issue of equitable sharing and the responsibility of a Government body to place or locate public open space or environmental corridors that adversely affect only one property is deemed unreasonable, ie, if a corridor were to be shared equally by two parties to achieve the same objective, this could be deemed as fairer and justifiable.
- Our client has agreed to undertake an ecological study, taking into consideration the findings of Eco Logical Australia Pty Ltd report; however, to enable a professional exercise to be undertaken requires a significant amount of time including field work and it is imperative for the Department and Council to appreciate that the Draft Ingleside Strategy was placed on exhibition during January and February at a time when many consultants are on leave over the Christmas/New Year break. The period of 60 days including the month of January is considered inadequate for a project of this magnitude, which has taken decades to evolve to a stage to enable the Department of Planning to develop a Draft Ingleside Strategy. Our clients will undertake an independent study and this will be submitted to the Department for its consideration notwithstanding that the submission time ceases on 28 February 2017. If it has taken the Department and Council decades to develop the plan, it is not unreasonable for both these authorities to permit the submission of supporting documentation to be forwarded to the Department in defence of their case.
- A detailed review of the Eco Logical Australia Pty Ltd report has revealed that on the drawing headed property access for vegetation survey, within the precinct to which this submission relates, there are some 40 properties of which only 5 were accessed by the consultants. One of these properties included our client's land. It is essential for both the Department and Council to understand that the consultants did not visit any of the adjoining properties that abut our client's property and therefore could not form a fair and accurate opinion on ecological values relating to this precinct and, in particular, the location of the corridor. The diagram below depicts the properties that have been inspected:



Subject property


Legend


 Biodiversity Certification Assessment Area

Access

 Accessible

 No Access - High Visibility

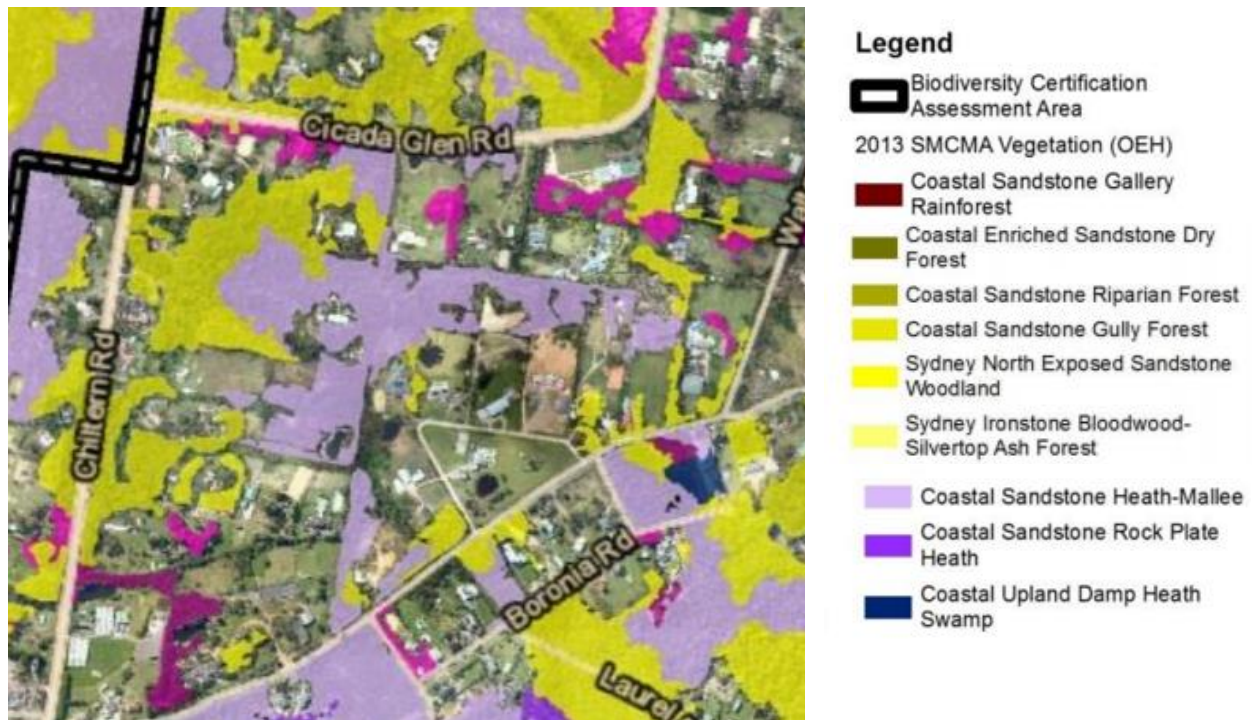
 No Access - Low Visibility

 No Access

- Council's Corridor Mapping, being figure 26, of the ECO Logical Australia Pty Ltd's report, Pittwater Council Wildlife Corridors, depicts Council's interpretation of where corridors should be located or which currently exist. Figure 26 shows an environmental corridor immediately west of our client's property which is consistent with the Draft Strategy Plan that was prepared in 2014. This document further reinforces our client's position that the corridor should be located west of their subject property which would be in accordance with Pittwater Council's wildlife corridor mapping as depicted below:



- Consideration has also been given to Figure 7, Vegetation Mapping, of the Eco Logical Australia Pty Ltd report (depicted below), which shows a very strong and dominant band of vegetation classified as Coastal Sandstone Heath-Mallee. This band traverses the precinct in an east-west direction and it is interesting to note that on the Draft Structure Plan, this east-west band has been defined for residential development with no recognition of its vegetation value, apart from the small section in the north of our client's property.



- It is submitted that the vegetation mapping fails to show the relevance of the proposed north-south ecological vegetated corridor when the vegetation mapping depicts a very strong component of the precinct as being located in an east-west direction from Walter Street through to Chiltern Road. This east-west vegetated corridor comprises significant pockets of Coastal Sandstone Heath-Mallee which include a continuous link of heavy vegetation. It is difficult to comprehend how Council, the Department and relevant consultants have ignored the need to recognise the value in preserving this vegetated area in preference to a north-south corridor which in part traverses grassland without any valued vegetation. To indicate that certain private lands would need to be vegetated to create an effective corridor has little or no substance when other areas are heavily vegetated and could be used as corridors to achieve the same objectives.
- The Strategy Plan does not show any planned fauna crossings at Lane Cove Road notwithstanding the ecological report strongly reiterates there is a need to effectively link the planned northern corridor to the southern side of Lane Cove Road. The topography of the land adjacent to our client's property along the frontage of Lane Cove Road is such that the south-western corner of the property would be the only section a fauna tunnel could be created; again, strongly reinforcing our view that the corridor west of our client's property represents the most logical location for a north-south environmental corridor.
- It is submitted that part of the northern component of the site, which comprises scrubland and some minor rock outcrops, possesses properties and characteristics that are suitable for residential urban purposes and, in this regard, it is suggested the amount of land that would need to be set aside for environmental conservation purposes and would protect any matters of environmental conservation value is shown cross-hatched green. The area cross-hatched green would comprise the ridgeline that traverses in an east-west direction and also possesses a steep gully in the north eastern corner. The plan on the following page also shows a preferred viable option to create an ecological corridor from the north of our client's land through to the timbered area on the southern side of Lane Cove Road, which is shown as Endangered Ecological Community on the Draft Biodiversity Assessment Report. This option is consistent with Council's corridor mapping as per Figure 26: Pittwater Council Wildlife Corridors, and also consistent with the Draft Strategy Plan produced by the Department of Planning and Council in 2014. The location

of a vegetated Environmental Conservation Corridor on the western side of our client's property permits a fauna crossing to be created under Lane Cove Road which would connect directly into the proposed Environmental Conservation lands on the southern side of Lane Cove Road, as shown on the 2016 Draft Strategy Plan. The proposed corridor is shown cross-hatched yellow.

This would also a permit a more equitable sharing of land for conservation purposes noting that our client already has over 20% of the site in options 1 and 2 shown as Environmental Conservation.



Option 1 – preferred option



Approximate Lot boundary



Proposed residential component



Proposed Environmental Conservation Area







Proposed corridor to link with Conservation area

In respect to Option 1, this provides for the Environmental Conservation – Ecological Corridor to be accommodated on the site immediately west of the subject land and this would be consistent with the corridor that was defined on the Draft Structure plan on the Ingleside Precinct in 2014. This corridor would permit a continuous link from the northern part of our client's site through to the proposed endangered ecological community south of Lane Cove Road. This option would also allow for a fauna crossing to be constructed under the Lane Cove Road as the topography of the land is capable of achieving this provision for a continuous link north to the south.

Option 2 – alternate option



-  Approximate Lot boundary
-  Proposed residential component
-  Proposed Environmental Conservation Area
-  Proposed corridor to link with Conservation area

This option allows for the creation of a corridor 40m wide shared between the common boundary of the subject site and the land to the east. This option would permit a more equitable distribution of land being set aside for an ecological corridor and would achieve the same objective as defined in the report prepared by Eco Logical Australia Pty Ltd.

Compulsory Acquisition

During discussions held on Wednesday, 22 February 2017 with Matthew Cuthbert of NSW Department of Planning and Gordon Edgar of Northern Beaches Council, the question of compulsory acquisition of properties zoned for Environmental Conservation was raised. The relevant officers were unable to give a clear and distinct answer on who is responsible for acquiring land for this purpose. Accordingly, it is submitted, if the subject land is zoned Environmental Conservation under a gazetted LEP, our client would immediately request that the land be acquired by the responsible authority under the provisions of the Land Acquisition (Just Terms Compensation) Act 1991. It is noted that any privately owned land that is acquired by government for public purposes, which is our view would include property zoned Environmental Conservation, is acquired by negotiation and agreement between the land holder and the acquiring authority. This matter is causing a great deal of concern for the current land owner and accordingly it is requested the Department of Planning, in consultation with Council, determine who is responsible for acquiring the land and under what statutory provisions along with a time table for acquisition following gazettal of any LEP.

Conclusion

It is submitted that the property known as 48 Lane Cove Road, Ingleside, does not possess the necessary environmental or ecological criteria to warrant 90% of the property being shown with an environmental conservation classification on the Draft Ingleside Strategy Plan 2016. This conclusion is reached having due regard to the following:

- At least 60% of the site is devoid of any vegetation and, in fact, is an open, gently undulating grassed land. To enable this component of the site to effectively serve as an ecological corridor, substantial planting would be required on private land which is a practice where the Government instrumentalities carry out as a last resort, when other lands are readily available with the correct criteria for conservation purposes within the immediate precinct.
- The Draft Plan fails to comply with Section 5 of the *EP&A Act 1979* (as amended) in that the objectives of this clause require the statutory authority preparing a structure plan to promote or coordinate the orderly and economic use and development of land. At least 80% of the subject site is ideal for residential purposes as it possesses the following essential characteristics for urban development:
 - Devoid of significant vegetation that would be defined as ecological conservation value
 - Gently undulating land (ideal for construction of residential dwellings) with minimum cut and fill
 - Not flood prone
 - Drains towards Lane Cove Road and capable of being connected to future stormwater drainage infrastructure and sewage facilities
- In 2014 a Draft Structure Plan was prepared by the Department of Planning in consultation with Pittwater Council, which showed the Ecological Corridor west of the subject site, whereas the current plan shows 90% of the corridor has moved in an easterly direction and is now proposed to be located within the subject land. The 2014 Plan showed the majority of the subject land as suitable for urban development. It is difficult to comprehend why the corridor has been relocated when it is not supported by Council's corridor mapping or, when one assesses the vegetation mapping for this precinct, which shows the band of vegetation worthy of retention traversing the area in an east-west direction as opposed to the north south corridor defined on the current structure plan.
- Council's Corridor Mapping, as shown in Figure 26 within the Eco Logical Australia Pty Ltd report, shows the Environmental Corridor west of the subject property, which further reinforces the client's position that the land does not possess any environmental ecological significance that would warrant 90% of the property being denoted as Environmental Conservation.
- Vegetation mapping, Figure 7, of the Eco Logical Australia Pty Ltd report, shows a very strong and dominant band of vegetation classified as Coastal Sandstone Heath-Mallee, traversing the precinct in an east-west direction. It is noted that on the Draft Structure Plan, the Environmental Conservation corridor is shown running north-south which is completely contrary to the vegetation mapping. Where land has been defined for Coastal Sandstone Heath-Mallee west of the client's property as shown on the Draft Plan, is shown suitable for residential development.

- The Draft Strategy Plan does not show any planned fauna crossing at Lane Cove Road, notwithstanding the Ecological Report recommends the need to effectively link the planned north corridor to the south of Lane Cove Road. It would be reasonable to assume there is no crossing shown due to the topographical features of the landscape which do not permit a fauna underpass in this location. If a crossing was to be provided, the only option would be west of the subject land where the road configuration does provide an opportunity for a crossing subject to engineering design.
- The Draft Strategy Plan fails to provide an equitable sharing of responsibility for land to be set aside for Environmental Conservation purposes. The subject land is severely prejudiced with 90% of the property being shown as Environmental Conservation, whereas adjoining properties east and west do not have the same impediment.
- Two options have been developed which show alternate locations for the proposed ecological corridor. The first option, which is the preferred option, shows a corridor some 40m wide immediately west of the subject land and in the location shown on Council's Corridor Mapping and the Draft Structure Plan 2014. This option would provide equitable sharing for environmental management of land with 20% of the subject property being set aside for this purpose and with the corridor immediately west of the property which provides an effective link from the north to the south. The second option is to locate the corridor along the eastern common boundary of the subject land with 20m being equally shared by the adjoining owner. This option is not considered to be the preferred option as it does not create a suitable point of fauna crossing from the north to the south over Lane Cove Road. If the statutory authorities are adamant that a corridor in this location is desirable, the corridor should be equally disbursed between the two properties with a maximum distance of 20m each side of the common boundary.

It is respectfully submitted that a sound professional case has been developed to support the relocation of the Environmental Conservation Corridor and situated west of the subject property, or alternately, a corridor some 40m wide equally shared along the common eastern boundary.

Our client will be undertaking an independent ecological study of the subject property and immediate precinct and this will be submitted to the Department of Planning and Council upon completion.

It is submitted that the current mapping of the corridor is in error and contravenes Council's corridor mapping and fails to demonstrate compliance of the objectives of *Section 5* of the *EP&A Act 1979 (as amended)* as the current plan fails to promote or coordinate the orderly and economic use and development of land, in that 80% of the subject property is ideal for residential purpose and does not possess the essential criteria to be classified as Environmental Conservation.

It is requested that we seek immediate clarification on who is the responsible authority for acquiring land zoned for Environmental Conservation and would the process of acquiring the land be undertaken in accordance with the Land Acquisition (Just Terms Compensation) Act 1991?

We would welcome the opportunity in having further discussions with the Department's representative, Matthew Cuthbert and Council's officers.

Yours faithfully,



DENIS SMITH
Planning and Property Consultant