

12 December 2019

Amanda Harvey  
A/ Executive Director, Eastern Harbour City  
Department of Planning, Industry and Environment  
Level 24, 320 Pitt Street  
SYDNEY NSW 2001

Our Ref: 2019/701569

Dear Ms Harvey

**Review of Gateway Determination – PP\_2018\_NBEAC\_0004\_00 – 2 & 4 Nooal Street & 66 Bardo Road, Newport**

Northern Beaches Council wishes to advise that it is seeking a Gateway Determination Review for the above Planning Proposal and provides the relevant form and justification supporting the request.

Council has reviewed the Gateway Determination and the Gateway Determination Report and formed the view that the Planning Proposal has not demonstrated strategic or site specific merit. Further, the Gateway Determination appears to be based on inaccurate information in relation to the flood and estuarine hazards that affect the site.

Council believes the proposal should not proceed for the following reasons:

1. A site specific Planning Proposal for the site is premature and is contrary to the Greater Sydney Commission's preference for holistic, consultative and comprehensive strategy led management of urban change.
2. Council's draft LSPS and indicates that Council already has existing capacity with residential zoned land to meet housing targets and provide seniors housing.
3. The DPIE Gateway Determination report contains errors in relation to the affectation of the site to natural hazards. The site is subject to flooding at the 1% AEP and PMF events under Newport Flood Study, 2019 and this has not been appropriately considered.
4. The site is affected by estuarine inundation as defined by *Pittwater Estuary Mapping of Sea Level Rise Impacts*, Cardno, 2015 and this has not been appropriately considered.
5. The proposal does not demonstrate site specific or strategic merit, and is inconsistent with Pittwater Local Strategy 2011 the draft Northern Beaches Council Local Strategic Planning Statement and the existing built form and character of the area.

6. The proposal is not needed to provide additional senior housing opportunities in the locality as the current residential zones have existing capacity to support senior housing development free of natural hazards.
7. Northern Beaches Council is generally on track to meet required housing targets, with the Councils Housing Study the appropriate vehicle to investigate and consider any additional housing opportunities.
8. The proposal is not consistent with all components of the strategic planning framework, with specific reference to North District Plan Planning Priorities N5, N17 and N22 and Ministerial Direction 2.2 Coastal Protection, 4.3 Flood Prone Land and 7.1 Metropolitan Planning and State Environmental Planning Policy (Coastal Management) 2018.
9. The proposal does not represent orderly and economic planning.
10. The proposal creates an undesirable precedent for similarly zoned adjoining properties.
11. The proposal is inconsistent with the existing and desired future built form and local character of the area.

To assist with the Gateway Determination Review, Council has provided the following documents:

- Gateway Determination Review form
- Planning Proposal PP0003/17 v3
- Northern Beaches Council's response to the Gateway Determination Report

Should you require any further information or assistance in this matter, please contact Andrew Pigott, Executive Manager Strategic Planning on 9942 2710.

Yours faithfully



Louise Kerr  
Director Planning & Place

<b>ITEM</b>	<b>REVIEW OF THE GATEWAY DETERMINATION REPORT OF THE DEPARTMENT OF PLANNING, INDUSTRY AND ENVIRONMENT FOR PLANNING PROPOSAL - 2 AND 4 NOOAL STREET AND 66 BARDO ROAD, NEWPORT</b>
<b>REPORTING MANAGER</b>	<b>MANAGER STRATEGIC &amp; PLACE PLANNING - ANNE-MAREE NEWBERY</b>
<b>TRIM FILE REF</b>	
<b>ATTACHMENTS</b>	<b>NIL</b>

## **PURPOSE**

To review the Gateway Determination (GD) report issued by the Department of Planning, Industry and Environment (DPI&E) for the properties at 2 and 4 Nooal Street and 66 Bardo Road, Newport (subject site) and to formally request a Gateway Review as the Planning Proposal does not demonstrate strategic or site specific merit.

## **EXECUTIVE SUMMARY**

On 4 September 2017 Council received a Planning Proposal to amend Pittwater Local Environmental Plan 2014 (Pittwater LEP 2014) for land at 2-4 Nooal Street and 66 Bardo Road, Newport. The Planning Proposal sought to add an additional permitted use on the site through Schedule 1 of the Pittwater LEP 2014 to permit 'seniors housing'.

The Planning Proposal was reported to Council's meeting of 28 November 2017, and Council subsequently resolved to not proceed to Gateway Determination.

The proponent sought and was granted a Rezoning Review by the then NSW Department of Planning & Environment (DPE). The DPE referred the matter to the Sydney North Planning Panel (SNPP) for a decision as the relevant panel for the Northern Beaches area.

The Sydney Northern Planning Panel (SNPP) considered the Rezoning Review at its meeting on 2 May 2018 and determined the Planning Proposal should proceed with substantial amendments that were not communicated or discussed at the SNPP meeting.

Given the substantial changes sought by the SNPP to the Planning Proposal, Council requested to be appointed the Principal Planning Authority (PPA) role which was subsequently granted.

The Planning Proposal was submitted to the Northern Beaches Local Planning Panel (NBLPP) on 1 August 2018. The NBLPP considered the Planning Proposal and determined that the proposal should not proceed to a Gateway Determination.

Given its role as PPA, Council at its meeting of 28 August 2018, was obliged to submit the Planning Proposal for a Gateway Determination.

Council provided the Planning Proposal to the DPIE for a Gateway Determination three times. On each occasion, Council raised issues with the proposal including its lack of strategic and site specific merit and its affection by natural hazards. DPIE issued a Gateway Determination in October 2019 with a range of conditions requesting amendments to the Planning Proposal.

Council has serious concerns with the Gateway Determination issued by DPIE. The Gateway Determination relied on the Gateway Determination report (GD report), which after detailed examination is considered deficient and flawed including a failure to have appropriate regard for the hazards affecting the subject site.

Council notified the DPIE on 24 October 2019 of its intention to seek a Gateway Review.

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## RECOMMENDATION

1. Council lodge a Gateway Review in response to the issue of a Gateway Determination dated October 2019 by the Department of Planning, Infrastructure and Environment for the Planning Proposal to permit development for the purposes of seniors housing on land at 2 and 4 Nooal Street and 66 Bardon Road, Newport (PP\_2018\_NBEAC\_004\_00).
  2. A site specific Planning Proposal for the site is premature and is contrary to the Greater Sydney Commission's preference for holistic, consultative and comprehensive strategy led management of urban change.
  3. Council's draft LSPS indicates that Council already has existing capacity with residential zoned land to meet housing targets and provide seniors housing.
  4. The DPIE Gateway Determination report contains errors in relation to the affectation of the site to natural hazards. The site is subject to flooding at the 1% AEP and PMF events under Newport Flood Study, 2019 and this has not been appropriately considered.
  5. The site is affected by estuarine inundation as defined by *Pittwater Estuary Mapping of Sea Level Rise Impacts*, Cardno, 2015 and this has not been appropriately considered.
  6. The proposal does not demonstrate site specific or strategic merit, and is inconsistent with Pittwater Local Strategy 2011, the draft Northern Beaches Council Local Strategic Planning Statement and the existing built form and character of the area.
  7. The proposal is not needed to provide additional senior housing opportunities in the locality as the current residential zones have existing capacity to support senior housing development free of natural hazards.
  8. Northern Beaches Council is generally on track to meet required housing targets, with the Councils Housing Study/Strategy the appropriate vehicle to investigate and consider any additional housing opportunities.
  9. The proposal is not consistent with all components of the strategic planning framework, with specific reference to North District Plan Planning Priorities N5, N17 and N22 and Ministerial Direction 2.2 Coastal Protection, 4.3 Flood Prone Land and 7.1 Metropolitan Planning and State Environmental Planning Policy (Coastal Management) 2018.
  10. The proposal does not represent orderly and economic planning.
  11. The proposal creates an undesirable precedent for similarly zoned adjoining properties.
  12. The proposal is inconsistent with the existing and desired future built form and local character of the area.
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## BACKGROUND

### Lodgement and Council Assessment

Council received a Planning Proposal on 4 September 2017 to amend Pittwater Local Environmental Plan 2014 (Pittwater LEP 2014) for land at 2-4 Nooal Street and 66 Bardo Road, Newport. The Planning Proposal sought to add an additional permitted use on the site through Schedule 1 of the Pittwater LEP 2014 to permit seniors housing.

Non-statutory public exhibition of the Planning Proposal was undertaken for 30 days between 16 September 2017 and 16 October 2017 with 28 submissions received.

Of the submissions received, 23 objected to the Planning Proposal, one was neutral and 4 supported the proposal including one from the owner of 66 Bardo Road.

Issues raised during the non-statutory exhibition are outlined in Table 1.

**Table 1 – Issues raised during non-statutory exhibition of Planning Proposal**

<b>Objector Issues - Non Statutory Public Exhibition 2017</b>	
Flooding	Precedent of other rezonings in Crystal Bay
Coastal Inundation	Western end of Bardo Road is narrow and unformed
Environmentally sensitive site	Lack of footpaths
Stormwater	Site not meeting Seniors SEPP requirements
The bulk, scale and density of the proposal	Endangered/threatened flora and fauna
Traffic and Parking issues	Local infrastructure demand and capacity
The dangerous nature of the Bardo Road and Nooal Street intersection	Zoning reflecting Council's and communities intended land uses
Vegetation removal	E4 Environmental living Zone should be considered holistically and not piecemeal
Zone permissibility	Construction Impacts
Foreshore access	Precedent of other rezonings in Crystal Bay
Occupation of seniors living by people that are not seniors	Western end of Bardo Road is narrow and unformed
Noise	Lack of footpaths

Considering the response received during the non-statutory exhibition, internal referral advice and detailed assessment of the proposal, staff recommended that the Planning Proposal should not be supported.

The Planning Proposal was reported to Council's meeting of 28 November 2017, with a staff recommendation for the Planning Proposal not to proceed to Gateway Determination.

Council formally resolved:

*That:*

- A. *Council does not submit the Planning Proposal lodged for 2-4 Nooal Street and 66 Bardo Road, Newport for a Gateway Determination for the following reasons:*

- a. *It is inconsistent with the Pittwater Local Planning Strategy (2011)*
- b. *It does not have strategic merit or site specific merit when assess in accordance with the NSW Planning & Environment's Planning Proposal: A guide to preparing planning proposals (2016)*
- c. *It does not align with the goals and targets of the Revised Draft North District Plan.*
- d. *It is inconsistent with the following State Environmental Planning Policies;*
  - i. *Housing for Seniors or People with a Disability*
  - ii. *Coastal Protection*
  - iii. *Draft Coastal Management*
- e. *Is inconsistent with the following Local Planning Directions;*
  - i. *2.1 – Environmental Protection Zones*
  - ii. *4.3 - Flood Prone Land*
  - iii. *7.1 – Implementation of the Metropolitan Strategy*
  - iv. *Draft Coastal Management Local Planning Direction.*
- f. *It is inconsistent with the objectives of the E4 Environmental Living Zone in Pittwater Local Environmental Plan 2014.*
- g. *It seeks to permit medium density residential development that is inconsistent with the established low density character of the area.*
- h. *It would set an unacceptable precedent.*

### **Rezoning Review**

The applicant subsequently sought and was granted a Rezoning Review by the then NSW Department of Planning & Environment (DPE). The DPE referred the matter to the Sydney North Planning Panel (SNPP) for a decision as the relevant panel for the Northern Beaches area.

During the rezoning review process the Applicant submitted to DPE two additional reports that were not originally submitted with the Planning Proposal and therefore were not considered by Council. This included an Arborist report and an Estuarine Risk report. Council raised concerns with DPE regarding the introduction of additional information during the Rezoning Review, as the introduction of new material is inconsistent with Planning Circular PS 16-004 *Independent reviews of plan making decisions* (Planning Circular PS16-004) and the clear statement '*Only the same application that was initially presented to the council by the proponent will be reviewed by the Planning Panel or Commission*'. DPE did not remove the two additional reports and provided the SNPP the new information contrary to the requirements outlined in Planning Circular PS16-004.

At its meeting of 2 May 2018, the SNPP considered the matter and subsequently determined the Planning Proposal should proceed with substantial amendments that were not communicated or discussed at the SNPP meeting. In making their decision the SNPP provided the following reasons for their decision as outlined below:

### **REASONS FOR THE DECISION**

*The Panel considers that the planning proposal has strategic merit because it provides much needed senior living consistent with the Sydney North District Plan.*

*The Panel also considers that the planning proposal has local merit because of the scale and form of development allowed by the planning proposal will be consistent with the built form and character of the area.*

*The Panel notes that prior to the zoning of the land E4 under the recent standard instrument, development under the Seniors Living SEPP was permissible on the site. The introduction of the E4 zone due to purported environmental concerns relating to the land switched off the operation of the SEPP. However, it is unclear to the Panel what the environmental factors were relating to this particular land and that in the immediate vicinity, that led to the decision to zone it environmental living (and thus the prohibition of dual occupancy and seniors living). The Panel notes in particular, that the biodiversity map of the Pittwater LEP 2014 generally equates to the E4 zone; however, it does not cover this land and neighbouring sites. Council could not indicate why this land was zoned E4 rather than R2, other than to indicate that it has "scenic value" and that the land is subject to coastal inundation up to 25%. In this respect the Panel notes that a foreshore building line exists on the land up to approximately 25% of the site, so that the possibility of inundation would not inhibit the proposal.*

*Therefore, it has not been demonstrated to the Panel that the zoning of the land E4 is justified having regard to the objectives of that zone. The Panel understands that the greatest concern to council is the potential precedent if seniors living becomes permissible just on this site within the E4 zone.*

*The Panel is reluctant to recommend that seniors living becomes permissible as a specific use on this site, which does not appear to be "unique" or unusual in any way in relation to other waterfront sites in its immediate vicinity. However, the Panel does consider that the zoning of the land E4 is unjustified and that R2 zoning would be more appropriate. Accordingly, the Panel recommends to the delegate that the land from Bardo Road northward along Noal Street up to Irrubel Road currently zoned E4 be investigated and re-zoned R2 which would allow the proposed use as well as other suitable uses such as dual occupancy. The planning proposal should therefore be revised to reflect the above before it is exhibited.*

Council wrote to the Minister for Planning on 10 May 2018 raising significant concerns with the SNPPs decision. A relevant extract from Council's letter to the Minister is provided below.

*I wish to raise serious concerns in relation to a decision of the Sydney North Planning Panel (the Panel) on 2 May 2018, in relation to the above mentioned properties. The Panel considered a rezoning review to amend Schedule 1 of Pittwater Local Environmental Plan 2014, to allow seniors housing as an additional permitted use for these sites.*

*The decision of the Panel was not just to support the planning proposal as outlined above i.e. retain the zone of the subject sites (currently E4 Environmental Living) and support the request for an additional permitted use of seniors housing. The Panel's decision was that the proposal be revised and significantly expanded such that the subject properties and 13 additional properties, that were not the subject of the original planning proposal, be rezoned from E4 Environmental Living to R2 Low Density Residential.*

*This decision represents an egregious overreach by the Panel. In making this decision, the Panel are in breach of the Planning Panel Operational Procedures which state as follows:*

*"The Panel's determination should provide a clear decision on whether the planning proposal before it should proceed, or not proceed, for a Gateway determination rather than recommending improvements".*

*Clearly the Panel have not followed their own Operational Procedures. Rather than making a decision on the proposal before it, the Panel have significantly expanded the scope of the proposal. In making this recommendation the Panel has exceeded their authority.*

*Further, the Panel are ignoring the newly published North District Plan which states that "Councils are in the best position to investigate and confirm which parts of their local government areas are suited to additional medium density opportunities". The Panel are seemingly attempting to step into the role of Council and undertake strategic planning on our behalf on a Planning Proposal by Planning Proposal basis. The Pittwater LEP 2014 is less than 5 years old and Northern Beaches Council is on track to achieve our housing target. We are committed to preparing a housing strategy to address growth. The demand for seniors housing is recognised however, there are literally hundreds of other sites within the northern beaches where seniors housing is permitted. These sites can yield thousands of seniors housing apartments. Accordingly, to change the zone of these lots is unnecessary and unwarranted.*

*The development and gazettal of the Pittwater LEP was undertaken following extensive investigation, research and community consultation. The first objective of the E4 Environmental Living zone is as follows:*

- To provide for low-impact residential development in areas with special ecological, scientific or aesthetic value.*

*Every residential property that fronts the Pittwater Waterway is zoned E4 Environmental Living on the basis of 'aesthetic value'. The Panel have taken it upon themselves to arbitrarily dismiss this and make a decision which sets a precedent that will undermine the consistency and integrity of this zone and all it sets out to achieve.*

*There are also serious site specific issues related to this recommendation. Nine of the additional lots recommended to be rezoned are subject to medium or high risk flooding affectation. Additionally, the State Environmental Planning Policy (Housing for Seniors or People with a Disability) (SEPP (HSPD)) contains site related requirements that include the need for a site to be within 400m of a bus stop. All of the additional sites are beyond 400m from the nearest bus stop. Accordingly, these properties should not be developed for seniors housing in accordance with SEPP (HSPD).*

Given the substantial changes sought by the SNPP to the Planning Proposal, Council requested to be appointed the Principal Planning Authority (PPA) role which was subsequently granted.

### **Northern Beaches Local Planning Panel**

As the PPA, Council then began preparing a Planning Proposal to be submitted for a Gateway Determination. In the intervening period a Ministerial direction regarding planning proposals and local planning panels was released. This direction stated that Planning Proposals that had not yet been submitted for a Gateway Determination would require consideration by the relevant Local Planning Panel before being submitted. This direction was not in place when Council first considered the Planning Proposal, and as it had not submitted the Planning Proposal for Gateway Determination, Council was obligated to refer the Planning Proposal to the NBLPP.

The NBLPP considered the Planning Proposal at its meeting of 1 August 2018 and determined that the Proposal should not proceed to a Gateway Determination because:

- 1. The proposal has not demonstrated strategic merit given the isolated nature of the site. It is inconsistent with the Pittwater Local Planning Strategy (2011).*
- 2. The proposal fails to provide any public benefit or improvement.*

3. *There is no physical contribution to local affordable housing proposed.*
4. *The proposal does not represent orderly and economic planning.*
5. *The site is adversely affected by flooding as shown in the Pittwater Overland Flow Mapping and Flood Study and is therefore an inappropriate site for any increase in housing density or development for aged and disabled persons.*
6. *It does not align with the goals and targets of the North District Plan (March 2018).*
7. *The lack of strategic direction in the proposed amplifies the likelihood of similar applications in this environmentally sensitive area.*

As a consequence of the rezoning review recommendation, Council at its meeting of 28 August 2018, was obliged to submit the Planning Proposal for a Gateway Determination. Council subsequently formally resolved to forward the Planning Proposal to the Department of Planning, Industry and Environment (DPIE) for a Gateway Determination.

### **Gateway Determination**

Council provided the Planning Proposal to the DPIE for a Gateway Determination three times. At each occasion, Council raised issues with the proposal including its lack of strategic and site specific merit and affection by natural hazards. DPIE issued a Gateway determination in October 2019 with a range of conditions requesting amendments to the Planning Proposal.

Council has serious concerns with the Gateway Determination issued by DPIE. The Gateway determination relied on the GD report which after detailed examination, as outlined in this report, is considered deficient and flawed.

Council formally notified the DPIE on 24 October 2019 of its intention to seek a Gateway Review. The Gateway Review challenges the Gateway Determination issued by the DPIE for the specific reasons outlined in this report.

## NORTHERN BEACHES COUNCIL CRITIQUE OF DPIE GATEWAY DETERMINATION REPORT

While Council understands the Gateway Determination (GD) follows positive consideration of the Planning Proposal by the SNPP, we remain disappointed with the DPIE decision to progress this matter. The following provides Council's critique against the Gateway Determination report.

### 1. INTRODUCTION

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#### 1.1 Description of planning proposal

When describing the Planning Proposal, the Gateway determination report (GD report) simply outlines the purpose of the proposal but doesn't clearly outline how the planning proposal will amend the Pittwater LEP 2014 to achieve this outcome. Council believes it is important to clarify this upfront in the GD report to reduce ambiguity given the SNPP Rezoning Review decision significantly amended the mechanism by which the planning proposal will achieve the outcome to permit seniors housing on the site with consent.

This section outlines the decision of the SNPP to support the rezoning review unanimously, however does not provide the full context of the reasons for the decision or the method via which the SNPP chose to advance the Planning Proposal which Council considers relevant to the planning proposal moving forward.

The SNPP states *"the Panel is reluctant to recommend that seniors living becomes permissible as a specific use on this site, which does not appear to be "unique" or unusual in any way in relation to other waterfront sites in its immediate vicinity."*

The above extract clearly confirms that the SNPP gave consideration to, and did not support, the approach to include an additional permitted use on the subject site. This decision was made on the basis that the site does not display any special attributes which differentiate it from other land (zoned E4 Environmental Living) on the foreshore fronting Pittwater. Notwithstanding the position of the SNPP, the GD report recommends that the Planning Proposal be amended to apply an additional permitted use for "seniors housing". Council agree with the SNPP, the site is not unique or unusual in any way. Furthermore, we maintain that there is no site specific or strategic merit to progress the Planning Proposal.

#### 1.2 Site description

No concerns with this section of the GD report.

#### 1.3 Existing Planning Controls

The GD report only highlights the Pittwater LEP 2014 planning controls and doesn't properly consider the hazards impacting the site, such as estuarine hazard and flooding hazard.

Two separate reports, being the Pittwater Estuary Mapping of Sea Level Rise Impacts, 2015 and Newport Flood Study, 2019 have identified the site as subject to estuarine inundation and catchment flood and as shown in the Figures 2, 3 and 4.



Figure 2 – Extract from Pittwater Estuary Mapping of Sea Level Rise Impacts Study – Cardno 2015



Figure 3- Northern Beaches Council Flood Hazard Map – 1% AEP

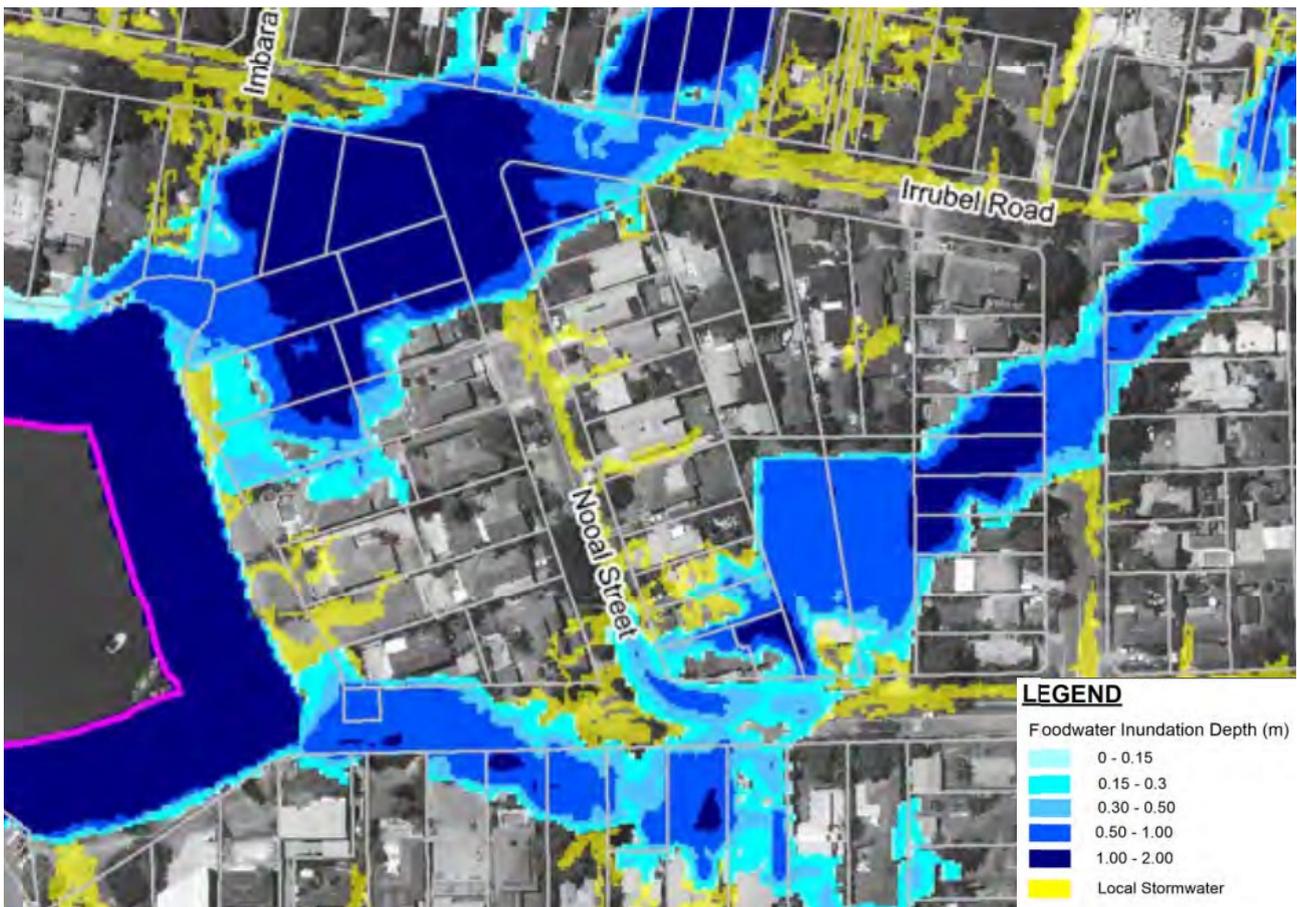


Figure 4 – Newport Flood Study 2019 (Figure 22.3) – PMF

#### 1.4 Surrounding area

No concerns with this section of the GD report

#### 1.5 Background

A detailed background to the history of the Planning Proposal has been provided earlier in this report. Council is concerned that the DPIE has not identified that the Planning Proposal was considered by the NBLPP at its meeting of the 1 August 2018.

The following table provides an accurate timeframe of significant events:

DATE	MATTER
12 January 2017	Pre-lodgement on the planning proposal held with applicants.
22 February 2017	Council writes to applicants with advice from the pre-lodgement. Council advises that it does not support the proposal as it high risk and that there are issues with coastal inundation and permissibility.
4 September 2017	Planning Proposal PP0003/17 lodged with Council. Proposal seeks to make seniors living an additional permitted use on the site.
28 November 2017	Council refuses the Planning Proposal.

8 February 2018	Council advised by Department of Planning that rezoning review had been lodged by applicants and for Council to provide a response.
2 May 2018	Sydney North Planning Panel meeting. Peter Debnam, John Roseth and Sue Francis appear for the Panel. No Council representative Panel Members are in attendance.
3 May 2018	Panel decides to recommend the proposal proceed with substantial changes including a recommendation that expands the scope to additional properties that were not part of the original application.
10 May 2018	Council writes to the Minister for Planning detailing concerns with the expanded scope of the proposal and the Panel's ability to do so.
14 June 2018	Council formally accepts role of Planning Proposal Authority and begins preparing the planning proposal.
1 August 2018	Planning proposal presented to the Northern Beaches Local Planning Panel for advice in accordance with Ministerial Direction.  Panel considers the proposal and recommends to Council that the proposal not proceed for 7 reasons.
28 August 2018	Council resolves to send the proposal for a Gateway Determination due to rezoning review recommending it proceed. Issues raised with site specific & strategic merit and hazards.
2 October 2018	Department rejects proposal and asks for it be revised.
23 November 2018	Council submits revised proposal for a Gateway Determination (proposal version 2) Issues raised regarding hazards.
March 2019	Department rejects proposal and asks for it be revised.
14 June 2019	Council submits revised proposal for a Gateway Determination (proposal version 3).
14 October 2019	Council receives Gateway Determination.
24 October 2019	Council advises Department it will be seeking a Gateway Determination Review.
12 December 2019	Council submits Gateway Determination Review.

The timeline of significant events, illustrated in Table 1 of the GD report, is inaccurate as it does not incorporate the NBLPP consideration and recommendation.

## 1.6 Summary of recommendation

The following recommendations outlined in the GD report are not supported by Council.

- *Provide for much needed seniors housing to cater for an ageing population*

Council Response:

There are hundreds of sites within the Northern Beaches where seniors housing is currently permitted either via existing LEPs or SEPP (HSPD). Again, the site is not unique or special and should not be treated as such. Council has exhibited our Local Strategic Planning Statement (LSPS) which identifies we are largely on track to meet our housing target. Furthermore, we are preparing a Housing Strategy to, among other things, address the demand for seniors housing in a strategic manner. This current Planning Proposal purports to do strategic policy on a site by site basis.

- *Allow for an additional permitted use which represents a compatible and logical extension of the residential uses in the R2 Low Density Residential land directly opposite the site on the eastern side of Noal Street*

Council Response:

Seniors housing on the subject site is neither compatible or logical. The subject site is not a residential zone, it is zoned E4 Environmental Living. The E4 Environmental Living zoning is not isolated to this locality, with all waterfront land fronting Pittwater being zoned E4 Environmental Living. The Proposal will set an unwanted precedent for all other E4 zoned land in the Pittwater LEP 2014.

It is noted that seniors housing is also prohibited under the R2 Low Density Residential zone and only permitted via the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP HSPD 2004).

- *Will retain the scale of development currently permitted on the site and its surrounds*

Council Response:

The existing scale and character of the surrounding area is dominated by low scale detached housing (one or two storeys).

The proposal, as outlined, will permit an increase in the scale and intensification of development on the site. There are currently three single detached dwelling houses on each lot. The concept drawings submitted with the Planning Proposal show 8 units and the built form proposed shows that of a residential flat building.

An example provided by the Proponent and relied upon in the GD report, of a residential flat building to the south of the site is an isolated example, was built circa 1980 and is not reflective of the current or future desired character of the area.

- *Not result in any detrimental environmental, social or economic impacts*

Council Response:

The site, like other E4 Environmental Living zoned land fronting the Pittwater, is valued by the community for its aesthetic values and is affected by flooding and estuarine hazards, therefore it is inappropriate and misleading to claim that the proposal will not result in any detrimental environmental, social or economic impacts.

## 2. PROPOSAL

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### 2.1 Objectives or intended outcomes

The GD report requests Council updates the planning proposal to include or refer to the concept scheme provided by the applicant. In accordance with the Ministerial Direction 6.3 Site Specific Provisions provides as follows:

Clause (5) *“A planning proposal must not contain or refer to drawings that show details of the development proposal.”*

Accordingly the DPIEs request is contradictory to the requirements of the Ministerial Direction 6.3 and is misleading as there is no requirement or obligation upon the Proponent or future developer to abide by the concept scheme submitted with the Proposal.

### 2.2 Explanation of provisions

No concerns with this section of the GD report

### 2.3 Mapping

No concerns with this section of the GD report

## 3. NEED FOR THE PLANNING PROPOSAL

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The GD report acknowledges that the Planning Proposal is not the result of any strategic study or report. The need for the planning proposal is discussed in detail in subsequent sections of this analysis.

The GD report and its adoption of option two, being an amendment to Schedule 1 Additional Permitted Uses of Pittwater LEP 2014 to permit seniors housing with consent on site, is inconsistent with the position adopted by the SNPP, who in justifying their reasons for the decision to support the Rezoning Review, stated *“the Panel is reluctant to recommend that seniors living becomes permissible as a specific use on this site, which does not appear to be “unique” or unusual in any way in relation to other waterfront sites in its immediate vicinity.”*

## 4. STRATEGIC ASSESSMENT

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### 4.1 District

#### North District Plan

The GD report statement that the proposal is generally consistent with the North District Plan is considered inaccurate.

*Planning Priority N5 – Providing housing supply, choice and affordability with access to jobs, services and public transport*

The planning proposal only partially meets this priority through the provision of additional housing supply. Council acknowledges that Northern Beaches Local Government Area (LGA) has an ageing population and diversity of housing typology is essential to provide additional housing choice. However, Council contends that there is a sufficient supply of residential zoned land in the Newport locality, not affected by natural hazards, that could be readily developed for seniors housing. Figure 5 shows an extract from the Pittwater LEP 2014 zoning map for Newport showing the extent of R2 and R3 zoned land under Pittwater LEP 2014.

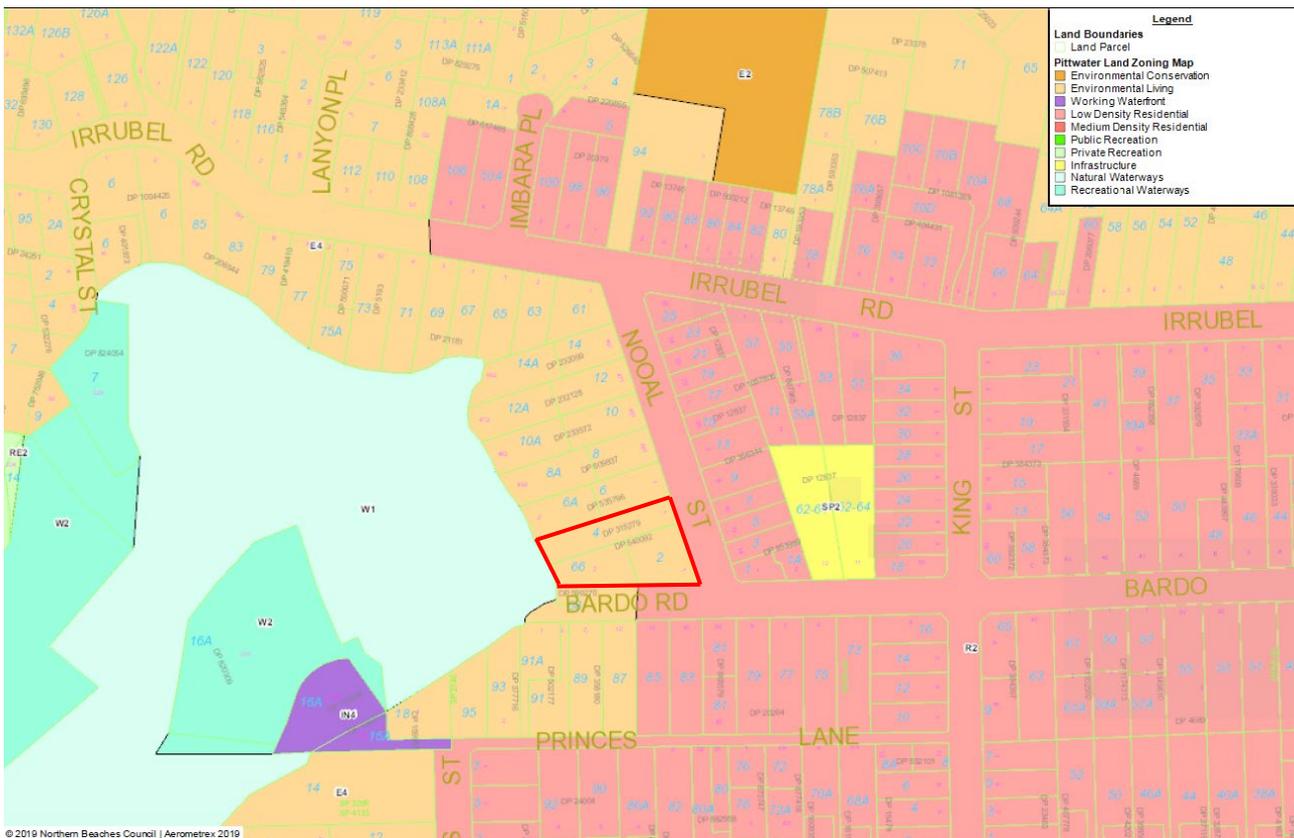


Figure 5 – Extract of Land Zoning Map 17 from the Pittwater LEP 2014 with subject properties identified by red outline

Furthermore, Council contends that current housing targets can be met through the existing LEP zones, without the need for rezonings. Pittwater Local Planning Strategy 2011 (Pittwater Strategy 2011) confirmed that the former Pittwater Council was on track to meet its targets and the current residential zoning provided the necessary capacity for additional housing. Similarly, the SGS housing study undertaken for Northern Beaches Council to support the LSPS project and inform the development of the Local Housing Strategy reconfirms this.

The North District Plan, under Planning Priority N5 directly references the Pittwater Strategy 2011 for providing opportunities for additional medium density development and states that “Councils are in the best place to determine what areas in their LGAs are appropriate for medium density opportunities”. Furthermore the DG report does not address affordable housing issues. This is concerning as Council’s housing needs analysis undertaken to inform the draft LSPS indicates that housing affordability is a critical issue for the LGA.

***Planning Priority N17 – Protecting and enhancing scenic and cultural landscapes***

The GD report references two photos Figure 13 and 14. Figure 13 shows a four storey apartment block at 14 Princes Street, Newport. As discussed above, this apartment building was approved under a previous planning regime and is not consistent with the existing established character or the desired future character of the locality. This proposal will detract from the scenic landscape of the locality by permitting development that is out of scale and character with the locality.



Figure 6 – Street view of properties opposite 14 Princes Lane showing low density detached dwelling character

The properties at 91A, 93 and 95 Princes Lane have been used to demonstrate that the locality surrounding the site consists of three storey development. A detailed site analysis of the locality (as shown in Figure 7 to 11) confirms that only 3 of a total 23 residential properties immediately adjoining Crystal Bay have a three storey presentation, while the remaining 23 properties comprise single detached dwellings ranging from one to two storeys set within landscaped gardens.



Figure 7 – View north along Crystal Bay from subject site showing the two storey detached dwelling character of the area



Figure 8 – Rear of 66 Bardo Road and 4 Nooal Street facing Crystal Bay showing low scale detached dwelling character



Figure 9 – View north along Nooal Street



Figure 10 – View of properties opposite subject site at 1, 3, 5 and 7 Nooal Street



Figure 11 – View of adjoining properties at 6, 8 and 10 Nooal Street



Figure 12 – Analysis of medium density development within locality

The proposed development is considered to be inconsistent with the existing scale, built form and character of the locality and will not provide for low impact or low density residential development in an area identified by Council and the community to contain environmental and aesthetic values.

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

#### Flooding

The GD report identifies that Council's most recent flood study applying to the subject site (Newport Flood Study 2019) shows the site is not flood affected in a 1% Annual Exceedance Probability (AEP) flood event. This is not correct. The site is affected in the 1% AEP event as shown in Figure 3.

Further the DG report does not acknowledge that the site is flood affected in a Probable Maximum Flood (PMF) event as shown in figure 4. Council's current flood policy and controls identify that for vulnerable developments, in this case seniors housing, the PMF control should be applied as the Flood Planning Level (FPL). Accordingly the site is identified as being subject to flood hazard in both the 1%AEP and the PMF.

#### Estuarine Inundation

Further to the above, the GD report also fails to identify that the subject site is subject to estuarine hazard.

Pittwater Council established the *Estuarine Planning Level Mapping*, Lawson and Treloar, 2004 using available shoreline terrain data and estimates of extreme ocean water levels at that time.

This report was updated and the *Pittwater Estuary Mapping of Sea Level Rise Impacts*, Cardno, 2015 was developed to provide Council with additional information regarding estuarine flood risk (or inundation risk) in the Pittwater waterbody

Estuarine Flood Risk, which is also referred to as estuarine or foreshore inundation risk, is foreshore inundation from a very high tide, combined with the effects of a storm event.

The reports identify an Estuary Planning Level for all affected properties. This is the combination of elevated estuary levels (derived from significant historical ocean events or ocean levels of specific Annual Recurrence Intervals (ARIs)) and freeboards selected for estuarine inundation risk management purposes.

Action 81, of Planning Propriety N22, states “Avoid locating new urban development in areas exposed to natural and urban hazards and consider options to limit the intensification of development in existing urban areas most exposed to hazards”.

The DG report did not identify or adequately consider the impacts of natural hazards on the site and the consequence of permitting an intensification of development. The Planning Proposal clearly fails to comply with this Planning Priority and its relevant actions.

#### **4.2 Local Merit Assessment**

The focus of the Local Merit assessment in the DG report centred on the benefits of the provision of additional housing, rather than a broader strategic consideration of additional housing in the right locations. There is no consideration of Pittwater Strategy 2011 that indicates existing residential zones have capacity to meet required dwelling targets without the need for additional rezoning, including opportunities for more diverse housing. Nor has there been any consideration of the recently exhibited Northern Beaches Local Strategic Planning Statement (LSPS). The LSPS also identifies that Council is generally on track to achieve our housing target.

##### *Bulk and Scale*

Bulk and scale issues have been addressed earlier in this analysis with specific reference to the existing character of the locality. The DG report states that the bulk and scale of the development can be addressed later at the development assessment phase rather than upfront during the planning proposal phase. Council does not support this approach, given the current design concept provided by the Application is considered out of scale and character to the surrounding locality. Council believes that the bulk, scale and character of future development permitted on the site is a relevant matter for consideration at the planning proposal stage and contends that the potential bulk and scale of future development under this proposal is not acceptable in an area where the predominant built form is detached residential dwellings of one to two storeys, rather than the built form of a residential flat building.

The GD report again makes the incorrect assertion that the site is not flood prone and uses this flawed position to suggest the site has good land capacity.

##### *Housing Choice*

Council already has the potential for diverse housing opportunities under the existing framework. ABS Census data from 2016 shows that the Northern Beaches local government area housing profile is broken down into 56% detached dwellings, 7% is semi-detached and 34% in in apartment format. Council acknowledges that the predominant housing type in its LGA is detached style dwellings, but it also notes that the greatest bulk of its future capacity is in areas for apartment style dwelling which ranges from smaller ‘missing middle’ style development right up to larger apartment complexes. This indicates that Council can meet the demand for more diverse housing under its existing framework.

Council’s draft LSPS acknowledges the need to find housing for seniors, but identifies that this housing typology should be well located on sites free from natural hazards. The LSPS also acknowledges that Council will be preparing a Housing Strategy which will further investigate opportunities for diverse housing opportunities.

##### *Land Capability Mapping*

Council disagrees with the DG report which indicates that the site is classified as having a “good” land capability.

Detailed land capability mapping was undertaken as part of the Pittwater Strategy 2011, which consisted of an overlaying of constraints mapping to indicate which properties are more and less able to sustain intensified development. The results of the mapping for the site is provided below in Figure 13 and clearly shows that the majority of the site is ranked categories 4 and 5, being the category of land least able to sustain more intensive development.

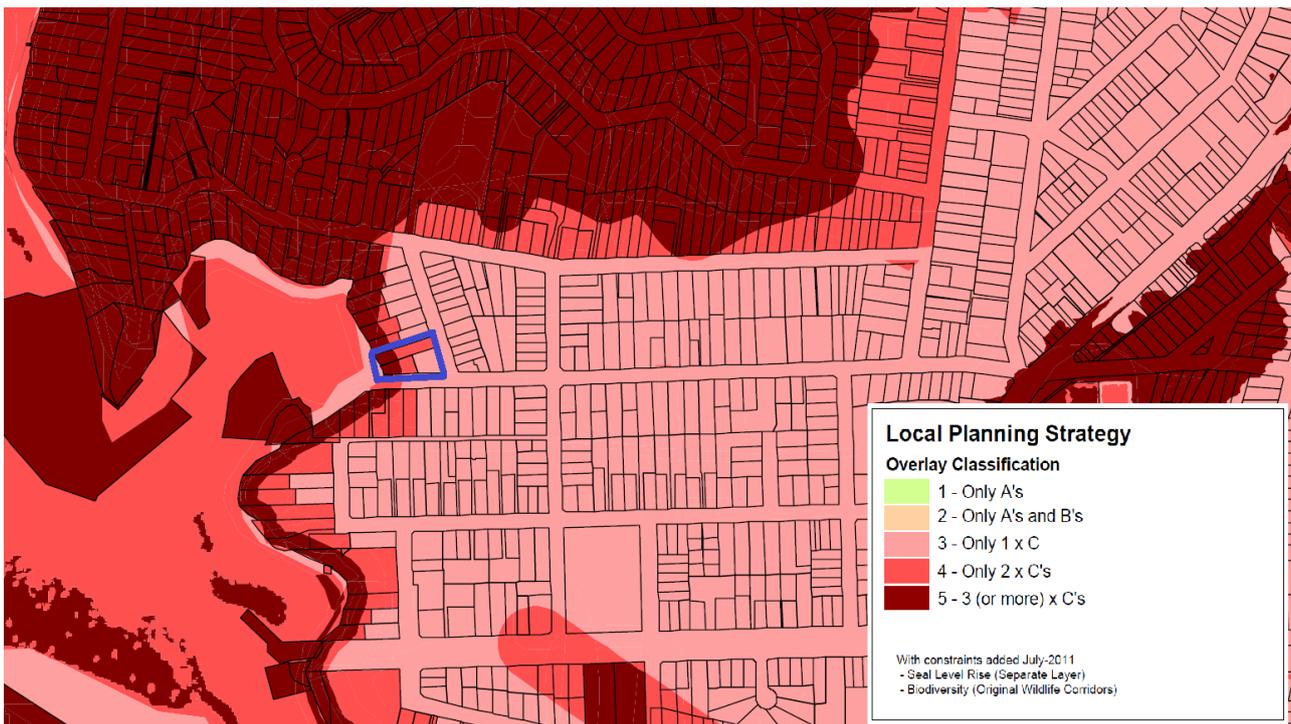


Figure 13 – Extract of Land Capability Map from *Pittwater Local Planning Strategy 2011*

### *Density*

Council does not support the statement in the DG report that the proposal will be compatible with the existing foreshore development, as outlined earlier in this analysis.

If the Independent Planning Commission endorses the Planning Proposal, Council requests a condition to permit a site specific development control plan to regulate the potential development outcome on the site.

## **4.3 Policy Directions for Plan Making (Special 9.1 Ministerial Directions)**

### **2.1 Environmental Protection Zones**

This Ministerial direction is applicable as the subject properties are zoned E4 Environmental Living under the Pittwater LEP 2014. The objective of the Direction is *'to protect and conserve environmentally sensitive areas'*.

Council does not support the statement outlined in the DG report that the proposal is consistent with the Direction. The proposal will not protect and conserve this environmentally sensitive area and permitting the introduction of seniors housing in an area known to be subject to hazard is contrary to sound planning.

### **2.2 Coastal Management**

The DG Report provides as follows:

*The objective of this Direction is to protect and manage coastal areas of NSW. This Direction applies to land that is within the coastal zone, as identified under the Coastal Management Act 2016. The subject land is mapped as 'coastal environment area' and 'coastal use area' within the coastal zone.*

*This Direction provides that a planning proposal must not rezone land which would enable increased development or more intensive land-use on land affected by a current or future coastal hazard in a local environmental plan or development control plan, or a study/assessment undertaken by or on behalf of the planning proposal authority.*

The DG report relied on the Newport Flood Study 2019 (which is not a coastal hazard study) to incorrectly conclude that the site is not impacted by coastal hazard. 66 Bardo Road and 4 Nooal Street are in fact identified as being subject to estuarine inundation which is defined as a coastal hazard under the Coastal Management Act 2016 (Clause 4). The *Pittwater Estuary Mapping of Sea Level Rise Impacts Study (2015)* shows, at figure 2 the impact of this inundation on these properties and an extract from the mapping is included below at Figure 14. This study was adopted by Council and planning for these hazards was included in the Pittwater 21 Development Control Plan B3.7 – B3.10. Thus they meet the standard as prescribed in this Ministerial Direction.

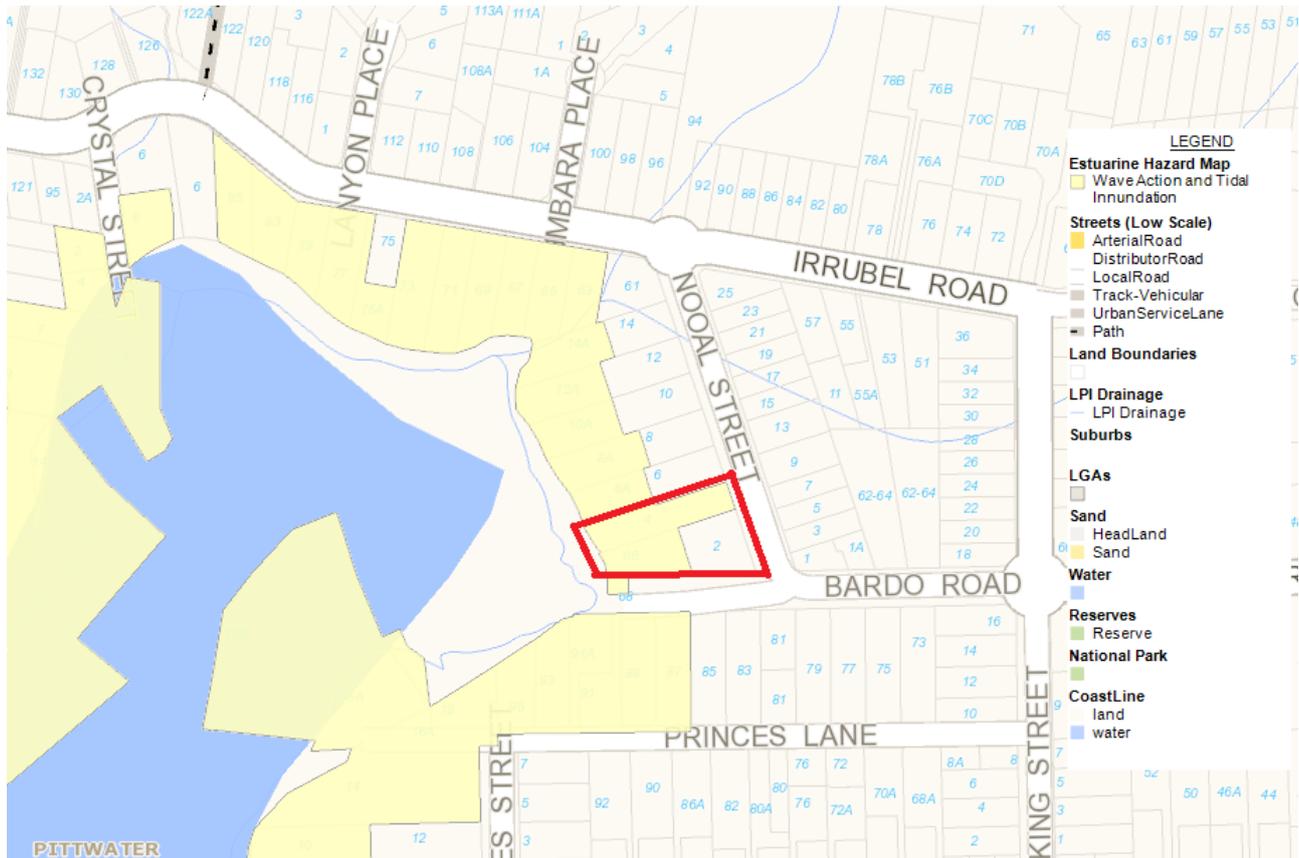


Figure 14– Extract from Pittwater 21 Development Control Plan Estuarine Hazard Map – Subject properties indicated by red outline

The DG Report has not assessed the coastal hazard impacts of the site and the clear direction to not introduce more intensive development on land affected by a coastal hazard. This is compounded by the fact that the Planning Proposal, if approved, would introduce vulnerable uses, being seniors housing, onto the site.

### 3.3 Residential Zones

The Planning Proposal applies to land zoned E4 Environmental Living. This is an “Environment” zone, not a “Residential” zone and therefore consideration against Direction 3.1 Residential Zones is not appropriate.

### 3.4 Integrated land use and transport

Council has no comments in relation to this section, other than to identify that the justification provided in the GD report could be applied to any Proposal to increase density within a 800m radius of Newport Village.

### 4.1 Acid Sulfate Soils

No objection to this direction.

### 4.3 Flood Prone Land

As outlined above, the site is flood prone.

The Direction provides that *“a planning proposal must not rezone land within flood planning areas from Special Use, Special Purpose, Recreation, Rural or Environmental Protection Zone to a Residential, Business, Industrial, Special Use or Special Purpose Zone”*

The Proposal intends to introduce residential use into an Environmental protection zone in clear conflict with this direction.

#### 6.1 Approval and Referral Requirements

No objection to this direction.

#### 6.3 Site specific provisions

The GD report requests the Planning Proposal is updated to include concept plans and drawings showing the potential development outcome. As stated earlier this is contrary to clause (5) of the direction which clearly states *‘A planning proposal must not contain or refer to drawings that shows details of the development proposal’*.

#### 7.1 Implementation of ‘A Plan for Growing Sydney’

Council contends that satisfying one component of a planning priority direction does not demonstrate a proposal’s consistency with the overall plan. As noted elsewhere, the plan mentioned in this direction has been superseded by the *Greater Sydney Region Plan* and the *North District Plan*. The proposal is unable to demonstrate consistency with a broad range of priorities and therefore cannot be considered consistent with the direction.

#### **4.4 State environmental planning policies**

##### State Environmental Planning Policy (Coastal Management) 2018.

The Planning Proposal is inconsistent with this SEPP. The aims of this SEPP are to promote a co-ordinated and integrated approach to the management of coastal areas, including managing development in the coastal zone and protecting the environmental assets of the coast.

Two of the subject properties are identified as being impacted by a coastal hazard, being inundation from the Pittwater estuary. In accordance with the recently released Planning Circular PS 19-006 Planning for coastal hazards, Council considers that the proposal is inconsistent with the SEPP as it does not comply with clause 15, which says *“Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land”*. The proposal is inconsistent as it seeks to place additional people and property at risk from the hazard.

Attention is drawn to the circular where it states *‘The threshold test under Clause 15 is intentionally low. Councils and other consent authorities should take a precautionary approach to assessing risks associated with current and future coastal hazards pending the approval of a relevant CMPs.’*

Currently the Pittwater estuary is not subject to a coastal zone management plan. It is however subject to a coastal hazard (inundation) as detailed in a number of studies such as the Pittwater Estuary Mapping of Sea Level Rise Impacts 2015 and the Pittwater Estuary Management Plan 2010. The estuary management plan is also a coastal zone management plan adopted under the former Coastal Protection Act 1979 which the circular confirms is still current and should be considered when assessing development proposals.

Given the site is impacted by a coastal hazard as identified in a recognised study and estuarine plan as well as the precautionary approach outlined through the circular, Council considers this proposal to be inconsistent with the SEPP

##### State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development

The draft concept plans provided indicate development is up to three storeys. Therefore the SEPP, applies.

## 5 SITE-SPECIFIC ASSESSMENT

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### 5.1 Social

The GD reports assessment of the Proposal's site specific merit appears to have also been based mostly on a narrow assessment of the need for seniors housing in the Northern Beaches LGA. This is considered to be a strategic merit test, not a site specific test requirement. The Departments *Guide to Preparing Planning Proposals* notes under the question "does the proposal have site specific merit?" additional criteria and attention is drawn to the first two criteria which are repeated below.

- The natural environment (including known significant environmental values, resources or hazards), and
- Existing uses, approved uses, and likely future uses of land in the vicinity of the proposal, and

The site is recognised by the Pittwater Strategy 2011 as having scenic and aesthetic vales and is impacted by coastal inundation and flooding. The surrounding properties are comprised mostly of single dwellings set in landscape surrounds. Council has no plans to change the development standards or planning controls in this area and the GD report has failed to consider and address this in their assessment.

### 5.2 Environmental

In reference to this section, the GD report relies upon the foreshore building clause of the Pittwater LEP 2014 to indicate that foreshore processes will not be impacted upon by the proposal.

As outlined earlier, the site is subject to estuarine inundation which extends beyond the foreshore building line. Furthermore the impacts of the 1% AEP and PMF flood events have not been considered or addressed. Given this there will be impacts from natural hazards that haven't been adequately considered or addressed.

## 6 CONSULTATION

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### 6.1 Community

No concerns with this section of the GD report

### 6.2 Agencies

No concerns with this section of the GD report

## 7. TIMEFRAME

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No concerns with this section of the GD report

## 8. LOCAL PLAN-MAKING AUTHORITY

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No concerns with this section of the GD report

## 9. CONCLUSION

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Council disagrees with the GD reports conclusion on the following basis:

- While the proposal provides additional housing for seniors, the location is considered inappropriate and doesn't represent the requirements of the North District Plan which seeks to provide additional housing in the right locations.
- Recent studies undertaken by Council to inform the development of the draft Local Strategic Planning Statement (draft LSPS) confirm Pittwater LEP 2014 provides a sufficient supply of residential zoned land, not affected by coastal and flooding hazards, to meet current housing targets.
- The proposal is inconsistent with the existing built form and local character of the locality, as demonstrated in Council's detailed site analysis.
- The proposal is not consistent with all components of the strategic planning framework, with specific reference to North District Plan Planning Priorities N5.N17 and N22, Pittwater Local Planning Strategy 2011 and Land Capability Mapping.
- The proposal is subject to natural hazards such as flooding and estuarine inundation and subsequently is not consistent with Ministerial Direction 2.2 Coastal Protection, 4.3 Flood Prone Land and 7.1 Metropolitan Planning and State Environmental Planning Policy (Coastal Management) 2018

## CONCLUSION

Council has prepared a range of strategic documents and studies to guide and inform local strategic planning decisions. These documents include the *Pittwater Local Planning Strategy 2011*, natural hazard studies including the *Pittwater Estuary Mapping of Sea Level Rise Impacts*, Cardno, 2015 and the *Newport Flood Study 2019* and the draft *Local Strategic Planning Statement 2019*. Studies, such as those identified above are used to make informed strategic decisions on zonings and areas suited and capable of sustaining intensified development.

The North District Plan firstly recognised Pittwater Local Planning Strategy (2011) identified opportunities to increase capacity for housing and secondly that *"Councils are in the best position to investigate and confirm which parts of their local government areas are suited to additional medium density opportunities"*.

The site, as confirmed by SNPP in its consideration and decision of the Rezoning Review, does not have any unusual and unique site characteristics that differentiate it from other waterfront sites in the immediate vicinity that would therefore warrant the provision of an additional permitted use for seniors housing.

Based on the above and Council's critique of the GD report, Council does not support the recommendations outlined in the GD report that the Planning Proposal should proceed.

## RECOMMENDATION

1. Council lodge a Gateway Review in response to the issue of a Gateway Determination dated October 2019 by the Department of Planning, Infrastructure and Environment for the Planning Proposal to permit development for the purposes of seniors housing on land at 2 and 4 Nooal Street and 66 Bardon Road, Newport (PP\_2018\_NBEAC\_004\_00).
2. A site specific Planning Proposal for the site is premature and is contrary to the Greater Sydney Commission's preference for holistic, consultative and comprehensive strategy led management of urban change.
3. Council's draft LSPS indicates that Council already has existing capacity with residential zoned land to meet housing targets and provide seniors housing.

4. The DPIE Gateway Determination report contains errors in relation to the affectation of the site to natural hazards. The site is subject to flooding at the 1% AEP and PMF events under Newport Flood Study, 2019 and this has not been appropriately considered.
5. The site is affected by estuarine inundation as defined by *Pittwater Estuary Mapping of Sea Level Rise Impacts*, Cardno, 2015 and this has not been appropriately considered.
6. The proposal does not demonstrate site specific or strategic merit, and is inconsistent with Pittwater Local Strategy 2011, the draft Northern Beaches Council Local Strategic Planning Statement and the existing built form and character of the area.
7. The proposal is not needed to provide additional senior housing opportunities in the locality as the current residential zones have existing capacity to support senior housing development free of natural hazards.
8. Northern Beaches Council is generally on track to meet required housing targets, with the Councils Housing Study/Strategy the appropriate vehicle to investigate and consider any additional housing opportunities.
9. The proposal is not consistent with all components of the strategic planning framework, with specific reference to North District Plan Planning Priorities N5,N17and N22 and Ministerial Direction 2.2 Coastal Protection, 4.3 Flood Prone Land and 7.1 Metropolitan Planning and State Environmental Planning Policy (Coastal Management) 2018.
10. The proposal does not represent orderly and economic planning.
11. The proposal creates an undesirable precedent for similarly zoned adjoining properties.
12. The proposal is inconsistent with the existing and desired future built form and local character of the area.



Gateway Determination Review Application Form

Date received:

Reference No.

LODGEMENT

Instructions to users

This form is to be completed if you wish to request an independent review related to plan-making under Part 3 of the Environmental Planning and Assessment Act 1979. This form relates to Gateway determination review requests.

A Gateway determination review can be sought following a Gateway determination where a determination is made that:

- a) the planning proposal should not proceed;
b) the planning proposal should be resubmitted to the Gateway; or
c) imposes requirements (other than consultation requirements) or makes variations to the proposal that the proponent or council thinks should be reconsidered.

Note: With reference to point 'c' above, a request to review a Gateway determination can only be made prior to the commencement of community consultation on the planning proposal.

Note: Gateway reviews can only be sought if the original Gateway determination was made by a delegate of the Minister.

Before lodging a request for review, it is recommended that you consult the Planning Circular 'Independent reviews of plan-making decisions' and 'A guide to preparing local environmental plans', which can be found on the Department's website www.planning.nsw.gov.au. The guide gives a step-by-step explanation of the review procedure and submission requirements.

To ensure that your request for review is accepted, you must:

- complete all relevant parts of this form
submit all relevant information required by this form
provide one hard copy of this form and required documentation
provide the form and documentation in electronic format (e.g. CD-ROM)

Note: The Department may request further information if your request for review is incomplete or inadequate.

A fee is not charged for a Gateway determination review.

All requests must be lodged with the Department's relevant Regional Office. Please refer to www.planning.nsw.gov.au for contact details.

PART A - APPLICANT AND SITE DETAILS

A1 - Applicant Details

Principal contact

Mr Ms Mrs Dr Other

First name

Louise

Family name

Kerr

Name of company (N/A if an individual)

Northern Beaches Council

Street address

Unit/street no.

Street name

Suburb/town

State

Postcode

Postal address (or mark 'as above')

PO Box or Bag

Suburb or town

PO BOX 82

MANLY

State

Postcode

Daytime telephone

Fax

NSW

1655

9942 2949

Email

louise.kerr@northernbeaches.nsw.gov.au

Mobile

## A2 – Site Details

Identify the land that is to be the subject of the planning instrument and for which you seek a review

Street address	Unit/street no. 2 and 4	Street name Nooyal Street and 66 Bardo Road	
	Suburb/town NEWPORT	State NSW	Postcode 2106

NAME OF THE SITE

N/A

REAL PROPERTY DESCRIPTION

Lot 1 and Lot 2 DP 540092, Lot 1 DP 315279

*The real property description is found on a map of the land or on the title documents for the land. If you are unsure of the real property description, you should contact the Department of Finance and Services, Land and Property Information. Please ensure that you place a forward slash (/) to distinguish between the lot, section DP and strata numbers. If the proposal applies to more than one piece of land, please use a comma (,) to distinguish between each real property description.*

PROVIDE DETAILS OF ALL AFFECTED LANDOWNERS WHERE THEY ARE NOT THE DIRECT APPLICANT

Crystal Apartments Pty Ltd, Geoffrey Butcher and Judith Radford, Susan Rogers

HAVE ALL OWNERS OF LAND TO WHICH THIS PROPOSED INSTRUMENT APPLIES BEEN NOTIFIED?

- Yes  
 No  
 Some have but not all  
 N/A (Applicant is owner)

**Note:** If some land owners, but not all, have been notified, list below those notified: Boston Blyth Fleming Pty Ltd is the applicant for the Planning Proposal  
Council has notified the applicant of its intention to seek a review

CURRENT ZONING OF THE LAND AT THE SITE

E4 Environmental Living under the Pittwater Local Environmental Plan 2014

CURRENT LAND USE AT THE SITE

Dwelling Houses

## PART B – REASON FOR REVIEW AND THE PLANNING PROPOSAL

### B1 – Reason for Gateway Review

WAS THE ORIGINAL GATEWAY DETERMINATION MADE BY A DELEGATE OF THE MINISTER

- Yes **Note:** Requests for the review of Gateway determination will only be considered if the original Gateway determination was made by a delegate of the Minister.  
 No

Indicate below the reason for seeking a Gateway determination. A review can only proceed if either of these two circumstances has occurred.

- A determination has been made that the planning proposal should not proceed**  
In the case of the above, will this request for review be submitted no more than 42 days from the date of the original notification of the Gateway determination?  
 Yes  
 No
- A determination has been made that the planning proposal should be resubmitted to the Gateway**  
In the case of the above, will this request for review be submitted no more than 42 days from the date of the original notification of the Gateway determination?  
 Yes  
 No

to progress the Planning Proposal. Council believes the proposal should not proceed

**A determination has been made that has imposed requirements (other than consultation requirements) or makes variations to the proposal**

In the case of the above, have you indicated your intent to submit a request for review no more than 14 days from the date of the original notification of the Gateway determination?

Yes

No

Will this request for review itself be submitted no more than 42 days after this date from the date of the original notification of the Gateway determination?

Yes

No

An extension has been granted by DPI&E

## B2 – The Planning Proposal

DEPARTMENT'S REFERENCE NUMBER

PP\_2018\_NBEAC\_004\_00

NAME OF THE LOCAL GOVERNMENT AREA

Northern Beaches Council

DESCRIPTION OF PROPOSAL

Planning Proposal to add Seniors Living as a Schedule 1 Additional Permitted Use at the site under the Pittwater LEP 2014

LOCAL ENVIRONMENTAL PLAN (LEP) TO BE AMENDED BY THE PLANNING PROPOSAL

Pittwater Local Environmental Plan 2014

IS THE LEP TO BE AMENDED (ABOVE) A STANDARD INSTRUMENT LEP?

Yes

No

INFORMATION REQUIREMENTS

Requests should be accompanied by:

- an application form
- a copy of the planning proposal as submitted to the Gateway
- a copy of all additional information and documentation provided at the Gateway
- justification for why an alteration of the Gateway determination is warranted (if applicable), including, where relevant, responses to issues raised by the original Gateway decision maker
- if relevant, disclosure of reportable political donations under section 10.4 of the Act.

Please refer to 'A guide to preparing local environmental plans' for the necessary information requirements.

List below all the documents, maps, plans, studies, information and any other supporting information that comprises your proposed instrument and request for pre-gateway review.

INFORMATION PROVIDED

Application Form, Copy of Planning Proposal + Gateway Documentation, Cover Letter, Review Justification Report

## PART C – DISCLOSURE AND SIGNATURES

### C1 – Donation and Gift Disclosure

Section 10.4 of the Environmental Planning and Assessment Act 1979 requires the public disclosure of *reportable political donations* or gifts when lodging or commenting on a *relevant planning application*. This law is designed to improve the transparency of the planning system.

DO YOU HAVE ANY DONATIONS OR GIFTS TO DISCLOSE?

Yes

No

**How and when do you make a disclosure?**

The disclosure to the Minister or the Secretary of a *reportable political donation* or gift under section 10.4 of the Act is to be made:

- (a) in, or in a statement accompanying, the relevant planning submission if the donation is made before the submission is made, or
- (b) if the donation is made afterwards, in a statement of the person to whom the relevant planning submission was made within 7 days after the donation is made.

**What information needs to be included in a disclosure?**

The information requirements of a disclosure of reportable political donations are outlined in section 10.4(9) of the Act. A Disclosure Statement Template which outlines the information requirements for disclosures to the Minister or to the Director-General can be found on the department's website:

<https://www.planning.nsw.gov.au/donation-and-gift-disclosure>

**C2 – Signature(s)**

By signing below, I/we hereby declare that all information contained within this application form is accurate at the time of signing.

Signature(s)



Name(s)

Louise Kerr

In what capacity are you signing

Director, Planning and Place, Northern Beaches Council

Date

13/13/19.



northern  
beaches  
council

# **PLANNING PROPOSAL**

Amendments to Pittwater Local Environmental Plan 2014

## **NOS. 2 & 4 NOOAL STREET & NO. 66 BARDO ROAD, NEWPORT**

June 2019 (v.3 Incorporating DPE Feedback pre Gateway Determination)

TRIM PP0003/17 & 2019/314090

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## **Part 1 – Intended Outcomes**

The intended outcome of the Planning Proposal is to rezone Nos. 2 and 4 Nooal Street and No. 66 Bardo Road, Newport (being Lot 1 DP 540092, Lot 1 DP 315279 and Lot 2 DP 540092), from E4 Environmental Living to R2 Low Density Residential to enable 'seniors housing' on the land.

## Part 2 – Explanation of Provisions

The Planning Proposal seeks to amend PLEP 2014 as follows:

- Amend Land Zoning Map (LZN\_017) to rezone land known as Nos 2 and 4 Nooal Street and No. 66 (being Lot 1 DP 540092, Lot 1 DP 315279 and Lot 2 DP 540092), from E4 Environmental Living to R2 Low Density Residential.

The Planning Proposal is provided in response to the decision of the Sydney North Planning Panel following a Rezoning Review request made after Council's refusal of the original application.

However, the recommendation of the Sydney North Planning Panel to investigate expanding the rezoning to include approximately 13 additional properties to the north (up to Irrubel Road) is not included within the Planning Proposal. These were not included within the original Planning Proposal and have not been investigated to understand the full extent of site constraints or hazards.

Council considers that the Sydney North Planning Panel's recommendation to include additional properties is inconsistent with the Department of Planning and Environment's 'Planning Panels Operational Procedures' document (September 2016) which on page 35 states that:

*'The panel's determination should provide a clear decisions on whether the planning proposal before it should proceed, or not proceed, for a Gateway determination rather than recommending improvements.'*

In addition, Council received a letter from the Department of Planning and Environment dated 22 June 2018 (reference MDPE18/1430) which states in paragraph six that:

*'The planning proposal does not include the additional land referred to by the Panel and this will mean that the relevant planning and environmental studies are not available for assessment and a subsequent Gateway determination by the Delegate of the Greater Sydney Commission.'*

Given the reasons above, this Planning Proposal does not include any land beyond for Nos. 2 and 4 Nooal Street and No. 66 Bardo Road, Newport.

## Site Description

The land that is subject to this Planning Proposal is described as follows:

- No. 2 Nooal Street, Newport, being Lot 1 DP 540092;
- No. 4 Nooal Street, Newport, being Lot 1 DP 315279; and
- No. 66 Bardo Road, Newport being Lot 2 DP 540092.

The land has a combined area of approximately 2,927m<sup>2</sup> and is located on the north western corner of Bardo Road and Nooal Street. Directly adjoining the land to the west is Crystal Bay, forming part of the Pittwater Waterway. Crown land is located between the waterway and the land itself, creating an unofficial foreshore reserve accessed via Bardo Road. The section of Bardo Road that adjoins the land to the south is informal, having a single width carriageway.

Existing improvements on the land include three (3) dwelling houses, with associated swimming pools and gardens. A number of large trees are located within the Bardo Road and Nooal Street road reserves that directly adjoin the site. Mature vegetation is also located on the land itself.

Directly adjoining the site to the south is an existing Sydney Water Pumping station located at No. 68 Bardo Road. Surrounding development is generally characterised by one and two storey detached dwelling houses sited within a treed canopy. Princes Street Marina is located to the south west of the land.

Newport Village Centre located along Barrenjoey Road is located approximately 800m from the site (at the end of Bardo Road). A secondary neighbourhood shopping centre is located in Kalinya Street which is approximately 360m from the site as a direct line, but approximately 700m walking distance via the exiting road network.

Photos of the site and its immediate locality are provided at Attachment 1.

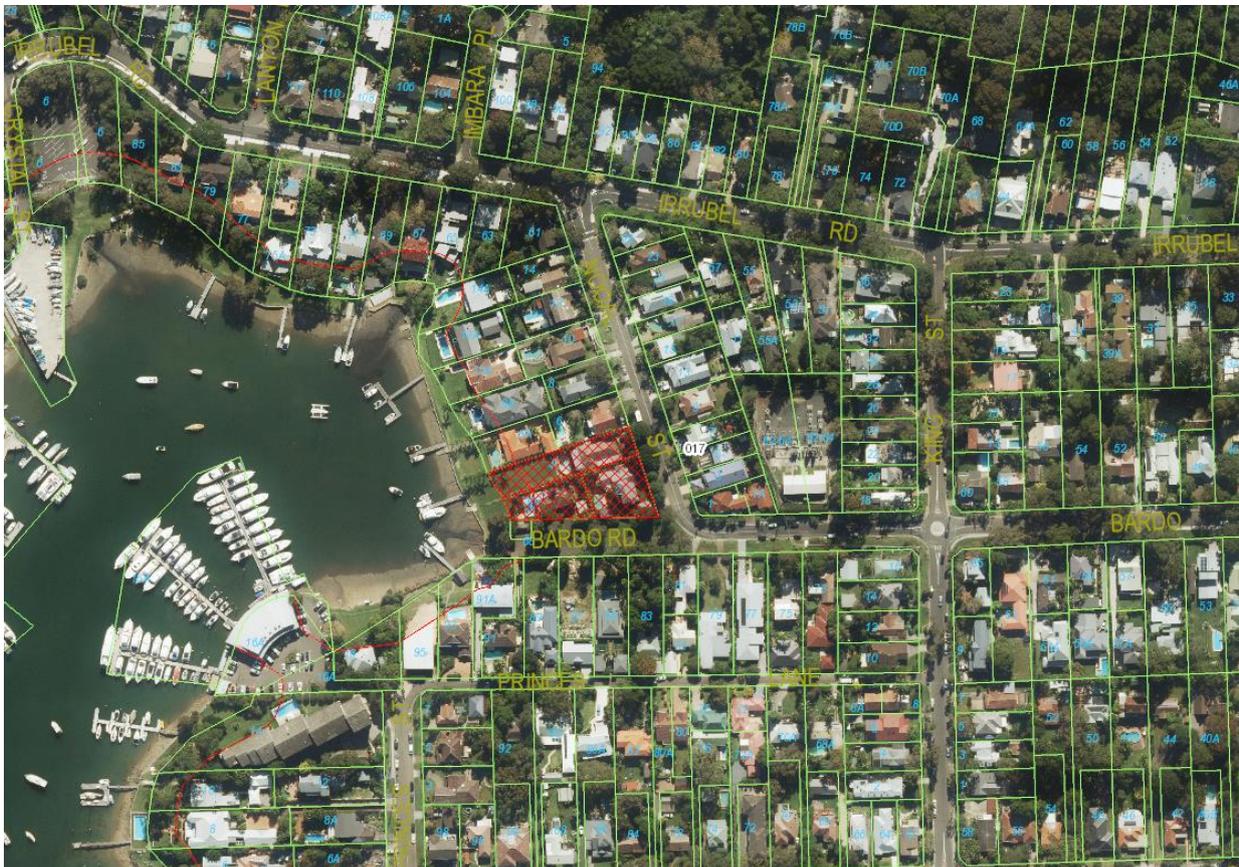


Figure 1: Aerial image of subject site and immediate locality (site shown red crossed hatched)

## The Zones

The land is currently zoned E4 Environmental Living pursuant to PLEP 2014. This zoning is predominantly applied to the entire Pittwater waterfront edge from Gladstone Street all the way to Palm Beach. The zoning is the predominant zone used within this part of the Peninsula with smaller pockets of Residential and Business zonings coupled with Environmental Conservation and Public Recreation zones.

The PLEP 2014 Land Use Table for the E4 Environmental Living Zone is as follows:

### **Zone E4 Environmental Living**

#### **1 Objectives of zone**

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- *To ensure that residential development does not have an adverse effect on those values.*
- *To provide for residential development of a low density and scale integrated with the landform and landscape.*
- *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*

#### **2 Permitted without consent**

*Home businesses; Home occupations*

#### **3 Permitted with consent**

*Bed and breakfast accommodation; Boat sheds; Building identification signs; Business identification signs; Centre-based child care facilities; Community facilities; Dwelling houses; Environmental protection works; Group homes; Health consulting rooms; Home-based child care; Home industries; Jetties; Oyster aquaculture; Places of public worship; Pond-based aquaculture; Respite day care centres; Roads; Secondary dwellings; Tank-based aquaculture; Water recreation structures*

#### **4 Prohibited**

*Industries; Service stations; Warehouse or distribution centres; Any other development not specified in item 2 or 3*

The PLEP 2014 Land Use Table for the R2 Low Density Residential Zone is as follows:

### **Zone R2 Low Density Residential**

#### **1 Objectives of zone**

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide for a limited range of other land uses of a low intensity and scale, compatible with surrounding land uses.*

#### **2 Permitted without consent**

*Home businesses; Home occupations*

#### **3 Permitted with consent**

*Bed and breakfast accommodation; Boarding houses; Boat sheds; Building identification signs; Business identification signs; Centre-based child care facilities; Community facilities; Dual occupancies; Dwelling houses; Environmental protection works; Exhibition*

homes; Group homes; Health consulting rooms; Home-based child care; Home industries; Jetties; Oyster aquaculture; Places of public worship; Pond-based aquaculture; Respite day care centres; Roads; Secondary dwellings; Tank-based aquaculture; Veterinary hospitals; Water recreation structures

**4 Prohibited**

Any development not specified in item 2 or 3

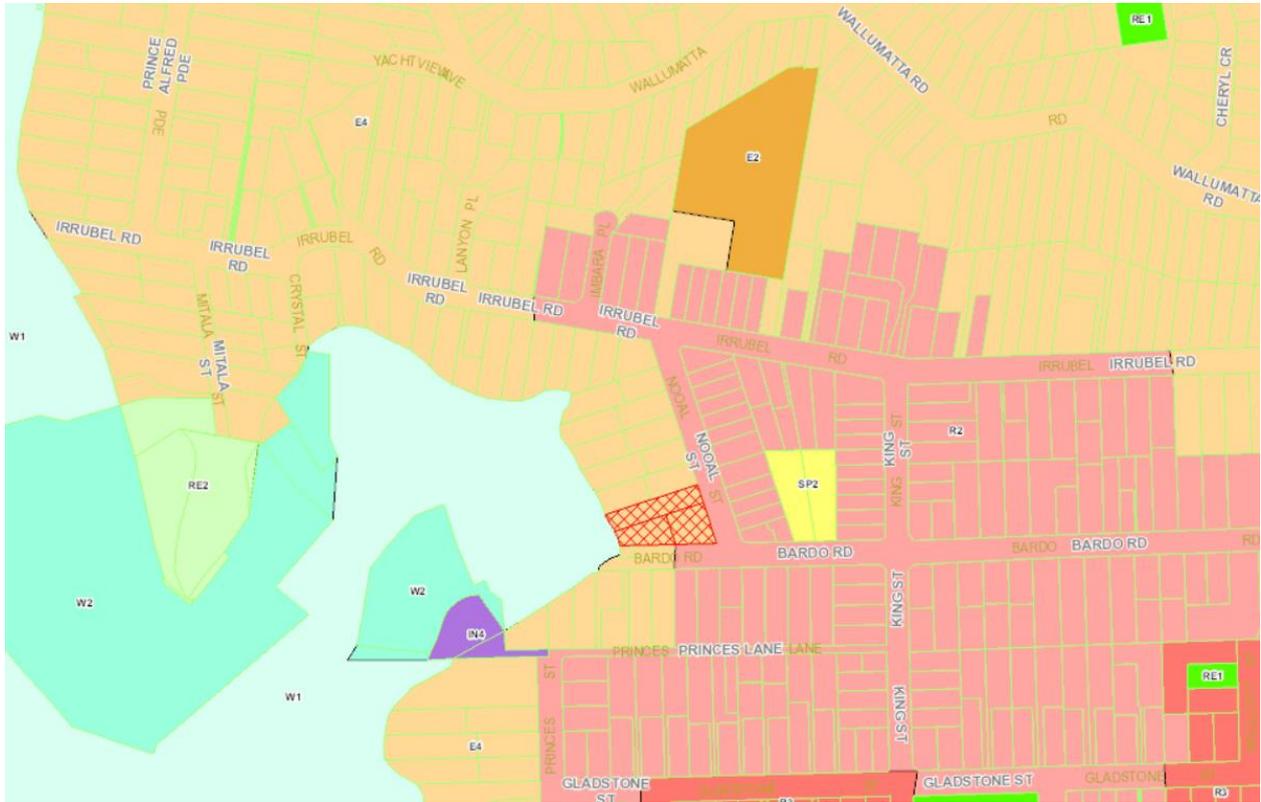


Figure 2: Existing land zoning (site shown red crossed hatched)

## **Part 3 – Justification**

### **Section A – Need for the Planning Proposal**

#### **1. Is the Planning Proposal a result of any strategic study or report?**

This Planning Proposal is not the result of any strategic study or report. This Planning Proposal is made in response to a Rezoning Review decision of the Sydney North Planning Panel.

The Rezoning Review was made in response to Council's refusal of the applicant's original Planning Proposal which sought to enable seniors housing on the site through an amendment to Schedule 1 of PLEP 2014. The Panel's decision however was to rezone the land to R2 Low Density Residential.

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

The intended effect of the applicant's original Planning Proposal was to allow 'seniors housing' on the site.

Rezoning of land to R2 Low Density Residential would allow State Environmental Planning Policy (Housing for Seniors or People with a Disability) (HSPD SEPP) to apply to the land. The SEPP would enable the use of the land for seniors housing to be considered pursuant to the provisions of the HSPD SEPP only, as the term 'senior's housing' is not permitted in R2 Low Density Residential Zone under PLEP 2014.

Alternatively, an amendment to Schedule 1 of the Pittwater Local Environmental Plan 2014 to include an additional permitted use for seniors housing on the subject site would also achieve the intended effect of the Planning Proposal and would not rely upon the provisions of the HSPD SEPP. An assessment of any application made for seniors housing under PLEP 2014 would then require more rigid assessment under the provisions of both the PLEP 2014 and Pittwater Development Control Plan 21 (DCP 21) and is likely to achieve a more favourable built form outcome that is consistent with existing development in the locality. Additional site specific DCP controls may also be able to be established for the site as part of this option.

## Section B – Relationship to strategic planning framework

### 3. Is the Planning Proposal consistent with the objective and actions of the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?

#### Greater Sydney Region Plan

The Planning Proposal has been reviewed against relevant outcomes of the Greater Sydney Region Plan “A Metropolis of Three Cities” published on 18 March 2018. The Plan identifies a number of strategic directions and specific policy settings transforming the Greater Sydney Region into a metropolis of three cities comprising the Western Parkland City, the Central River City and the Eastern Harbour City.

The Planning Proposal is informed by the Plan’s vision for the Eastern Harbour City. The Planning Proposal is not contrary to the broad Directions of the Plan. However there are a number of Objectives that require further analysis as follows:

- *Objective 11 - Housing is more diverse and affordable*
- *Objective 25 - The coast and waterways are protected and healthier*
- *Objective 27 - Biodiversity is protected, urban bushland and remnant vegetation is enhanced*
- *Objective 28 - Scenic and cultural landscapes are protected*
- *Objective 30 - Urban tree canopy cover is increased*
- *Objective 36 - People and places adapt to climate change and future shocks and stresses*
- *Objective 37 - Exposure to natural and urban hazards is reduced*

These objectives are discussed more broadly below under the heading *North District Plan*, with further discussion relating to housing diversity and affordability; scenic and cultural landscapes; biodiversity and tree canopy; and natural hazards and climate change. The discussion below includes recommendations on the additional information that should be required to be provided by the applicant should a gateway determination be issued.

#### North District Plan

The North District Plan (March 2018) is the relevant and applicable district plan. An assessment of the strategic and site specific merit of the Planning Proposal against this plan appears below.

*Planning Priority N5 – Providing housing supply, choice and affordability, with access to jobs, services and public transport*

The Planning Proposal has the intended effect of increasing housing supply and choice in the form of housing for seniors or people with a disability. However, the Planning Proposal does not fulfill a holistic approach to increase housing supply or choice in strategic locations identified under the District Plan.

The Planning Proposal is unlikely to improve housing affordability within the local area given the limited market that seniors housing is available to be occupied by. Furthermore, the waterfront location is also likely to command a premium price that may reduce overall affordability.

In 2017 Northern Beaches Council adopted an Affordable Housing Policy. One of the Policy statements included a commitment toward a minimum *10% affordable rental housing target for all strategic plans and planning proposals for urban renewal or greenfield development*. Council has the opportunity to negotiate with the applicant as part of the Planning Proposal process to discuss how this may be able to be achieved. Alternatively, the applicant may wish to

enter into a voluntary planning agreement to provide a monetary contribution toward affordable housing within the Northern Beaches Local government area.

*Planning Priority N17 - Protecting and enhancing scenic and cultural landscapes*

The subject properties are regarded as scenic due to their environmental character and waterfront location. Any eventual redevelopment of the site will be required to respond in a way that is appropriate having regard to the character of existing development in the locality, relevant zone objectives and other planning controls.

The draft concept scheme provided with the initial planning proposal was not considered to meet the above objective. Should a gateway determination be issued by the Department, it is suggested that it be conditional on the applicant providing a more appropriate built form concept and/or site specific DCP controls that protect and enhance the scenic landscape of the area. Any DCP controls should form part of any public exhibition documentation.

*Planning Priority N19 – Increasing urban tree canopy cover and delivering Green Grid connections*

The Planning Proposal itself will not alter the tree canopy, however the future built form outcome will have the potential to impact upon existing and future trees on the site and within the adjoining boundary areas such as Council's roads reserves.

An appropriate architectural design could be achieved which retained existing trees on the site and adjoining properties and potentially increased overall tree canopy through additional planting. This matter could be addressed as part of a future development application which would be subject to a detailed Arboricultural Assessment.

A *Pre-development site inspection letter* dated January 2018 prepared by an Arborist (Arborsaw) provided as part of the Rezoning Review identified that the majority of trees within adjoining Council land are of high significance. The letter recommends the implementation of minimum tree protection zones and further Arboricultural Assessment prior to any further development of the land.

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

The subject site is impacted by natural hazards, including flooding and coastal inundation, the impact of which is anticipated to increase from climate change.

This Planning Proposal is inconsistent with Objectives 37 and 81 of the North District Plan, which aims to reduce and minimise exposure to natural hazards, and to avoid locating new development and the intensification of development in areas impacted by hazards.

It is further noted that page 118 of the North District Plan states '*placing development in hazardous areas or increasing the density of development in areas with limited evacuation options increase risk to people and property*'. It is noted that during flooding events access to the subject properties is impacted by floodwaters overtopping both road access from Nooal Street to Irrubel Road and from Bardo Road to King Street. It is further noted that the intended habitants of senior's housing developments are generally more likely to require assistance to evacuate which may increase the risk to life in emergency events.

Should a gateway determination be issued, it is suggested that it be conditional on the applicant providing a response to how the flooding and natural hazards (including the impacts of climate change) can be addressed as part of a future redevelopment of the site. Commentary from relevant State Government Authorities and the State Emergency Service should also inform the suitability of the site for senior's housing development.

This matter is addressed further under the Section 9.1 Ministerial Directions relating to Coastal Management and Flooding.

**a) Does the proposal have strategic merit? Is it;**

*Consistent with a relevant local council strategy that has been endorsed by the Department?*

The proposal is not consistent with elements of the *Pittwater Local Planning Strategy (2011)* which is discussed further below. While this strategy was not formally endorsed by the Department, it was used to inform the PLEP 2014 which was gazetted on 30 May 2014 and came into effect on 27 June 2014.

*Responding to a change in circumstances, such as the investment in new infrastructure or changing demographic trends that have not been recognised by existing planning controls?*

The applicant's original Planning Proposal was made in response to a change in circumstances being the change in land zoning from 2(a) (Residential "A") pursuant to Pittwater Local Environmental Plan 1993 (PLEP 1993) to E4 Environmental Living following the gazettal of PLEP in June 2014. An extract of the applicant's original Planning Proposal is provided below:

- (i) *We confirm that No's 2 and 4 Nooal Street, Newport were purchased by their current owner prior to the gazettal of Pittwater Local Environmental Plan 2014 (PLEP 2014) with the intention of developing the land for the purpose of seniors housing. At the time of purchase these properties were zone 2(a) (Residential "A") pursuant to Pittwater Local Environmental Plan 1993 (PLEP 1993) with seniors housing permissible in the zone pursuant to State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP HSPD).*
- (ii) ..
- (iii) ...
- (iv) ...
- (v) *Following a lengthy community consultation process PLEP 2014 was gazetted in May 2014 with the instrument commencing on 27th June 2014. This had the effect of prohibiting seniors housing on the land which until this time was permissible with consent pursuant to SEPP HSPD. This was confirmed in writing by the Department of Planning and Environment in its correspondence of 9th August 2016 a copy of which is at Attachment 2.*

The *Pittwater Local Planning Strategy (2011)* which informed the existing planning controls acknowledged that the population of the local area is ageing with a need for seniors housing and 'ageing in place' to be accommodated. However this type of housing is generally best suited in close proximity to town or village centre locations to improve access to services and transport. As such the use was not applied as a permissible development within the PLEP 2014 for zones typically located outside of centre locations.

**b) Does the proposal have site-specific merit, having regard to the following:**

*The natural environment (including known significant environmental values, resources or hazards)?*

The site currently allows for residential development, however it is impacted by coastal inundation risk and flood hazards. As such the site may not be the most suitable location for additional housing, including seniors housing that is more likely to accommodate frail or disabled people who may require assistance in evacuation events.

Should a gateway determination be issued, it is suggested that it be conditional on the applicant providing a response to how the flooding and natural hazards (including the impacts of climate change) can be addressed as part of a future redevelopment of the site for intensified residential use including seniors housing.

Commentary from relevant State Government Authorities and the State Emergency Service should also inform the suitability of the site for the intended redevelopment.

*The existing uses, approved uses, and likely future uses of land in the vicinity of the proposal?*

The site is surrounded by detached dwelling houses to the north, east and south. There is no rezoning proposed or anticipated in this area at a broader level.

The introduction of a senior's housing development may be inconsistent with both the established character and the desired future character of the area. However, this assessment would be dependent upon the built form outcome to be proposed on the site.

An appropriate architectural response may be able to be achieved to enable a built form outcome that is compatible with the predominant character, bulk and scale of development in the locality.

The initial concept plans provided with the applicant's original Planning Proposal were not considered to provide for a bulk and scale of development consistent with the predominant built form in the area and the underlying controls of Pittwater DCP 21 that would otherwise apply to the land.

Should gateway determination be issued, it is suggested that it be conditional on the applicant providing a site specific DCP controls to ensure a compatible design that also protects local scenic and aesthetic qualities, and that these form part of any public exhibition documentation.

*The services and infrastructure that are or will be available to meet the demands arising from the proposal and any proposed financial arrangements for infrastructure provision?*

The land is currently occupied by existing residential dwellings and is serviced by existing roads and necessary utilities.

The Planning Proposal has the intended effect of permitting seniors housing on the site. The site is located 400 metres from a bus stop and there will need to be upgraded pedestrian footpaths and facilities to ensure compliance with accessibility standards. However the cost of this would be borne by the developer and would be addressed as part of any future development application.

The concept proposal provided indicates substantial changes to the Bardo Road reserve near to the intersection with Nooal Street will be required. Currently this area serves as a driveway access to a small number of properties while the Proposal seeks to locate its primary road access here requiring upgrades to accommodate additional traffic impacts. Engineering plans and designs showing the required upgrades should be provided to understand the impact upon existing trees and potential impacts upon flood waters

From a traffic generation and demand perspective, it is reasonable to assume the Planning Proposal will have a minimum impact on existing traffic flows which is unlikely to significantly increase the anticipated peak hour traffic in the local road network.

#### **4. Is the Planning Proposal consistent with a council's local strategy or other local strategic plan?**

A review has been undertaken of the Planning Proposal against certain policies and plans of Northern Beaches Council as follows:

##### *Pittwater Local Planning Strategy (2011)*

The proposal is within the former Pittwater Council area and the *Pittwater Local Planning Strategy (2011)* is considered the relevant strategy. While this strategy was not endorsed by the former Department of Planning and Environment, it was used to inform the Pittwater Local Environmental Plan 2014 which has been gazetted and came into force on 27 June 2014. This Planning Proposal is inconsistent with elements of that strategy and other Council policies as outlined below.

##### *Land Capability Mapping*

The Land Capability Mapping that accompanied the Pittwater Local Planning Strategy established the classification criteria for the suitability for the intensification of land development having regard to a range of environmental, economic or social characteristic that influences land use allocation and future management of the land.

Through this process, the subject site was identified as being of environmental and aesthetic significance and not appropriate for more intensive development.

##### *Centre Based Development*

Actions contained within the strategy seek to intensify land uses within close proximity to existing centres while continuing the same land uses for land located away from services or impacted by constraints. The motivations for these actions are to contain dense development in areas that are well serviced and located close to existing centres.

The Planning Proposal is inconsistent with the strategy by rezoning land to allow for denser development more than 800m away from the Newport Village Centre away from high frequency public transport.

##### *Dwelling Targets*

Under the Northern District Plan, the Northern Beaches LGA has been assigned a target for 3,400 dwellings to 2021. Northern Beaches Council is currently working on a housing strategy to ensure that both short term and longer term housing targets can be provided in strategic locations best serviced by existing infrastructure and public transport services.

##### *Affordable and Appropriate Housing*

Key workers are an important contributor to the local economy and community; however they are increasingly locked out of accommodation on the Northern Beaches. To alleviate these problems Northern Beaches Council has adopted an affordable housing policy which commits Council to a 10% affordable housing target for all rezonings proposing new dwellings. This application has made no provisions for affordable housing.

Council has the opportunity to negotiate with the applicant as part of the Planning Proposal process to discuss how this may be able to be achieved. Alternatively, the applicant may wish to enter into a voluntary planning agreement to provide a monetary contribution toward affordable housing within the Northern Beaches Local government area.

**5. Is the Planning Proposal consistent with applicable State Environmental Planning Policies?**

**Table 1. Compliance with State Environmental Planning Policies (SEPPs)**

SEPPs (as at June 2018)		Applicable	Consistent
1	Development Standards	No Refer Cl 1.9 PLEP 2014)	N/A
19	Bushland in Urban Areas	N/A	N/A
21	Caravan Parks	N/A	N/A
33	Hazardous and Offensive Development	N/A	N/A
36	Manufactured Home Estates	N/A	N/A
44	Koala Habitat Protection	N/A	N/A
47	Moore Park Showground	N/A	N/A
50	Canal Estate Development	N/A	N/A
55	Remediation of Land	<b>YES</b>	<b>YES</b>
64	Advertising and Signage	N/A	N/A
65	Design Quality of Residential Apartment Development	<b>YES</b>	<b>YES</b>
70	Affordable Housing (Revised Schemes)	<b>YES</b>	<b>YES</b>
	(Aboriginal Land) 2019	N/A	N/A
	(Affordable Rental Housing) 2009	<b>YES</b>	<b>YES*</b>
	(Building Sustainability Index: BASIX) 2004	<b>YES</b>	<b>YES</b>
	(Coastal Management) 2018	<b>YES</b>	<b>NO</b>
	(Concurrences) 2018	N/A	N/A
	(Educational Establishments and Child Care Facilities) 2017	N/A	N/A
	(Exempt and Complying Development Codes) 2008	<b>YES</b>	<b>YES*</b>
	(Gosford City Centre) 2018	N/A	N/A
	(Housing for Seniors or People with a Disability) 2004	<b>YES</b>	<b>NO</b>
	(Infrastructure) 2007	N/A	N/A
	(Kosciuszko National Park – Alpine Resorts) 2007	N/A	N/A
	(Kurnell Peninsula) 1989	N/A	N/A
	(Mining, Petroleum Production and Extractive Industries) 2007	N/A	N/A
	(Miscellaneous Consent Provisions) 2007	N/A	N/A
	(Penrith Lakes Scheme) 1989	N/A	N/A
	(Primary Production and Rural Development) 2019	N/A	N/A
	(State and Regional Development) 2011	N/A	N/A
	(State Significant Precincts) 2005	N/A	N/A
	(Sydney Drinking Water Catchment) 2011	N/A	N/A
	(Sydney Region Growth Centres) 2006	N/A	N/A
	(Three Ports) 2013	N/A	N/A
	(Urban Renewal) 2010	N/A	N/A
	(Vegetation in Non-Rural Areas) 2017	<b>YES</b>	<b>YES</b>
	(Western Sydney Employment Area) 2009	N/A	N/A
	(Western Sydney Parklands) 2009	N/A	N/A
	Sydney Regional Environmental Plan No 8 (Central Coast Plateau Areas)	N/A	N/A
	Sydney Regional Environmental Plan No 9 – Extractive Industry (No 2 – 1995)	N/A	N/A
	Sydney Regional Environmental Plan No 16 – Walsh Bay	N/A	N/A

	Sydney Regional Environmental Plan No 20 – Hawkesbury-Nepean River (No 2 – 1997)	N/A	N/A
	Sydney Regional Environmental Plan No 24 – Homebush Bay Area	N/A	N/A
	Sydney Regional Environmental Plan No 26 – City West	N/A	N/A
	Sydney Regional Environmental Plan No 30 – St Marys	N/A	N/A
	Sydney Regional Environmental Plan No 33 – Cooks Cove	N/A	N/A
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	N/A	N/A

\* Refer further discussion below.

In relation to applicable SEPPs listed at Table 1 above, the following comments are provided regarding how the Planning Proposal is either consistent or inconsistent with the SEPPs as follows:

#### SEPP No. 55 - Remediation of Land

Clause 6(1) of SEPP 55 states that:

- (1) *In preparing an environmental planning instrument, a planning authority is not to include in a particular zone (within the meaning of the instrument) any land specified in subclause (4) if the inclusion of the land in that zone would permit a change of use of the land, unless:*
  - (a) *the planning authority has considered whether the land is contaminated, and*
  - (b) *if the land is contaminated, the planning authority is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for all the purposes for which land in the zone concerned is permitted to be used, and*
  - (c) *if the land requires remediation to be made suitable for any purpose for which land in that zone is permitted to be used, the planning authority is satisfied that the land will be so remediated before the land is used for that purpose.*

The site's history indicates that it has been used for predominantly residential purposes for the last 50+ years. The possibility of contamination is considered low. This matter could be further addressed as part of a future development application

#### SEPP No. 65 - Design Quality of Residential Apartments

SEPP 65 applies to development for the purpose of a residential flat building, shop top housing or mixed use development with a residential accommodation component that is at least 3 or more and contains at least 4 dwellings.

The concept plans provided with the original Planning Proposal may meet the criteria for the applicability of this SEPP. Any future development application that reaches this threshold would have to demonstrate consistency with the SEPP. This could be addressed at the development application stage.

#### SEPP No 70 – Affordable Housing (Revised Schemes)

SEPP 70 now identifies all parts of the state as having a need for affordable housing and enables the potential collection of affordable housing contribution pursuant to Section 7.32 (1) of the Environmental Planning and Assessment Act (EP&A Act) where either SEPP or local environmental plan authorises an affordable housing condition to be imposed.

Council has an adopted Affordable Housing Policy which is working toward amending relevant LEPs to impose a contribution toward affordable housing pursuant to the EP&A Act. Council's Policy also aims to achieve a minimum 10% of affordable housing for all planning proposals seeking rezoning or additional dwelling capacity. Given the intent of the SEPP and Council's Affordable Housing Policy, it is suggested that should a gateway determination be issued, that the applicant be asked to provide an affordable housing contribution in accordance with Council's Policy.

#### SEPP (Building Sustainability Index: BASIX) 2004

This SEPP applies to new residential development and requires a certain commitment toward water and energy efficiency. Any future development of the site for residential purposes would be required to meet the requirements of the SEPP. This could be addressed as part of a future development application.

#### SEPP (Coastal Management) 2018

The Planning Proposal is inconsistent with the aims and intent of this policy which is to minimise development that places more people at risk from coastal hazards. The site is identified as a property subject to coastal inundation, which is defined as a 'coastal hazard' under the *Coastal Management Act 2016*. The Planning Proposal could allow for the intensification of development on areas impacted by coastal hazards.

The Planning Proposal is inconsistent with the following objectives of the SEPP;

- (a) *To protect and manage the natural, cultural, recreational and economic attributes of the NSW Coast, and*
- (e) *to ensure that the visual amenity of the coast is protected, and*
- (k) *to ensure that the type, bulk, scale and size of development is appropriate for the location and protects and improves the natural scenic qualities of the surrounding area, and*
- (i) *to encourage a strategic approach to coastal management*

The Planning Proposal if it were to proceed could allow for development out of scale and character with the surrounding area that is generally characterised by detached dwelling houses. Future development may not protect the visual amenity of the area, or promote an approach to coastal management that is strategic or consistent with other properties that adjoin the Pittwater waterway.

Should a gateway determination be issued it is suggested that it be conditional upon address of the matters raised under the SEPP and provision of site specific DCP controls guiding future redevelopment of the site.

#### SEPP (Exempt and Complying Development Codes) 2008

Future redevelopment of the site may be subject to the provisions enabled by the SEPP within an R2 Low Density Residential zoning. To enable consistency with adjoining land (including the type of development that may be exempt or complying) it is preferable the E4 zoning be retained. However

## Housing for Seniors or People with a Disability) 2004

Under the Standard Instrument, 'E' zones are regarded as environmental protection zones. In this regards the site is known to meet the criteria for exclusion under the SEPP for environmentally sensitive sites.

The E zones objectives include aesthetics as a valid reason for protection. Allowing the Planning Proposal to proceed would not be consistent with the aims and intent of the SEPP to exclude environmentally sensitive areas from Seniors Housing Development.

However, should the use be permitted as an additional permitted use under Schedule 1 of PLEP 2014, this would avoid the application of this SEPP.

### **6. Is the planning proposal consistent with applicable Ministerial Directions?**

Applicable Directions are summarised in Table 2 below including comments on each. Where the Planning Proposal is deemed inconsistent with a Direction it is discussed in further detail below.

#### Direction 2.1 Environment Protection Zones

The objective of this Direction is *to protect and conserve environmentally sensitive areas*.

The Planning Proposal is inconsistent with part 2.1(5) of this Direction which states that:

*A planning proposal that applies to land within an environmental protection zone or otherwise identified for environmental protection purposes in an LEP must not reduce the environmental standards that apply to the land (including modifying development standards that apply to the land).*

The site is identified as an environmental protection zone, due to the E4 Environmental Living zoning. Under Direction 2.1(6) a planning proposal may be inconsistent if the relevant planning authority can justify an inconsistency through a strategy or study. However no strategy or study justifying the inconsistency has been prepared.

Consistency with this Direction may be able to be achieved through the retention of the existing E4 Environmental Living zoning as opposed to the blanket rezoning of the land to R2 Low Density Residential.

An additional permitted use of 'seniors housing' could be included in Schedule 1 subject to the continued operation of existing planning controls that protect and conserve environmentally sensitive areas.

The introduction of site specific DCP controls may also be required to address the scenic protection requirements and to address any site specific environmental factors.

#### 2.2 Coastal Protection

The objective of this Direction is *to implement the principles in the NSW Coastal Policy*.

This direction applies to land within the coastal zone as identified under the *Coastal Management Act 2016*, including land identified as 'coastal use'. The subject properties are identified as such.

2.2(5) of the Direction states (in part) that:

*A planning proposal must not rezone land which would enable increased development or more intensive land-use on land;*

(b) *that has been identified as land affected by a current or future coastal hazard in a local environmental plan or development control plan, or a study or assessment undertaken:*

(i) *By or on behalf of the relevant public authority and provided to the relevant planning proposal authority, or*

(ii) *By or on behalf of a public authority and provided to the relevant planning authority and the planning proposal authority*

The subject properties have been identified as being subject to coastal inundation, a coastal hazard as defined in the *Coastal Management Act 2016*. The proposed rezoning could enable a more intensive development outcome on the site which this Direction seeks to prevent.

While 2.2(7) allows for an inconsistency, no strategy or study has been provided with the Planning Proposal to justify an inconsistency. With regards to an inconsistency justified by a District Plan, the Planning Proposal is inconsistent with the relevant District Plan (North District Plan) as previously discussed in this Planning Proposal.

Should a gateway determination be issued it should be conditional upon the provision by the applicant of relevant technical studies to address the suitability to the site to enable more intense residential development having regard to any coastal management of natural hazard issues.



Figure 3: Coastal Use Area – shown orange hatched (site shown red crossed hatched)

### 3.1 Residential Zones

The objectives of this Direction are to:

- (a) *encourage a variety of choice of housing types to provide for existing and future housing needs,*
- (b) *to make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services, and*
- (c) *to minimise the impact of residential development on the environment and resource lands*

While the proposal generally complies with this Direction it is inconsistent with objective (c) as the proposal has the potential to increase the impact of residential development on environmental land by potentially increasing the bulk and scale of development on land that is currently zoned E4 Environmental Living.

Inconsistency with this Direction could be overcome by applying site specific DCP controls to the site to limit the size and scale of future development. The preparation of appropriate DCP controls should be required as a condition of any gateway determination issued.

### 3.4 Integrating Land Use and Transport

The objective of this Direction is to ensure that urban structures, building forms, land use locations, development designs, subdivision and street layouts achieve the following planning objectives:

- (a) *improving access to housing, jobs and services by walking, cycling and public transport, and*
- (b) *increasing the choice of available transport and reducing dependence on cars, and*
- (c) *reducing travel demand including the number of trips generated by development and the distances travelled, especially by car, and*
- (d) *supporting the efficient and viable operation of public transport services, and*
- (e) *providing for the efficient movement of freight.*

The Planning Proposal is inconsistent with the objectives of this Direction as it does not improve access via walking or cycling and does not reduce the likely extent of private vehicle trips being located 800m from the Newport Village Centre. It is also not located close to frequent high capacity public transport.

### 4.3 Flood Prone Land

The objectives of this Direction are:

- (a) *to ensure that development of flood prone land is consistent with the NSW Government's Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005, and*
- (b) *to ensure that the provisions of an LEP on flood prone land is commensurate with flood hazard and includes consideration of the potential flood impacts both on and off the subject land.*

The Planning Proposal is considered to be inconsistent with this Direction. 4.3(5) of the Direction states that;

*A planning proposal must not rezone land within the flood planning areas from Special Use, Special Purpose, Recreation, Rural or **Environmental Protection Zones** [emphasis added] to a Residential, Business, Industrial, Special Use or Special Purpose Zone.*

The properties are currently zoned E4 Environmental Living, an environmental protection zone under the Standard Instrument. Retention of the E4 zoning would remove the inconsistency with this element of the Direction.

5.5 (6) of the Direction states that:

*A planning proposal must not contain provisions that apply to the flood planning areas which;*

- (a) permit development in floodway areas,*
- (b) permit development that will result in significant flood impacts to other properties,*
- (c) permit a significant increase in the development of that land,*
- (d) are likely to result in a substantially increased requirement for government spending on flood mitigation measures, infrastructure or services*

The Pittwater Overland Flow Mapping and Flood Study 2013 indicates that the subject sites are subject to flooding impacts including being isolated in certain flood events. Nooal Street is overtopped by flooding both near the intersection with Irrubel Road and Bardo Road. Council has also undertaken further flood studies for this area in 2018 which indicate that parts of the site and surrounding road network are subject to the impacts of flooding.

This Planning Proposal is considered to be inconsistent with the aims and intent of the Direction to avoid placing more people and property at risk. The risk is considered greater given that the intended development outcome of seniors housing is more likely to house people with mobility issues that require assistance in an evacuation event.

Should a gateway determination be issued it is recommend that it be conditional upon the applicant providing a Flood Study addressing the impacts of flooding on the site and in particular addressing the matters raised in Section 6 of the Direction as outlined above.



Figure 4: Draft Newport Flood Study 2018 high (red), medium (blue) and low (green) flood risk (site shown red crossed hatched)

**Table 2: Ministerial Directions – Summary of Applicable Directions**

<b>Ministerial Direction</b>	<b>Comment</b>
<b>1 Employment and Resources</b>	
1.1 Business and Industrial Zones	Not applicable
1.2 Rural Zones	Not applicable
1.3 Mining, Petroleum Production and Extractive Industries	Not applicable
1.4 Oyster Aquaculture	Not applicable
1.5 Rural Lands	Not applicable
<b>2 Environment and Heritage</b>	
2.1 Environment Protection Zones	
The objective of this direction is to protect and conserve environmentally sensitive areas.	Applicable and inconsistent Refer detailed discussion above.
2.2 Coastal Protection	
The objective of this direction is to implement the principles in the NSW Coastal Policy	Applicable and inconsistent Refer detailed discussion above.
2.3 Heritage Conservation	Not applicable
2.4 Recreation Vehicle Areas	Not applicable
2.5 Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEP's	Not applicable
<b>3. Housing, Infrastructure and Urban Development</b>	
3.1 Residential Zones	
The objectives of this direction are to: (c) encourage a variety of choice of housing types to provide for existing and future housing needs, (d) to make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services, and to minimise the impact of residential development on the environment and resource lands.	Applicable and partly inconsistent Refer detailed discussion above.
3.2 Caravan Parks and Manufactured Home Estates	Not applicable
3.3 Home Occupations	Not applicable
3.4 Integrating Land Use and Transport	Applicable and inconsistent Refer detailed discussion above
3.5 Development Near Licensed Aerodromes	Not applicable
3.6 Shooting Ranges	Not applicable
<b>4. Hazard and Risk</b>	
4.1 Acid Sulfate Soils	
The objective of this direction is to avoid significant adverse environmental impacts from the use of land that has a probability of	The site is identified as being Class 5 on the Acid Sulfate mapping of the Pittwater Local Environmental Plan. It is considered

containing acid sulfate soils.	that this issue could be adequately addressed at the development application stage if this Planning Proposal was to proceed.
4.2 Mine Subsidence and Unstable Land	Not applicable
4.3 Flood Prone Land	Applicable and inconsistent Refer detailed discussion above
4.4 Planning for Bushfire Protection	Not applicable
<b>5 Regional Planning</b>	
5.1 Implementation of Regional Strategies	Not applicable
5.2 Sydney Drinking Water Catchments	Not applicable
5.3 Farmland of State and Regional Significance on the NSW Far North Coast	Not applicable
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	Not applicable
5.5 Development in the vicinity of Ellalong, Paxton and Millfield (Cessnock LGA) (Revoked 18 June 2010)	Not applicable
5.6 Sydney to Canberra Corridor (Revoked 10 July 2008 See amended Direction 5.1)	Not applicable
5.7 Central Coast (Revoked 10 July 2008. See amended Direction 5.1)	Not applicable
5.8 Second Sydney Airport: Badgerys Creek	Not applicable
5.9 North West Rail Link Corridor Strategy	Not applicable
5.10 Implementation of Regional Plans	Not applicable
5.11 Development of Aboriginal Land Council land	Not applicable
<b>6. Local Plan Making</b>	
6.1 Approval and Referral Requirements	
The objective of this direction is to ensure that LEP provisions encourage the efficient and appropriate assessment of development.	The Planning Proposal is consistent with the terms of this direction as follows: a) provisions that require the concurrence, consultation or referral of DAs to a Minister or public authority are minimised (b) no provisions are contained in the Planning Proposal requiring concurrence, consultation or referral of a Minister or public authority. (c) no development is identified as designated development.
6.2 Reserving Land for Public Purposes	
The objectives of this direction are: (a) to facilitate the provision of public services and facilities by reserving land for public purposes, and (b) to facilitate the removal of reservations of land for public purposes where the land is no longer required for acquisition.	The Planning Proposal does not create, alter or reduce existing zonings or reservations of land for public purposes.
6.3 Site Specific Provisions	
The objective of this direction is to discourage unnecessarily restrictive site specific planning	The Planning Proposal contains no site-specific planning controls.

controls.	
<b>7 Metropolitan Planning</b>	
7.1 Implementation of A Plan for Growing Sydney	
The objective of this direction is to give legal effect to the planning principles; directions; and priorities for subregions, strategic centres and transport gateways contained in A Plan for Growing Sydney.	No longer applicable. An address of the relevant Regional Plan and District Plan is provided in Section 3.
7.2 Implementation of Greater Macarthur Land Release Investigation	
7.3 Parramatta Road Corridor Urban Transformation Strategy	
7.4 Implementation of North West Priority Growth Area Land Use and Infrastructure Implementation Plan	
7.5 Implementation of Greater Parramatta Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	
7.6 Implementation of Wilton Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	
7.7 Implementation of Glenfield to Macarthur Urban Renewal Corridor	
7.8 Implementation of Western Sydney Aerotropolis Interim Land Use and Infrastructure Implementation Plan	
7.9 Implementation of Bayside West Precincts 2036 Plan	
7.10 Implementation of Planning Principles for the Cooks Cove Precinct	

## Section C – Environmental, social and economic impact

### 7. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

The Planning Proposal is unlikely to impact upon any known critical habitats, species or populations.

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

The subject sites are impacted by a number of hazards and require a number of studies or additional information for a complete assessment. A number of these issues were not previously addressed by the Planning Proposal and should be required to be provided by the applicant should gateway determination be issued.

#### Flooding

The subject properties are identified as being affected by flooding as well being potentially isolated in flooding events. A flood study should be provided that shows the site can be developed for seniors housing without risk to life or property on the site. The study should also

consider the impact of the property becoming isolated in flooding events and the need for the evacuation of people more likely to require assistance in doing so. It should also consider the impact of any proposed road modifications required and driveway upgrades that impact the flow of floodwaters.

Furthermore, the study should clearly outline how the proposal can ensure consistency with Section 9.1 Ministerial Direction 4.3- Flooding.

#### Visual impact on scenic area

Without some level of control, a proposed 'senior housing' development outcome typically provided under the HSPDSEPP could provide for a development of a bulk and scale that is out of character with the existing low density area regarded for its aesthetic qualities.

Should gateway determination be issued, it is suggested that it be conditional on the applicant providing additional information including a visual impact study and massing diagrams showing how the proposed development could fit within the low density environment. Site specific DCP controls should also be prepared to ensure a built form outcome can be achieved that protects local scenic and aesthetic qualities. This additional information should form part of any public exhibition documentation.

#### Coastal hazards

The property is identified as being impacted by coastal inundation. Should gateway determination be issued it should be conditional upon the provision by the applicant of a coastal hazard report that establishes the property can be safely developed without risk to property or life should be provided.

Furthermore, the study should clearly outline how the proposal can ensure consistency with Section 9.1 Ministerial Direction 2.2- Coastal Protection.

#### Loss of trees

An Arborist report indicating the impact of eventual development and tree loss should be provided. The report should include the impact of development on the loss of street trees affronting Nooal Street as well as required tree removal in Bardo Road to accommodate the new driveway and intersection modifications.

#### Access infrastructure

Based on the indicative concept plan provided require substantial changes to the Bardo Road reserve near to the intersection with Nooal Street. Currently this area serves as a driveway access to a small number of properties while the Proposal seeks to locate its primary road access here requiring upgrades to accommodate additional traffic impacts. Engineering plans and designs showing the required upgrades should be provided to understand the impact upon existing trees and potential impacts upon flood waters

### **9. Has the Planning Proposal adequately addressed any social and economic effects?**

The proposal has not considered the impacts of the proposal on housing affordability and in particular an address of Council's adopted Affordable Housing Policy position which is to aim to achieve 10% affordable rental housing target for all strategic plans and planning proposals for urban renewal or greenfield development.

This matter can be addressed further with the applicant should a gateway determination be issued.

**Section D – State and Commonwealth interests**

**10. Is there adequate public infrastructure for the planning proposal?**

This will be addressed at development application stage.

**11. What are the views of State and Commonwealth public authorities consulted in accordance with the Gateway determination?**

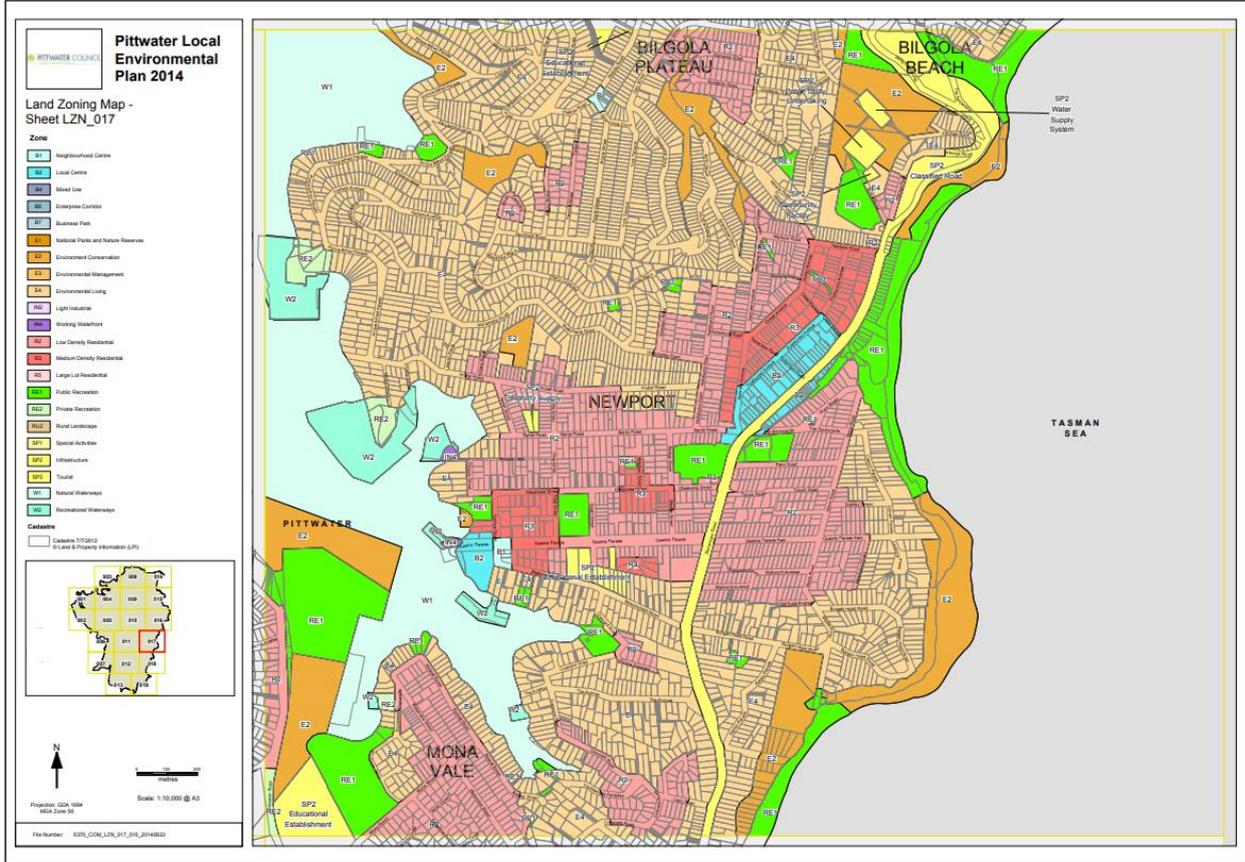
Should a gateway determination be issued the following authorities will need to be consulted.

Authority	Issues	Comment
Sydney Water	Pumping Station	The site adjoins a Sydney Water pumping station. They should be consulted in regards to impact on their asset.  Sydney Water should also be contacted having regard broader impacts on water supply infrastructure.
Roads and Maritime Services NSW	Traffic Impacts	RMS should be consulted as to whether they have any concerns with any impacts on state roads
Transport for NSW	Public transport	TfNSW should be consulted as to whether they propose any changes to public transport in the area.
Department of Primary Industries – Crown Lands (NSW)	Adjoining reclaimed land	The properties adjoin Crown Land that has been reclaimed from Crystal Bay and jetties and berthing areas leased from Crown Lands.
Department of Primary Industries – Fisheries	Impacts on waterway	The property adjoins Crystal Bay and Pittwater. They should be consulted with regards to any impacts upon any local water species.
State Emergency Services (SES)	Emergencies and evacuation	Consulted with regards to flooding and sea level rise impacts and the evacuation of less mobile people.
Ausgrid	Electrical Substation	The Proposal is within proximity of the Newport substation. Ausgrid should be consulted in terms of potential impacts upon their substation or potential impacts from it on potential residents.

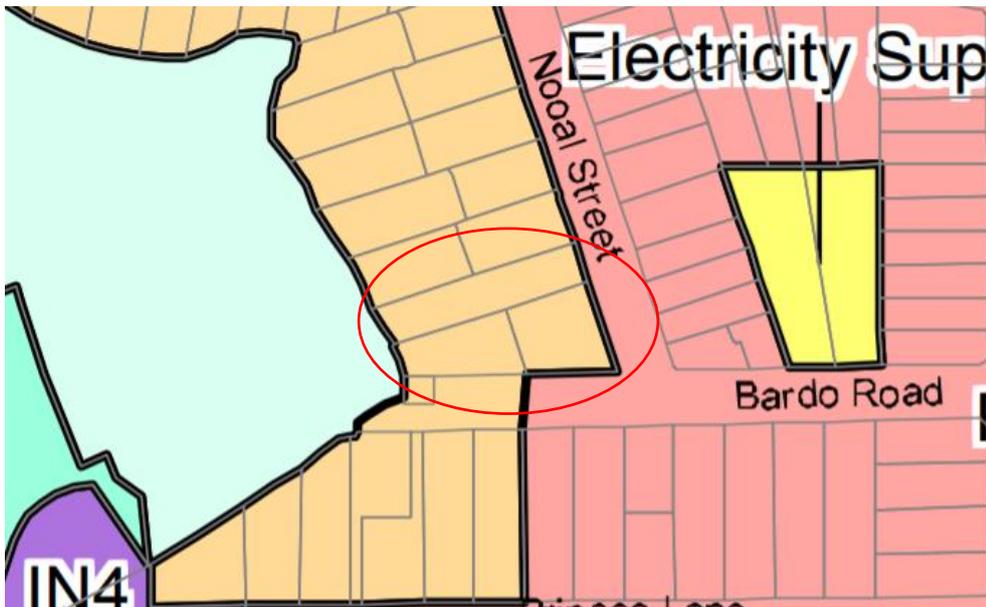
# Part 4 – Maps

The following maps are associated with the Planning Proposal.

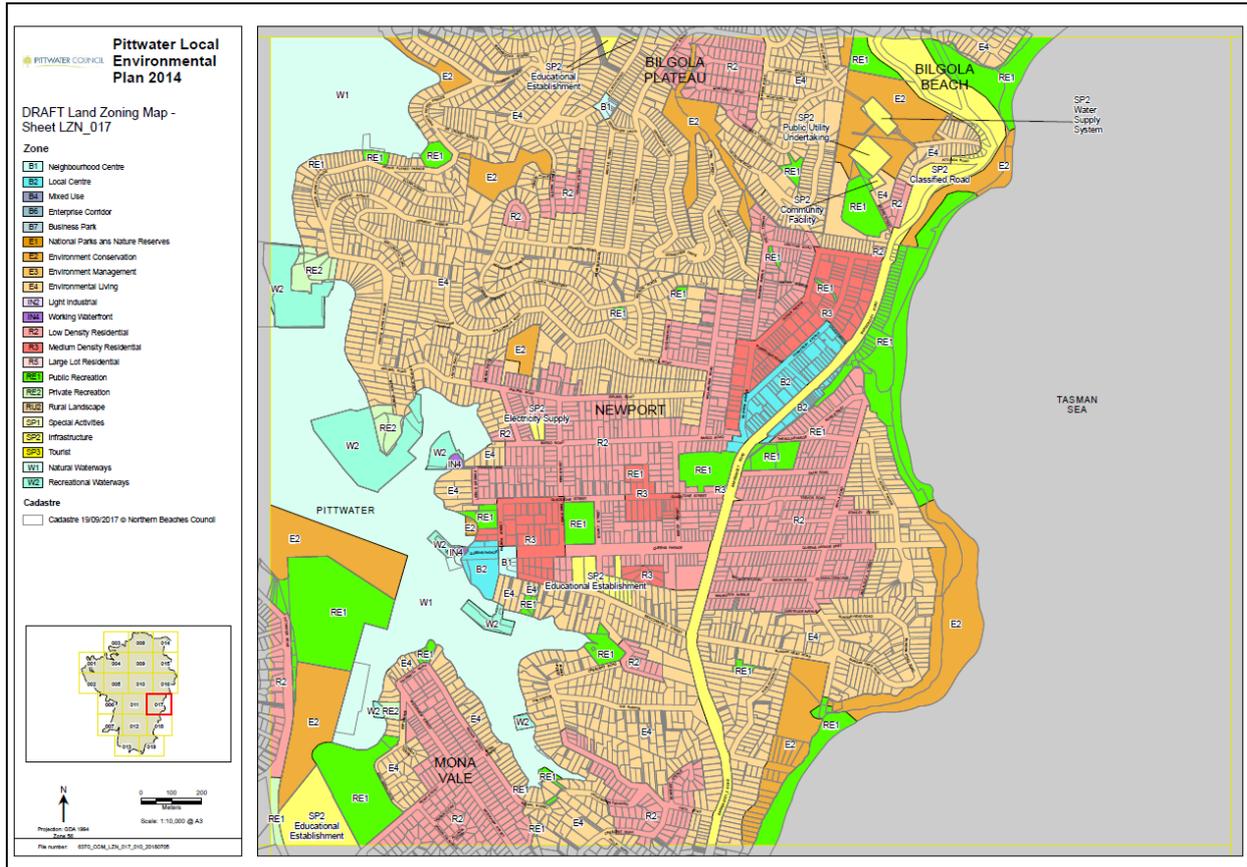
Current Land Zoning Map Sheet LZN\_017



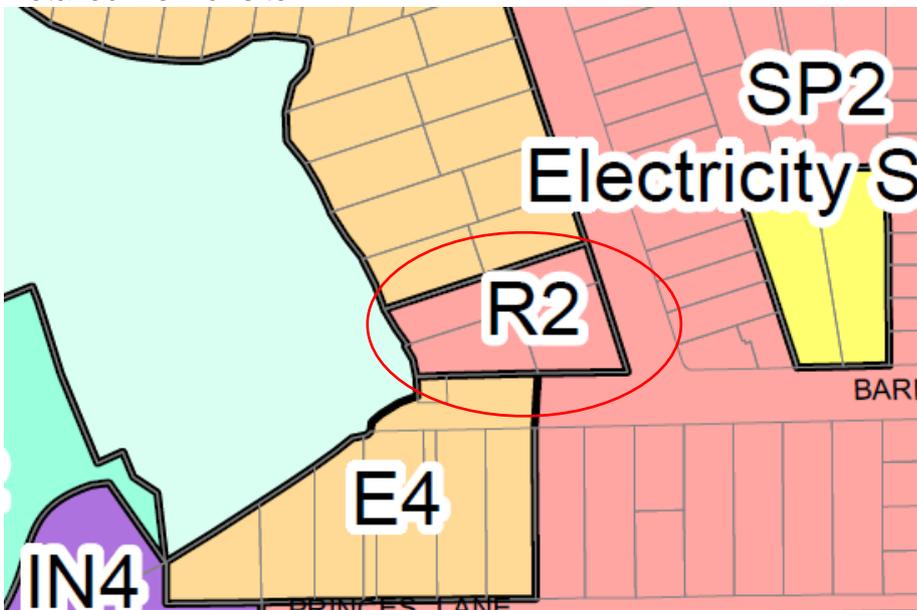
Detailed view of site



Proposed Land Zoning Map Sheet LZN\_017



Detailed view of site



## **Part 5 – Community Consultation**

Council will place the planning proposal on public exhibition in accordance with future Gateway Determination and consistent with Council's Community Engagement Policy including:

- A public notice in the Manly Daily notifying of the public exhibition;
- Letters to key stakeholders;
- Hard copies of the exhibition material at Council's offices; and
- Electronic copies of the exhibition material on Council's website.

If issued, the gateway determination will confirm the public consultation that must be undertaken.

## Part 6 – Project Timeline

<b>Task</b>	<b>Anticipated timeframe</b>
Referral to Department of Planning & Environment for Gateway determination	June 2019
Issue of Gateway determination	August 2019
Government agency consultation	September 2019
Public exhibition period	October 2019
Consideration of submissions	November 2019
Report to Council to determine Planning Proposal	December 2019
Submit Planning Proposal to the Department of Planning & Environment for determination	Published January 2020

## Attachment 1 – Site Photos



Image 2 – View of Bardo Road and Nooal Street intersection, facing west.



Image 3 - Intersection of Bardo Road and Nooal Street, facing north-west.



Image 4 – Properties on Nooal Street facing the subject site



Image 4 – Ausgrid Substation on Bardo Road.



Image 6 – Driveway on Bardo Road from the intersection with Nooal Street, facing east



Image 7 – Driveway on Bardo Road, facing west towards Crystal Bay



Image 8 – View north across rear of properties adjoining Crystal Bay



Image 9 – Rear of subject properties, facing north-east



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14 June

Carolyn McNally  
Secretary  
NSW Department of Planning and Environment  
PO Box 39  
SYDNEY NSW 2001

Our Ref: 2019/330210

Dear Ms McNally

**Planning Proposal – PP0003/17 – 2-4 Nooal Street and 66 Bardo Road, Newport**

Northern Beaches Council requests that the Department of Planning Environment provides a Gateway Determination for the attached Planning Proposal under Section 3.34 of the Environmental Planning and Assessment Act 1979

The Planning Proposal seeks to rezone the subject properties from E4 Environmental Living to R2 Low Density Residential under the Pittwater Local Environmental Plan 2014.

The enclosed following documentation supporting the request for a Gateway consideration and determination is attached:

- Planning Proposal
- Council Report – Minutes and Agenda
- Northern Beaches Local Planning Panel Report – Minutes and Agenda
- Information Criteria
- Delegation Criteria

Council request to exercise its delegation to make the local environmental plan. The evaluation response for delegation has been enclosed as listed above. For further information please contact Brendan Gavin on 9970 1264

Anne-Maree Newbery  
Manager, Strategic and Place Planning

# ATTACHMENT 1 – INFORMATION CHECKLIST

## ▶ STEP 1: REQUIRED FOR ALL PROPOSALS

(under s55(a) – (e) of the EP&A Act)

- Objectives and intended outcome
- Mapping (including current and proposed zones)
- Community consultation (agencies to be consulted)
- Explanation of provisions
- Justification and process for implementation (including compliance assessment against relevant section 117 direction/s)

## ▶ STEP 2: MATTERS – CONSIDERED ON A CASE BY CASE BASIS

(Depending on complexity of planning proposal and nature of issues)

PLANNING MATTERS OR ISSUES	To be considered	N/A	PLANNING MATTERS OR ISSUES	To be considered	N/A
<b>Strategic Planning Context</b>			<ul style="list-style-type: none"> <li>• Resources (including drinking water, minerals, oysters, agricultural lands, fisheries, mining)</li> <li>• Sea level rise</li> </ul>	<input type="checkbox"/> <input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> <input type="checkbox"/>
• Demonstrated consistency with relevant Regional Strategy	<input checked="" type="checkbox"/>	<input type="checkbox"/>			
• Demonstrated consistency with relevant Sub-Regional strategy	<input checked="" type="checkbox"/>	<input type="checkbox"/>			
• Demonstrated consistency with or support for the outcomes and actions of relevant DG endorsed local strategy	<input type="checkbox"/>	<input checked="" type="checkbox"/>			
• Demonstrated consistency with Threshold Sustainability Criteria	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<b>Urban Design Considerations</b>		
<b>Site Description/Context</b>			<ul style="list-style-type: none"> <li>• Existing site plan (buildings vegetation, roads, etc)</li> <li>• Building mass/block diagram study (changes in building height and FSR)</li> <li>• Lighting impact</li> <li>• Development yield analysis (potential yield of lots, houses, employment generation)</li> </ul>	<input checked="" type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>
• Aerial photographs	<input checked="" type="checkbox"/>	<input type="checkbox"/>			
• Site photos/photomontage	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<b>Economic Considerations</b>		
<b>Traffic and Transport Considerations</b>			<ul style="list-style-type: none"> <li>• Economic impact assessment</li> <li>• Retail centres hierarchy</li> <li>• Employment land</li> </ul>	<input type="checkbox"/> <input checked="" type="checkbox"/>	<input type="checkbox"/> <input checked="" type="checkbox"/>
• Local traffic and transport	<input type="checkbox"/>	<input checked="" type="checkbox"/>			
• TMAP	<input type="checkbox"/>	<input checked="" type="checkbox"/>			
• Public transport	<input checked="" type="checkbox"/>	<input type="checkbox"/>			
• Cycle and pedestrian movement	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<b>Social and Cultural Considerations</b>		
<b>Environmental Considerations</b>			<ul style="list-style-type: none"> <li>• Heritage impact</li> <li>• Aboriginal archaeology</li> <li>• Open space management</li> <li>• European archaeology</li> <li>• Social &amp; cultural impacts</li> <li>• Stakeholder engagement</li> </ul>	<input type="checkbox"/> <input checked="" type="checkbox"/>	<input type="checkbox"/> <input checked="" type="checkbox"/>
• Bushfire hazard	<input type="checkbox"/>	<input checked="" type="checkbox"/>			
• Acid Sulphate Soil	<input type="checkbox"/>	<input checked="" type="checkbox"/>			
• Noise impact	<input type="checkbox"/>	<input checked="" type="checkbox"/>			
• Flora and/or fauna	<input type="checkbox"/>	<input checked="" type="checkbox"/>			
• Soil stability, erosion, sediment, landslip assessment, and subsidence	<input type="checkbox"/>	<input checked="" type="checkbox"/>			
• Water quality	<input type="checkbox"/>	<input checked="" type="checkbox"/>			
• Stormwater management	<input type="checkbox"/>	<input checked="" type="checkbox"/>			
• Flooding	<input checked="" type="checkbox"/>	<input type="checkbox"/>			
• Land/site contamination (SEPP55)	<input type="checkbox"/>	<input checked="" type="checkbox"/>			
<b>Infrastructure Considerations</b>			<ul style="list-style-type: none"> <li>• Infrastructure servicing and potential funding arrangements</li> </ul>	<input checked="" type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>
<b>Miscellaneous/Additional Considerations</b>			<i>List any additional studies</i>		





## Part 6 – Project Timeline

<b>Task</b>	<b>Anticipated timeframe</b>
Referral to Department of Planning & Environment for Gateway determination	June 2019
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Submit Planning Proposal to the Department of Planning & Environment for determination	Published January 2020



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# AGENDA

## **NORTHERN BEACHES LOCAL PLANNING PANEL MEETING**

Notice is hereby given that a Meeting of the Northern Beaches Local Planning Panel will be held in the Council Chambers, Civic Centre, Dee Why on

**WEDNESDAY 1 AUGUST 2018**

Beginning at 1.00PM for the purpose of considering and determining matters included in this agenda.

**Peter Robinson**  
**Executive Manager Development Assessment**

### **Panel Members**

Lesley Finn	Chair
Robert Hussey	Town Planner
Graham Brown	Town Planner
Lloyd Graham	Community Representative

### **Quorum**

A quorum is three Panel members

### **Conflict of Interest**

Any Panel Member who has a conflict of Interest must not be present at the site inspection and leave the Chamber during any discussion of the relevant Item and must not take part in any discussion or voting of this Item.

**Agenda for a Meeting of the Northern Beaches Local Planning Panel  
to be held on Wednesday 1 August 2018  
in the Council Chambers, Civic Centre, Dee Why  
Commencing at 1.00PM**

<b>1.0</b>	<b>APOLOGIES &amp; DECLARATIONS OF PECUNIARY INTEREST</b>	
<b>2.0</b>	<b>MINUTES OF PREVIOUS MEETING</b>	
2.1	Minutes of Northern Beaches Local Planning Panel held 18 July 2018	
<b>3.0</b>	<b>DEVELOPMENT APPLICATIONS .....</b>	<b>5</b>
3.1	MOD2018/0194 - 74 Wyuna Avenue, Freshwater - Modification of Development Consent DA2017/0356 granted for the construction of a Secondary Dwelling .....	5
3.2	DA2017/1304 - 23-25 Lauderdale Avenue, Fairlight - Demolition works and construction of 4 attached dwellings and 4 lot torrens title subdivision .....	24
3.3	MOD2018/0065 - 38 Stuart Street, Manly - Modification to Development Consent DA251/2008 granted for the demolition of the existing building and construction of a building comprising two 2 dwellings .....	82
3.4	DA2018/0069 - 42 North Steyne, Manly - Change of use to tourist and visitor accommodation .....	100
<b>4.0</b>	<b>REVIEW OF DETERMINATIONS.....</b>	<b>123</b>
4.1	REV2018/0008 - 13 A Upper Gilbert Street, Manly - Review of Determination of Application DA0240/2017 for alterations and additions to an existing residential flat building .....	123
<b>5.0</b>	<b>PLANNING PROPOSALS.....</b>	<b>161</b>
5.1	PP0003/17 - 2-4 NOOAL STREET AND 66 BARDO ROAD, NEWPORT .....	161

## **2.0 MINUTES OF PREVIOUS MEETING**

### **2.1 MINUTES OF NORTHERN BEACHES LOCAL PLANNING PANEL HELD 18 JULY 2018**

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#### **RECOMMENDATION**

That the Panel note that the Minutes of the Northern Beaches Local Planning Panel held 18 July 2018 were adopted by the Chairperson and have been posted on Council's website.

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## 5.0 PLANNING PROPOSALS

<b>ITEM 5.1</b>	<b>PLANNING PROPOSAL PP0003/17 - 2-4 NOOAL STREET AND 66 BARDO ROAD, NEWPORT</b>
<b>REPORTING OFFICER</b>	<b>BRENDAN GAVIN</b>
<b>TRIM FILE REF</b>	<b>2018/391230</b>
<b>ATTACHMENTS</b>	<b>1 <a href="#">↓</a> Council Report and Resolution for PP0003/17</b> <b>2 <a href="#">↓</a> Planning Proposal - PP0003/17 - 2 Nooal Street , 4 Nooal Street and 66 Bardo Road, Newport</b>

### PURPOSE

This Planning Proposal has been referred to the Northern Beaches Local Planning Panel for advice, in accordance with the Local Planning Panels direction for Planning Proposals.

### SUMMARY

In September 2017 Northern Beaches Council received a Planning Proposal seeking to amend the Pittwater Local Environmental Plan 2014 to add Seniors Living as an Additional Permitted Use at 2-4 Nooal Street and 66 Bardo Road, Newport.

Council at its meeting of 27 November 2017 resolved to refuse the Planning Proposal and formally notified the applicant on 11 December 2018.

On the 28 of February 2018 the applicant sought a Rezoning Review with the Sydney North Planning Panel. At its meeting of 2 May 2018, the Planning Panel recommended that the Planning Proposal should be proceed subject to amendments.

On the 14 of June 2018 Council resolved to be the Relevant Planning Authority for the Planning Proposal. This means Council is now responsible of the preparation of a Planning Proposal and is required to submit it to the Department of Planning and Environment for a Gateway Determination.

In accordance with the Minister for Planning's Local Planning Panel Directions, the Planning Proposal must be referred to the relevant local planning panel first, before being forwarded to the Department of Planning and Environment and the Minister for a Gateway Determination. Subsequently the proposal has been prepared for the Panel's advice.

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### RECOMMENDATION OF MANAGER STRATEGIC AND PLACE PLANNING

That

- A. The Panel consider the Planning Proposal and provide advice to Council.
- B. Council then submits the Planning Proposal to the Department of Planning and Environment for a Gateway Determination with the advice from the Panel.

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**REPORT**

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**BACKGROUND**

Council received a Planning Proposal on 4 September 2017 to amend the Pittwater Local Environmental Plan 2014 (PLEP 2014) for land at 2-4 Nooal Street and 66 Bardo Road, Newport. The Planning Proposal sought to add an additional permitted use on the site through Schedule 1 of the PLEP to permit seniors housing. The subject properties would have retained their E4 Environmental Living Zoning.

Council at its meeting of 27 November 2017 resolved to refuse the Planning Proposal. Council resolved:

That

- A. Council does not submit the Planning Proposal lodged for 2-4 Nooal Street and 66 Bardo Road, Newport for a Gateway Determination for the following reasons:
  - a. It is inconsistent with the *Pittwater Local Planning Strategy (2011)*
  - b. It does not have strategic merit or site specific merit when assess in accordance with the NSW Planning & Environment's *Planning Proposal: A guide to preparing planning proposals (2016)*
  - c. It does not align with the goals and targets of the *Revised Draft North District Plan*.
  - d. It is inconsistent with the following State Environmental Planning Policies;
    - I. Housing for Seniors or People with a Disability
    - II. Coastal Protection
    - III. Draft Coastal Management
  - e. Is inconsistent with the following Local Planning Directions;
    - I. 2.1 – Environmental Protection Zones
    - II. 4.3 - Flood Prone Land
    - III. 7.1 – Implementation of the Metropolitan Strategy
    - IV. Draft Coastal Management Local Planning Direction.
  - f. It is inconsistent with the objectives of the E4 Environmental Living Zone in Pittwater Local Environmental Plan 2014.
  - g. It seeks to permit medium density residential development that is inconsistent with the established low density character of the area.
  - h. It would set an unacceptable precedent.
- B. The proponent and interested parties who made a submission be advised of Council's decision.

A copy of that Council Report is at **ATTACHMENT 1**

The applicant subsequently sought and was granted a Rezoning Review by the NSW Department of Environment and Planning. A proponent has 42 days from the formal notification of refusal to support a planning proposal to seek the review through the relevant planning panel. The request was accepted by the Department on 28 February 2018, being 60 days after Council notified the applicant it did not support the Planning Proposal. It is noted that periods may be extended over the Christmas and New Year's periods.

At its meeting of 2 May 2018, the Sydney North Planning Panel heard the matter. Council provided written commentary to the panel beforehand indicating their reasons for refusal and provided an oral submission on the day as to why it should not be supported. The following day the Panel determined the Planning Proposal should be proceed with substantial amendments that were not communicated or discussed previously. Rather than pursuing an amendment to Schedule 1 of the Pittwater Local Environmental Plan 2014 to introduce seniors housing as an additional permitted use the Panel supported a straight rezoning from E4 Environmental Living to R2 Low Density Residential, and a recommendation to investigate expanding the subject area to include 13 additional properties up to Irrubel Road.

Given the substantial changes proposed by the Sydney North Planning Panel, Council sought to be the Relevant Planning Authority (RPA) for this Planning Proposal. This means Council is now responsible for the preparation of a Planning Proposal, submitting it to the Department of Planning for a Gateway Determination, and its finalization and gazettal.

In accordance with the Minister for Planning's directions, the RPA must now submit a Planning Proposal to the relevant local council planning panel for advice, before it is submitted to the Department and Minister for a Gateway Determination. This direction was not in place when this Planning Proposal was first assessed by Council, and as such the Planning Proposal was not referred to the local planning panel at that time. The Minister's Direction came into effect on 1 June 2018, however it does apply to planning proposals prepared, but not submitted to the Minister, before 1 June 2018. As this proposal has not been submitted to the panel previously or the Minister, it must now be submitted to the Northern Beaches Local Planning Panel for advice.

Following the Northern Beaches Local Planning Panel providing advice on the Planning Proposal, it shall be forwarded to the Department of Planning and Environment for a Gateway Determination.

## **PLANNING PROPOSAL**

The intended outcome of the Planning Proposal is to rezone 2 – 4 Nooal Street and 66 Bardo Road from E4 Environmental Living to R2 Low Density Residential. This is in line with the decision of the Sydney North Planning Panel on the 2 May 2018.

A copy of the Planning Proposal is at **ATTACHMENT 2**.

## **CONCLUSION**

The Planning Proposal is prepared in accordance with the Department's *Guide to Preparing Planning Proposals* (August 2017) as well as the recommendations of the Sydney North Planning Panel. While Council previously resolved to not support the proposal, and has always opposed the proposal, it is now the Relevant Planning Authority and must comply with the direction of the Sydney North Planning Panel for the Planning Proposal to proceed.

## CONSULTATION

This proposal was first placed on non-statutory public exhibition for 30 days from 16 September 2017 until 16 October 2017. During that time 28 submissions were received from the general public. Only four of the submissions supported the proposal, while one was neutral. The remaining 23 submissions objected to the proposal.

If the proposal was to proceed through Gateway and receive a determination to proceed, an additional round of statutory public exhibition would be undertaken for 28 days.

## TIMING

It is anticipated that following the Northern Beaches Local Planning Panel providing advice on the proposal, it will be included with the proposal and forwarded to the Department of Planning and Environment for a Gateway Determination.

If the proposal receives a Gateway Determination to proceed, it is anticipated that it will take approximately 9 months to exhibit the proposal, finalize and then publish the proposed LEP amendment.

## FINANCIAL CONSIDERATIONS

There are no substantive financial considerations with the preparation of the Planning Proposal.

## ENVIRONMENTAL CONSIDERATIONS

The Planning Proposal is considered to have a negative outcome for the environment. The properties subject to the Planning Proposal are currently zoned E4 Environmental Living as they are subject to natural hazards while also valued by the community for their aesthetic qualities. The objectives of the E4 Environmental Living Zone are:

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- *To ensure that residential development does not have an adverse effect on those values.*
- *To provide for residential development of a low density and scale integrated with the landform and landscape.*
- *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors*

The proposed R2 Low Density Residential Zone has a different set of objectives and is clearly aimed at residential areas free from hazards or specific values and qualities that need to be preserved and enhanced. The objectives of this zone are

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide for a limited range of other land uses of a low intensity and scale, compatible with surrounding land uses.*

The proposed zoned would remove the aesthetic objectives of the original zone, as well as further weaken the strategic intent to allow development of a low scale and low impact, and enhance riparian and foreshore vegetation around Crystal Bay.

It is further noted that rezoning would provide for a seniors living development application to be lodged on the subject properties. This would allow for a medium density development of either multi-dwelling housing or residential flat buildings to be constructed on the site.

### **SOCIAL CONSIDERATIONS**

This proposal is subject to community opposition. 23 submissions objecting to the proposal were received during the non-statutory public exhibition period from surrounding land owners as well as the Newport Residents Association.

### **GOVERNANCE AND RISK CONSIDERATIONS**

Governance and risk considerations are standard procedural considerations in relation to actions arising from the recommendations of this report.



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# MINUTES

## **NORTHERN BEACHES LOCAL PLANNING PANEL MEETING**

held in the Council Chambers, Civic Centre, Dee Why on

**WEDNESDAY 1 AUGUST 2018**

**Minutes of a Meeting of the Northern Beaches Local Planning Panel  
held on Wednesday 1 August 2018  
at Council Chambers, Civic Centre, Dee Why  
Commencing at 1.00PM**

**ATTENDANCE:**

**Panel Members**

Lesley Finn	Chair
Robert Hussey	Town Planner
Graham Brown	Town Planner
Lloyd Graham	Community Representative

## **1.0 APOLOGIES AND DECLARATIONS OF PECUNIARY INTEREST**

Nil

## **2.0 MINUTES OF PREVIOUS MEETING**

### **2.1 MINUTES OF NORTHERN BEACHES LOCAL PLANNING PANEL HELD 4 JULY 2018**

The Minutes of the Northern Beaches Local Planning Panel held 4 July 2018, were adopted by the Chairperson and have been posted on Council's website

## 5.0 PLANNING PROPOSALS

### 5.1 PLANNING PROPOSAL PP0003/17 - 2-4 NOOAL STREET AND 66 BARDO ROAD, NEWPORT

#### PROCEEDINGS IN BRIEF

The intended outcome of the Planning Proposal is to rezone 2 – 4 Nooal Street and 66 Bardo Road from E4 Environmental Living to R2 Low Density Residential. This is in line with the decision of the Sydney North Planning Panel on the 2 May 2018.

The Panel viewed the site and its surrounds. At the public meeting which followed the Panel was addressed by three neighbours, a representative of the applicant and the Executive Manager, Strategic Planning, Northern Beaches Council.

A late submission from Peter Haxell to the Panel was considered.

#### RECOMMENDATION

The Northern Beaches Local Planning Panel supports the recommendation as detailed in the planning report by the Principal Planner and for the below following reasons, that the Planning Proposal not proceed and the matter be referred to Council for their determination.

Reasons:

1. The proposal has not demonstrated strategic merit given the isolated nature of the site. It is inconsistent with the *Pittwater Local Planning Strategy (2011)*.
2. The proposal fails to provide any public benefit or improvement.
3. There is no physical contribution to local affordable housing proposed.
4. The proposal does not represent orderly and economic planning.
5. The site is adversely affected by flooding as shown in the Pittwater Overland Flow Mapping and Flood Study and is therefore an inappropriate site for any increase in housing density or development for aged and disabled persons.
6. It does not align with the goals and targets of the *North District Plan (March 2018)*.
7. The lack of strategic direction in the proposed amplifies the likelihood of similar applications in this environmentally sensitive area.

Vote: 4/0

*The meeting concluded at 5.23pm*

This is the final page of the Minutes comprising 12 pages numbered 1 to 12 of the Northern Beaches Local Planning Panel meeting held on Wednesday 1 August 2018.



northern  
beaches  
council

# AGENDA

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

**Tuesday 28 August 2018**

Beginning at 6:30pm for the purpose of considering and determining matters included in this agenda.

A handwritten signature in blue ink, appearing to be 'Ben Taylor', with a long horizontal stroke extending to the right.

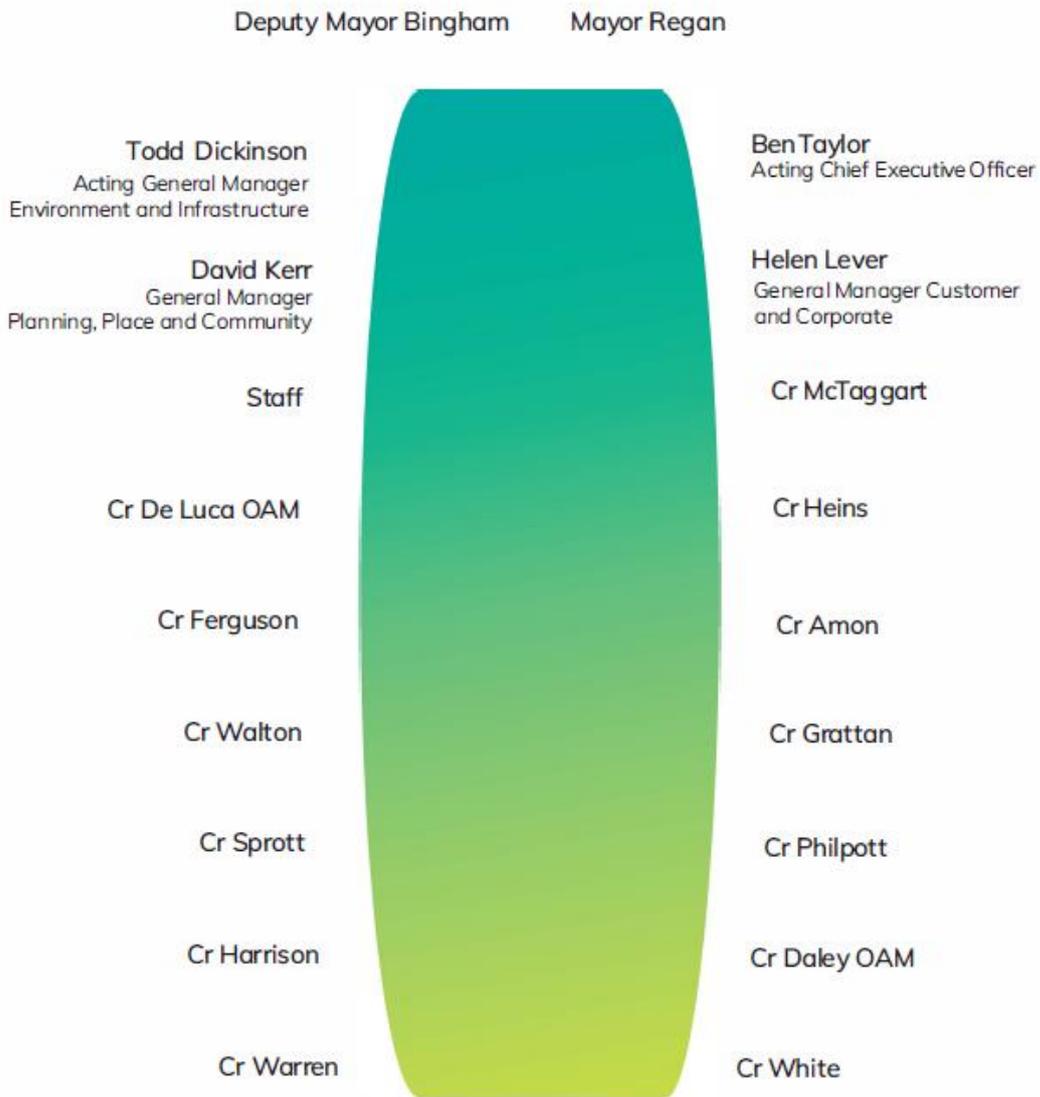
**Ben Taylor**  
**Acting Chief Executive Officer**

# OUR VISION

*Delivering the highest quality service valued and trusted by our community*

# OUR VALUES

*Trust Teamwork Respect Integrity Service Leadership*



**Agenda for an Ordinary Meeting of Council  
to be held on Tuesday 28 August 2018  
at the Civic Centre, Dee Why  
Commencing at 6:30pm**

<b>1.0</b>	<b>ACKNOWLEDGEMENT OF COUNTRY</b>	
<b>2.0</b>	<b>APOLOGIES AND APPLICATIONS FOR LEAVE OF ABSENCE</b>	
<b>3.0</b>	<b>CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS</b>	
3.1	Minutes of Ordinary Council Meeting held 26 June 2018	
3.2	Minutes of Extraordinary Council Meeting held 17 July 2018	
3.3	Minutes of Extraordinary Council Meeting held 1 August 2018	
<b>4.0</b>	<b>DISCLOSURES OF INTEREST</b>	
<b>5.0</b>	<b>PUBLIC FORUM AND PUBLIC ADDRESS</b>	
<b>6.0</b>	<b>ITEMS RESOLVED BY EXCEPTION</b>	
<b>7.0</b>	<b>MAYORAL MINUTES</b>	
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<b>12.0</b>	<b>NOTICES OF MOTION.....</b>	<b>155</b>
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<b>16.0</b>	<b>REPORT OF RESOLUTIONS PASSED IN CLOSED SESSION</b>	

<b>ITEM 11.4</b>	<b>PLANNING PROPOSAL (PP0003/17) AT 2-4 NOOAL STREET AND 66 BARDO ROAD, NEWPORT</b>
<b>REPORTING MANAGER</b>	<b>EXECUTIVE MANAGER STRATEGIC AND PLACE PLANNING</b>
<b>TRIM FILE REF</b>	<b>2018/483072</b>
<b>ATTACHMENTS</b>	<b>1 <a href="#">📄</a> Draft Planning Proposal - PP0003/17 at 2-4 Nooal Street and 66 Bardo Road, Newport (Included In Attachments Booklet)</b>

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## EXECUTIVE SUMMARY

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### PURPOSE

This report is to inform Council of the advice received from the Northern Beaches Local Planning Panel with regards to Planning Proposal PP0003/17 and to confirm the Planning Proposal will be submitted to the Department of Environment and Planning for a Gateway Determination in accordance with the decision of the Sydney North Planning Panel.

### SUMMARY

In September 2017, Council received a Planning Proposal to amend the Pittwater Local Environmental 2014 (PLEP) to add 'Seniors Living' as an additional permitted use at 2-4 Nooal Street and 66 Bardo Road, Newport.

Council, at its meeting of 27 November 2017 resolved not to support the Planning Proposal and formally notified the applicant on 11 December 2018.

On 28 February 2018, the applicant sought a Rezoning Review with the Sydney North Planning Panel. At its meeting of 2 May 2018, the Sydney North Planning Panel recommended that the Planning Proposal should be proceed to a Gateway Determination subject to amendments.

In accordance with the Minister for Planning's Local Planning Panel Directions, the Planning Proposal must be referred to the relevant local planning panel first, before being forwarded to the Department of Planning and Environment and the Minister for a Gateway Determination. Subsequently the proposal has been prepared for the Panel's advice.

On 14 June 2018 Council agreed to be the Relevant Planning Authority for the Planning Proposal. This requires the preparation of a Planning Proposal, and subsequent management of this Proposal through the plan making process.

The Minister for Planning has provided a Local Planning Panel Direction to require all Councils to refer Planning Proposals to the Local Planning Panel for advice. Accordingly, the current Planning Proposal was referred to the Northern Beaches Local Planning Panel. This report provides the advice of the Northern Beaches Local Planning Panel to Council.

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## RECOMMENDATION OF GENERAL MANAGER PLANNING PLACE AND COMMUNITY

That:

- A. Council note the advice received from the Northern Beaches Local Planning Panel.
  - B. Council now submits the Planning Proposal to the Department of Planning and Environment for a Gateway Determination as required by the Sydney North Planning Panel.
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**REPORT**

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**BACKGROUND**

Council received a Planning Proposal on 4 September 2017 to amend the Pittwater Local Environmental Plan 2014 (PLEP 2014) for land at 2-4 Nooal Street and 66 Bardo Road, Newport. The Planning Proposal sought to add an additional permitted use on the site through Schedule 1 of the PLEP to permit 'Seniors Housing'. The subject properties would have retained their E4 Environmental Living Zoning.

Council at its meeting of 27 November 2017 resolved to not support the Planning Proposal. Council resolved:

*That:*

- A. *Council does not submit the Planning Proposal lodged for 2-4 Nooal Street and 66 Bardo Road, Newport for a Gateway Determination for the following reasons:*
- a. *It is inconsistent with the Pittwater Local Planning Strategy (2011)*
  - b. *It does not have strategic merit or site specific merit when assessed in accordance with the NSW Planning & Environment's Planning Proposal: A guide to preparing planning proposals (2016)*
  - c. *It does not align with the goals and targets of the Revised Draft North District Plan.*
  - d. *It is inconsistent with the following State Environmental Planning Policies;*
    - i. *Housing for Seniors or People with a Disability*
    - ii. *Coastal Protection*
    - iii. *Draft Coastal Management*
  - e. *Is inconsistent with the following Local Planning Directions;*
    - i. *2.1 – Environmental Protection Zones*
    - ii. *4.3 - Flood Prone Land*
    - iii. *7.1 – Implementation of the Metropolitan Strategy*
    - iv. *Draft Coastal Management Local Planning Direction.*
  - f. *It is inconsistent with the objectives of the E4 Environmental Living Zone in Pittwater Local Environmental Plan 2014.*
  - g. *It seeks to permit medium density residential development that is inconsistent with the established low density character of the area.*
  - h. *It would set an unacceptable precedent.*
- B. *The proponent and interested parties who made a submission be advised of Council's decision.*

The applicant subsequently sought and was granted a Rezoning Review by the NSW Department of Planning & Environment. At its meeting of 2 May 2018, the Sydney North Planning Panel heard the matter and on the following day determined the Planning Proposal should proceed with amendments. Rather than pursuing an amendment to Schedule 1 of the Pittwater Local Environmental Plan 2014 to introduce seniors housing as an additional permitted use, the Sydney

North Planning Panel supported a rezoning from E4 Environmental Living to R2 Low Density Residential.

At its meeting of 2 May 2018, the Sydney North Planning Panel heard the matter. Council provided written commentary to the panel beforehand indicating their reasons for refusal and provided an oral submission on the day as to why it should not be supported. The following day the Panel determined the Planning Proposal should proceed with substantial amendments that were not communicated or discussed previously. Rather than pursuing an amendment to Schedule 1 of the Pittwater Local Environmental Plan 2014 to introduce seniors housing as an additional permitted use the Panel supported a straight rezoning from E4 Environmental Living to R2 Low Density Residential, and a recommendation to investigate expanding the subject area to include 13 additional properties up to Irrubel Road.

Significant concerns were raised regarding this decision. An extract from Council's letter to the Planning Minister in relation to this matter is provided below:

*This decision represents an egregious overreach by the Panel. In making this decision, the Panel are in breach of the Planning Panel Operational Procedures which state as follows:*

*"The Panel's determination should provide a clear decision on whether the planning proposal before it should proceed, or not proceed, for a Gateway determination rather than recommending improvements".*

*Clearly the Panel have not followed their own Operational Procedures. Rather than making a decision on the proposal before it, the Panel have significantly expanded the scope of the proposal. In making this recommendation the Panel has exceeded their authority.*

*Further, the Panel are ignoring the newly published North District Plan which states that "Councils are in the best position to investigate and confirm which parts of their local government areas are suited to additional medium density opportunities". The Panel are seemingly attempting to step into the role of Council and undertake strategic planning on our behalf on a Planning Proposal by Planning Proposal basis. The Pittwater LEP 2014 is less than 5 years old and Northern Beaches Council is on track to achieve our housing target. We are committed to preparing a housing strategy to address growth. The demand for seniors housing is recognised however, there are literally hundreds of other sites within the northern beaches where seniors housing is permitted. These sites can yield thousands of seniors housing apartments. Accordingly, to change the zone of these lots is unnecessary and unwarranted.*

*The development and gazettal of the Pittwater LEP was undertaken following extensive investigation, research and community consultation. The first objective of the E4 Environmental Living zone is as follows:*

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic value.*

*Every residential property that fronts the Pittwater Waterway is zoned E4 Environmental Living on the basis of 'aesthetic value'. The Panel have taken it upon themselves to arbitrarily dismiss this and make a decision which sets a precedent that will undermine the consistency and integrity of this zone and all it sets out to achieve.*

*There are also serious site specific issues related to this recommendation. Nine of the additional lots recommended to be rezoned are subject to medium or high risk flooding affectation. Additionally, the State Environmental Planning Policy (Housing for Seniors or People with a Disability) (SEPP (HSPD)) contains site related requirements that include the need for a site to be within 400m of a bus stop. All of the additional sites are beyond 400m from the nearest bus stop. Accordingly, these properties should not be developed for seniors housing in accordance with SEPP (HSPD).*

*Having regard for the above, we request an immediate review of this decision.*

An extract from the response from the Department of Planning and Environment is provided below:

*The Panel unanimously determined that the proposed instrument should be submitted for a Gateway determination because the proposal demonstrated clear strategic and site-specific merit. The Panel supported the planning proposal's objective to allow for seniors housing on the site; however, it recommended an alternative mechanism to the proponent's submission to achieve this objective, being rezoning of the site.*

*The Panel considered that an R2 Low Density Residential zone would be more appropriate to achieve the proposal's intended outcome rather than an additional permitted use in Schedule 1 of the Pittwater Local Environmental Plan 2014.*

*In the reasons for their decision, the Panel recommended to the delegate of the Greater Sydney Commission, the additional investigation and rezoning of land in the immediate vicinity of the site, including the 10 lots north of the subject land.*

*Through the rezoning review process, the planning panel determines whether a proposed instrument should be submitted for a Gateway determination based on the strategic and site-specific merits of the proposal. The panel's recommendations are then taken into consideration when the planning proposal is submitted to the Department for Gateway determination.*

*The Department is currently assessing the submitted planning proposal for a Gateway determination. I would like to assure you that whilst this includes consideration of the Panel's recommendation, it also considers the information in the planning proposal. The planning proposal does not include the additional land referred to by the Panel and this will mean that the relevant planning and environmental studies are not available for assessment and a subsequent Gateway determination decision by the Delegate of the Greater Sydney Commission.*

Given the substantial changes proposed by the Sydney North Planning Panel, Council sought to be the Relevant Planning Authority (RPA) for this Planning Proposal. This means Council is now responsible for the preparation of a Planning Proposal and subsequent Management of this proposal through the plan making process. Council has subsequently prepared the Planning Proposal (Attachment 1).

In accordance with the Minister for Planning's Directions, the RPA must now submit a Planning Proposal to the relevant local council planning panel for advice, before it is submitted to the Department for a Gateway Determination. This Direction was not in place when this Planning Proposal was first assessed by Council, and as such the Planning Proposal was not referred to the local planning panel at that time. The Minister's Direction came into effect on 1 June 2018, however there are no savings provisions and as such it does apply to planning proposals prepared, but not submitted to the Minister, before 1 June 2018.

Accordingly, the Planning Proposal was submitted to the Northern Beaches Local Planning Panel for advice. The Panel considered the Planning Proposal at its meeting of 1 August 2018. The advice of the panel is outlined below:

- 1. The proposal has not demonstrated strategic merit given the isolated nature of the site. It is inconsistent with the Pittwater Local Planning Strategy (2011).*
- 2. The proposal fails to provide any public benefit or improvement.*
- 3. There is no physical contribution to local affordable housing proposed.*
- 4. The proposal does not represent orderly and economic planning.*

5. *The site is adversely affected by flooding as shown in the Pittwater Overland Flow Mapping and Flood Study and is therefore an inappropriate site for any increase in housing density or development for aged and disabled persons.*
6. *It does not align with the goals and targets of the North District Plan (March 2018).*
7. *The lack of strategic direction in the proposed amplifies the likelihood of similar applications in this environmentally sensitive area.*

Council must now submit the Planning Proposal to the Department of Planning and Environment for a Gateway Determination in accordance with the decision of the Sydney North Planning Panel.

### **CONSULTATION**

If the proposal was to proceed through Gateway and receive a determination to proceed, an additional round of statutory public exhibition would be undertaken for 28 days.

### **TIMING**

If the proposal receives a Gateway Determination to proceed, it is anticipated that it will take approximately 9 months to exhibit the proposal, finalise and then publish the proposed LEP amendment.

### **FINANCIAL CONSIDERATIONS**

There are no substantive financial considerations with the preparation of the Planning Proposal.

### **SOCIAL CONSIDERATIONS**

This proposal is subject to community opposition. 23 submissions objecting to the proposal were received during the non-statutory public exhibition period from surrounding land owners as well as the Newport Residents Association.

### **ENVIRONMENTAL CONSIDERATIONS**

The proposal is considered to have potential negative environmental impacts on the aesthetic qualities and amenity of the locality.

### **GOVERNANCE AND RISK CONSIDERATIONS**

Governance and risk considerations are standard procedural considerations in relation to actions arising from the recommendations of this report.



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# MINUTES

## ORDINARY COUNCIL MEETING

held at the Civic Centre, Dee Why on

**TUESDAY 28 AUGUST 2018**

**Minutes of part of an Ordinary Meeting of Council  
held on Tuesday 28 August 2018  
at the Civic Centre, Dee Why  
Commencing at 6:33pm**

**ATTENDANCE:**

**Councillors**

Michael Regan (Mayor)  
Candy Bingham (Deputy Mayor)  
Rory Amon (*left at 11:43pm*)  
Pat Daley OAM (*left at 9:29pm*)  
Vincent De Luca OAM  
Kylie Ferguson  
Sarah Grattan  
Roslyn Harrison  
Sue Heins  
Alex McTaggart  
Penny Philpott  
Stuart Sprott  
David Walton  
Natalie Warren (*arrived 7:11pm and left at 10:10pm*)  
Ian White

**Officers**

Ben Taylor	Acting Chief Executive Officer
Helen Lever	General Manager Customer and Corporate
David Kerr	General Manager Planning Place and Community
Todd Dickinson	Acting General Manager Environment and Infrastructure
Eskil Julliard	General Counsel
Kylie Walsh	Executive Manager Community, Arts & Culture
Sonya Gallery	Executive Manager Governance and Risk
Campbell Pfeiffer	Executive Manager Property
Andrew Pigott	Executive Manager Strategic and Place Planning
Natasha Schultz	Executive Manager Waste Management & Cleansing
Melissa Lee	Manager Governance
Anna Moore	Senior Governance Advisor
Jasmine Evans	Governance Officer
Don Morales	Information Management Technology Officer

**Notes**

The meeting commenced at 6:34pm, adjourned at 8:36pm, resumed at 8:46pm, moved into closed session at 10:12pm, resumed in open session at 11:48pm and adjourned at 11:51pm.

The meeting is scheduled to reconvene at 7:00pm, Tuesday 4 September 2018.

**5.13 Item 12.2 Notice of Motion No 50/2018 – Beaches Link Tunnel**

Terry le Roux and Marco Corrent addressed Council in support of the motion.

**5.14 Item 15.2 Notice of Rescission No 04/2018 - RFT 2017/208 - District Park New Sport and Community Facility**

Matt Ingersole and Cade Jenkins addressed Council in support of the motion.

**6.0 ITEMS RESOLVED BY EXCEPTION**

212/18 **RESOLVED**

***Cr Regan / Cr Heins***

That items 8.1, 8.2, 8.3, 9.3, 9.4, 9.5, 9.6, 11.1, 11.3, 11.4, 11.6, 11.7, 11.8, 11.9 and 11.10 are dealt with by exception with the recommendations of the Chief Executive Officer / General Managers being adopted.

**VOTING**

**FOR:** Crs Bingham, Daley, De Luca, Grattan, Harrison, Heins, McTaggart, Philpott, Regan, Sprott, Walton, Warren and White

**ABSENT:** Crs Amon and Ferguson

**CARRIED**

**8.1 MONTHLY INVESTMENT REPORT - JUNE 2018**

213/18 **RESOLVED**

***Cr Regan / Cr Heins***

That Council receives and notes the Investment Report as at 30 June 2018, including the certification by the Responsible Accounting Officer.

**RESOLVED BY EXCEPTION**

**8.2 MONTHLY INVESTMENT REPORT - JULY 2018**

214/18 **RESOLVED**

***Cr Regan / Cr Heins***

That Council receives and notes the Investment Report as at 31 July 2018, including the certification by the Responsible Accounting Officer.

**RESOLVED BY EXCEPTION**

**8.3 STRONGER COMMUNITY FUND - QUARTERLY UPDATE - JUNE 2018**

215/18 **RESOLVED**

***Cr Regan / Cr Heins***

That Council note the Stronger Communities Fund June 2018 Quarterly Update.

**RESOLVED BY EXCEPTION**

### 11.3 AMENDMENT OF MERITON VOLUNTARY PLANNING AGREEMENT

221/18 RESOLVED

**Cr Regan / Cr Heins**

That:

- A. Council endorse the draft Second Deed of Amendment to the Planning Agreement between Northern Beaches Council, Karimbla Properties (No.41) Pty Ltd and Meriton Properties Pty Ltd.
- B. Pursuant to s377 of the *Local Government Act 1993*, Council delegate authority to the Chief Executive Officer to execute the Second Deed of Amendment to the Planning Agreement and Draft Explanatory Note between Northern Beaches Council, Karimbla Properties (No.41) Pty Ltd and Meriton Properties Pty Ltd.

**RESOLVED BY EXCEPTION**

### 11.4 PLANNING PROPOSAL (PP0003/17) AT 2-4 NOOAL STREET AND 66 BARDO ROAD, NEWPORT

222/18 RESOLVED

**Cr Regan / Cr Heins**

That:

- A. Council note the advice received from the Northern Beaches Local Planning Panel.
- B. Council now submits the Planning Proposal to the Department of Planning and Environment for a Gateway Determination as required by the Sydney North Planning Panel.

**RESOLVED BY EXCEPTION**

### 11.6 MINUTES FROM THE COMMUNITY SAFETY COMMITTEE - 7 JUNE 2018 AND 2 AUGUST 2018

223/18 RESOLVED

**Cr Regan / Cr Heins**

That Council note the Minutes of the Community Safety Committee meetings held on 7 June 2018 and 2 August 2018.

**RESOLVED BY EXCEPTION**

### 11.7 EAST ESPLANADE RESERVE COMMUNITY SAFETY MANAGEMENT PLAN

224/18 RESOLVED

**Cr Regan / Cr Heins**

That:

- A. Council note the implementation of the Council resolution of 27 March 2018.

## Evaluation criteria for authorising Council to be the local plan-making authority

(NOTE – where the matter is identified as relevant and the requirement has not been met, council is attach information to explain why the matter has not been addressed)	Council Response		Department assessment
	Y/N	Not Relevant	Agree / Disagree
Is the planning proposal consistent with the Standard Instrument Order, 2006?	Y		
Does the planning proposal contain an adequate explanation of the intent, objectives, and intended outcome of the proposed amendment?	Y		
Are appropriate maps included to identify the location of the site and the intent of the amendment?	Y		
Does the planning proposal contain details related to proposed consultation?	Y		
Does the planning proposal give effect to an endorsed regional or sub-regional planning strategy or a local strategy including the LSPS endorsed by the Planning Secretary?	N		
Does the planning proposal adequately address any consistency with all relevant s. 9.1 Planning Directions?	N		
Is the planning proposal consistent with all relevant State Environmental Planning Policies (SEPPs)?	N		
<b>Minor Mapping Error Amendments</b>			
Does the planning proposal seek to address a minor mapping error and contain all appropriate maps that clearly identify the error and the manner in which the error will be addressed?	N		
<b>Heritage LEPs</b>			
Does the planning proposal seek to add or remove a local heritage item and is it supported by a strategy/study endorsed by the Heritage Office?	N		
Does the planning proposal include another form of endorsement or support from the Heritage Office if there is no supporting strategy/study?	N		
Does the planning proposal potentially impact on an item of State Heritage Significance and if so, have the views of the Heritage Office been obtained?	N		

Reclassifications			
Is there an associated spot rezoning with the reclassification?	N		
If yes to the above, is the rezoning consistent with an endorsed Plan of Management (POM) or strategy?		N/A	
Is the planning proposal proposed to rectify an anomaly in a classification?	N		
Will the planning proposal be consistent with an adopted POM or other strategy related to the site?		N/A	
Has Council confirmed whether there are any trusts, estates, interests, dedications, conditions, restrictions or covenants on the public land and included a copy of the title with the planning proposal?		N/A	
Has council confirmed that there will be no change or extinguishment of interests and that the proposal does not require the Governor's approval?		N/A	
Has the council identified that it will exhibit the planning proposal in accordance with the Department's Practice Note regarding classification and reclassification of public land through a local environmental plan and Best Practice Guideline for LEPs and Council Land?		N/A	
Has council acknowledged in its planning proposal that a Public Hearing will be required and agreed to hold one as part of its documentation?		N/A	
Spot Rezonings			
Will the proposal result in a loss of development potential for the site (ie reduced FSR or building height) that is not supported by an endorsed strategy?	N		
Is the rezoning intended to address an anomaly that has been identified following the conversion of a principal LEP into a Standard Instrument LEP format?	N		
Will the planning proposal deal with a previously deferred matter in an existing LEP and if so, does it provide enough information to explain how the issue that lead to the deferral has been addressed?	N		
If yes, does the planning proposal contain sufficient documented justification to enable the matter to proceed?		N/A	
Does the planning proposal create an exception to a mapped development standard?	N		

## Section 3.22 matters

<p>Does the proposed instrument</p> <ul style="list-style-type: none"> <li>a) correct an obvious error in the principal instrument consisting of a misdescription, the inconsistent numbering of provisions, a wrong cross-reference, a spelling error, a grammatical mistake, the insertion of obviously missing words, the removal of obviously unnecessary words or a formatting error?;</li> <li>b) address matters in the principal instrument that are of a consequential, transitional, machinery or other minor nature?; or</li> <li>c) deal with matters that do not warrant compliance with the conditions precedent for the making of the instrument because they will not have any significant adverse impact on the environment or adjoining land?</li> </ul> <p>(Note – the Minister (or Delegate) will need to form an Opinion under section 3.22(1)(c) of the Act in order for a matter in this category to proceed).</p>	<p>N</p>		
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### Notes

- Where a council responds 'yes' or can demonstrate that the matter is 'not relevant', in most cases, the council will be authorised to make the plan, as a matter of local planning significance
- Endorsed strategy means a regional strategy, sub-regional strategy, or any other local strategic planning document that is endorsed by the Planning Secretary of the Department.

Matters that will be routinely delegated to a Council under administration are confirmed on the Department's website [www.planning.nsw.gov.au/Plans-for-Your-Area/Local-Planning-and-Zoning/](http://www.planning.nsw.gov.au/Plans-for-Your-Area/Local-Planning-and-Zoning/)