



New South Wales Government
Independent Planning Commission

Gateway Determination Review Request – Randwick Comprehensive Planning Proposal

Gateway Determination Review Advice Report

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16 February 2022

16 February 2022 Final Report ©
State of New South Wales through the Independent Planning Commission 2022

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DEFINED TERMS

ABBREVIATION	DEFINITION
Codes SEPP	<i>State Environmental Planning Policy (Exempt and Complying Development Codes) 2008</i>
Commission	Independent Planning Commission of NSW
Council	Randwick City Council
Department	Department of Planning and Environment
District Plan	Eastern City District Plan
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	<i>Environmental Planning and Assessment Regulation 2000</i>
EPI	Environmental Planning Instrument
ESD	Ecologically Sustainable Development
EIE	Explanation of Intended Effect
Gateway Determination	The Department's Gateway Determination for the Planning Proposal, issued on 12 September 2021
Green Grid	Network of green space known as the Sydney Green Grid, identified in the Greater Sydney Region and District Plans
GRJA Report	The Department's Gateway Review Justification Assessment
Housing SEPP	<i>State Environmental Planning Policy (Housing) 2021</i>
L&E Court	NSW Land and Environment Court
LGA	Local Government Area
Material	The material set out in section 3.2
Minister	Minister for Planning
Non-hosted STRA	Short-term rental accommodation provided where the host does not reside on the premises during the provision of the accommodation
Planning Proposal	Comprehensive review of the Randwick Local Environmental Plan 2012
Randwick LEP	<i>Randwick Local Environmental Plan 2012</i>
Randwick LPP	Randwick Local Planning Panel
Randwick LSPS	Randwick Local Strategic Planning Statement
Regulations	<i>Environmental Planning and Assessment Regulations 2000</i>
Review Request	Council's request to the Department on 5 November 2021 to review the Gateway Determination
Review Submission	Council's Gateway Review Submission dated 5 November 2021
ROW	Right of Way
SEPP	State Environmental Planning Policy
STRA	Short-term rental accommodation

1 INTRODUCTION

1. On 14 January 2022, the Independent Planning Commission of NSW (**Commission**) received a request from the NSW Department of Planning and Environment (**Department**), formerly the Department of Planning, Industry & Environment, to provide advice pursuant to section 2.9(1)(c) of the *Environmental Planning and Assessment Act 1979 (EP&A Act)* in relation to the Randwick Comprehensive Planning Proposal (PP-2021-4267) and Gateway determination.
2. The Randwick Comprehensive Planning Proposal (**Planning Proposal**) was lodged by Randwick City Council (**Council**) on 2 July 2021 and is a comprehensive review of the Randwick Local Environmental Plan 2012 (**Randwick LEP**).
3. As delegate of the Minister for Planning (**Minister**), the Department found the Planning Proposal was consistent with the Eastern City District Plan (**District Plan**) and Council's local strategic plans and would give effect to the priorities in the Randwick Local Strategic Planning Statement (**Randwick LSPS**) and Housing Strategy. Therefore, on 12 September 2021, the Department issued a Gateway determination that an amendment to the Randwick LEP should proceed subject to conditions (**Gateway Determination**).
4. On 5 November 2021, Council submitted a Gateway determination review request seeking to remove Gateway conditions 1(b), 1(c) and 1(d) (**Review Request**).
5. On 14 January 2022, the Department requested the Commission consider the merits of the Review Request and provide advice to the Minister's delegate confirming whether, in its opinion, any of the three conditions should be removed from the Gateway Determination as per Council's request.
6. Professor Mary O'Kane AC, Chair of the Commission, nominated Dr Peter Williams (Chair) and Adrian Pilton to constitute the Commission Panel to provide advice to the Department on the Gateway determination review request.

2 THE REVIEW REQUEST

2.1 Site and Locality

7. The Planning Proposal applies to the entire Randwick LGA.
8. The Commission notes with respect to the Review Request, condition 1(b) relates to the LGA as a whole; condition 1(c) relates to certain defined areas of the LGA; and condition 1(d) relates to a specific site at 1903R Botany Road, Matraville.

2.2 The Planning Proposal

9. Randwick Comprehensive Planning Proposal is a comprehensive review of the Randwick LEP, seeking to align with the strategic directions of the District Plan and Randwick LSPS, implement the findings and recommendations of other local strategies and studies and consider landowner rezoning requests and miscellaneous amendments.

2.3 Review Request

10. On 5 November 2021, Council requested a review of three conditions of the Gateway Determination (GR-2021-12), seeking the removal of conditions 1(b), 1(c) and 1(d). The subject conditions are provided below:
 - *Gateway condition 1(b) – Remove the proposed exempt development provision for non-hosted short-term rental accommodation.*

- Gateway condition 1(c) – Remove the proposed local character provision, mapping and local character statements.
- Gateway condition 1(d) – Remove the proposed rezoning of the land at 1903R Botany Road, Matraville from RE1 Public Recreation to RE2 Private Recreation.

3 THE COMMISSION'S CONSIDERATION

3.1 The Commission's Meetings

11. As part of its consideration of the Review Request, the Commission met with the agencies set out in **Table 1**. Transcripts of the meetings and copies of the presentations given to the Commission have been made available on the Commission's website.

Table 1 - Commission's Meetings

Meeting	Date	Transcription Available on
Council	28 January 2022	3 February 2022
Department	28 January 2022	3 February 2022

12. The Commission extended an invitation to elected representatives of Randwick City Council to join the meeting with Council officers, and four councillors participated in that meeting.

3.2 Material Considered by the Commission

13. In its review, the Commission has carefully considered the following material (**Material**):
- Draft Randwick Comprehensive Planning Proposal, dated May 2021;
 - the Department's Gateway Determination Report, dated September 2021;
 - the Department's Gateway Determination, dated 12 September 2021;
 - the Department's request for Gateway determination review letter, dated 14 January 2022;
 - the Department's Gateway Review Justification Assessment received by the Commission on 14 January 2022, and attachments;
 - Council's Gateway Review Submission, Comprehensive Planning Proposal, dated 5 November 2021;
 - the Eastern City District Plan;
 - *SEPP (Exempt and Complying Development Codes) 2008*;
 - *SEPP (Housing) 2021*;
 - *Randwick Local Environmental Plan 2012*;
 - Randwick Local Strategic Planning Statement, made by Council's General Manager on 26 March 2020;
 - Randwick Local Housing Strategy (approved by the Department on 23 June 2021);
 - Randwick Open Space and Recreation Strategy (Final July 2021);
 - all comments made during the Commission's meetings with Council and the Department (published in meeting transcripts), as set out in **Table 1**; and
 - Council's response to questions taken on notice, received by the Commission on 8 February 2022.

3.3 Condition 1(b) – non-hosted short-term rental accommodation

14. *State Environmental Planning Policy (Housing) 2021 (Housing SEPP)* commenced in November 2021 and includes a new State-wide exempt development pathway for non-hosted short-term rental accommodation (**STRA**), meaning STRA where the host does not reside on the premises during the provision of the accommodation. Clause 112(1)(b) allows non-hosted STRA to be exempt development if the dwelling is not used for more than 180 days within a 365-day period within Greater Sydney, and other specified LGAs.
15. Council's Planning Proposal sought an exemption from clause 112(1)(b) of the Housing SEPP, seeking a clause to be included in the Randwick LEP allowing non-hosted STRA to be exempt development if it is not used for more than 90 days within a calendar year.
16. However, in making the Gateway Determination, the Department imposed Condition 1(b), which states:

Remove the proposed exempt development provision for non-hosted short-term rental accommodation.
17. The Gateway Determination report indicates that condition 1(b) was imposed on the basis that the proposed local approach to non-hosted STRA imposes more onerous requirements than the endorsed Statewide provisions, with the introduction of local approaches to non-hosted STRA not being supported at this time (Gateway Determination p.31).

Council's View

18. Council's Gateway Review Submission dated 5 November 2021 (**Review Submission**) indicates Council is concerned that the effect of Condition 1(b) will reduce residential amenity and impact on the available rental stock, thereby increasing rents in the long term in coastal and inner-city areas of Randwick City. Therefore, Council is seeking the deletion of Gateway Condition 1(b).
19. In its presentation to the Commission, Council commented that the LGA has a very low rental vacancy rate (generally in the order of 3%) and a very high demand for rentals (transcript p.5). Council also stated that the LGA has a high number of key workers and with the expected growth in jobs in the Health and Education precinct, the number of key workers will continue to increase and consequently, the demand for suitable, affordable accommodation in this area will also increase (transcript p.6).
20. In its presentation to the Commission on 28 January 2022, Council cited data obtained from InsideAirbnb in 2019 which indicates that there were approximately 3,346 STRA listings within the LGA. Of these, Council advises that almost 60% were non-hosted properties, which effectively removes these properties from the private, long-term rental market. Council advised that while data for 2020-2021 has been more difficult to obtain due to Covid-19, it expects strong demand for STRA within the Randwick LGA to persist as the economic recovery continues and tourism resumes (transcript p.5).
21. Council advised that it is continuing to investigate ways of increasing the supply of affordable housing in the LGA, and is concerned that those efforts to accommodate and provide for affordable housing would be undermined by allowing STRA to remove properties from the long-term housing market (transcript p.6).

The Department's Consideration

22. The Department's Gateway Review Justification Assessment (**GRJA Report**) provides background to the Housing SEPP and confirms that the 180-day limit identified in clause 112(1)(b) for non-hosted STRA in Greater Sydney was set by the Government after extensive stakeholder consultation and careful consideration of the impacts of non-hosted STRA on the overall rental market (GRJA Report p.6).
23. The Department, in its presentation to the Commission, commented that Council's review request is not supported by:
 - economic analysis to address Council's submission that there would be detrimental impacts on the long-term rental housing market in the LGA;
 - social impact analysis to support Council's position that a 90-day cap would be required to circumvent concerns around amenity and noise impacts on the community; and
 - compliance analysis data to support Council's position that the cost and burden to its compliance teams to maintain public order and the safe operation of rental housing is significant enough to warrant a 90-day cap on non-hosted STRA.
24. The GRJA Report also notes that at its meeting of 13 April 2021, the Randwick Local Planning Panel (**Randwick LPP**) did not support the introduction of a 90-day limit on non-hosted STRA on the basis that there is insufficient evidence at this stage to justify a different limit to that proposed in the (then) draft Housing SEPP provisions. The Randwick LPP further recommended that the time limit be monitored for a period of least 12 months prior to any change to the day limit to ensure that the appropriate balance between visitor accommodation and rental housing is achieved (GRJA Report p.7).
25. The Department has described the recent amendment to the Environmental Planning and Assessment Regulation 2000 (**EP&A Regulation**) to create a new Government operated, online and mandatory STRA premises register, which has been established as a key data collection tool that will assist in understanding the economic impacts of STRA, including on the private, long-term rental market. This will inform decisions about future regulatory settings, including a planned two-year review of the STRA provisions in the Housing SEPP.
26. In its presentation to the Commission, the Department concluded that in the absence of supporting economic and social analysis, and in light of the scheduled two-year review of the STRA policy, a one-off exclusion from the 180-day non-hosted STRA provisions, as requested by Council, is considered by the Department to be premature at this time.

Commission's Findings

27. The Commission acknowledges that Council's argument is based on its strategic investigations and analysis associated with the Randwick LSPS and Housing Strategy.
28. However, the Commission notes that the Randwick LPP did not support the proposed 90-day limit on the basis that it believed further monitoring is required to provide supporting evidence for any future change.
29. The Commission further notes that the inclusion of a 90-day limit on non-hosted STRA within the Randwick LEP would result in an inconsistency with clause 112(1)(b) of the recently adopted Housing SEPP and that to the extent of any inconsistency, the SEPP would prevail. An amendment to the Housing SEPP would therefore be required to support the 90-day limit on non-hosted STRA to resolve the inconsistency.

30. The Commission finds that there is merit to Council's argument. However, the Commission agrees with the Department that exemptions to the current provisions are premature, given the recent adoption of the Housing SEPP provisions relating to non-hosted STRA and the Department's intention to register and monitor STRA and its economic impacts, which will then inform the planned two-year review of the STRA provisions in the Housing SEPP.
31. Having regard to the above, the Commission advises that the Gateway Determination should not be amended to delete Gateway condition 1(b).

3.4 Condition 1(c) – local character areas

32. From November 2020 to January 2021 the Department exhibited an Explanation of Intended Effect (EIE) for local character which proposed an LEP model clause referring to a Local Character Area Statement.
33. Based on information released by the Department on local character, Council undertook work to develop local character statements and subsequently sought to introduce a new local character overlay (clause, map and definition) to the LEP within the Planning Proposal. The local character overlay proposed to give effect to three 'special character areas and their character statements when considering development applications.
34. However, in making the Gateway Determination, the Department imposed Condition 1(c), which states:

Remove the proposed local character provision, mapping and local character statements.
35. The Gateway Determination report indicates that the condition was imposed on the basis that currently there is no Department-endorsed statutory pathway to include local character in LEPs. As such, the Department did not support that element at the time.

Council's View

36. In its Review Submission, Council states that the removal of the local character areas from the Planning Proposal contradicts Council's strategic planning framework and the Department's policy development on local character. Council emphasises that, based on the information released by the Department on local character since 2018, Council has invested significant time and resources into preparing this work over the last two-and-a-half years, developing a strong local character methodology which has been supported by the community during consultation (Review Submission p.8).
37. In the Gateway Determination the Department states that councils can include local character provisions in their Development Control Plans. However, Council emphasises that this does not carry the same statutory weight that it would if it were included in the LEP (Review Submission p.10). Council also argues that including the local character areas in the LEP would allow these areas to be excluded from the housing section of *SEPP (Exempt and Complying Development Codes) 2008 (Codes SEPP)*, which would mean that proposals would be subject to a merit assessment as part of a development application, rather than the complying development pathway.
38. In its meeting with the Commission, Council acknowledged that there is no statutory pathway for local character areas to be included as a general provision in the Standard Instrument, but noted it could be included as a local provision under Part 6: Additional Local Provisions of the LEP.

The Department's Consideration

39. Further to the Department's findings in the Gateway Determination Report, the Department advised again in the GRJA Report (p.8) that there is currently no Department-endorsed statutory pathway to include local character in LEPs.
40. The Department has noted that the EIE for local character received mixed feedback during exhibition and has advised that integrating local character into the planning system as exhibited in the EIE will not be progressing at this time (Gateway Determination, GRJA Report). In its meeting with the Commission on 28 January 2022, the Department indicated that since the exhibition, the approach within the Department has been superseded by what has now become the draft *Design and Place SEPP* "which is an overarching framework to introduce best 45 practice [sic] design controls for the built environment" (transcript p.9).
41. The Department also states that it does not support local character as a basis to exclude areas from the application of the Codes SEPP, noting that no other council has been granted an exclusion on these grounds. The Department cites this as the reason that it cannot support this component of the Planning Proposal (GRJA Report p.9), and therefore seeks to retain Gateway Condition 1(c).

Commission's Findings

42. The Commission acknowledges the considerable body of work undertaken by Council in this area and agrees that there may be merit in providing provisions for local character areas in certain LGAs. However, the Commission is of the opinion that allowing an exemption from the Codes SEPP for local character areas would set an undesirable precedent that would undermine the aims of the Policy.
43. The Commission is of the view that the inclusion of local character provisions within Council's Development Control Plan would ensure that Council's work is appropriately incorporated in a manner consistent with the current planning framework.
44. The Commission recognises that there could be merit in the Department providing a pathway for local character areas to be included in an LEP in certain circumstances. However, given that at this time there is no Department-endorsed statutory pathway to include Local Character Areas within the LEP and that a Development Control Plan can adequately provide for local character, the Commission advises that the Gateway Determination should not be amended to delete Gateway condition 1(c).

3.5 Condition 1(d) – proposed rezoning of 1903R Botany Road Matraville

45. Condition 1(d) relates to a site located on the northern side of Botany Road at Matraville, as illustrated at **Figure 1** (over page). The site is currently under private ownership and adjoins a parcel of Council-owned land to the east. The site is landlocked, has no formal road access, is fenced on all boundaries and has no available pedestrian access to or from Botany Road or the adjacent Council-owned site. Bunnerong Creek and the associated riparian corridor traverses both the subject site and the adjacent Council-owned land, running in a south-east to north-west direction near the northern boundary.
46. Council's Planning Proposal sought to rezone this site from RE1 Public Recreation to RE2 Private Recreation.



Figure 1 Location plan – site shown red, adjacent Council-owned site shown blue (Source: Council Gateway Review Submission)

47. However, in making the Gateway determination, the Department imposed Condition 1(d), which states:

Remove the proposed rezoning of the land at 1903R Botany Road, Matraville from RE1 Public Recreation to RE2 Private Recreation.

48. The Gateway Determination report indicates that the condition was imposed on the basis that there is insufficient justification as to why the site is no longer needed to contribute to public open space and recreation needs of the LGA, nor demonstrates that the rezoning will result in no net loss of existing or future potential public or publicly-accessible open space.

Council's View

49. In its presentation to the Commission on 28 January 2022, Council advised that the land is not currently used for public recreation, and the adjoining RE1 Public Recreation zoned land is not included in any short to medium term capital works programs (Council presentation notes p.14).
50. Further to this, Council notes that current and previous owners of the site have offered the site to Council for purchase in accordance with clause 5.1 of Randwick LEP, however, in June 2019 Council confirmed that it is not in a position to purchase the land (Review Submission p.11).
51. Council's Review Submission commented that the *Randwick City Open Space and Recreation Needs Study and Strategy* found that the Malabar, La Perouse and Chifley area is well placed to cater for existing and future populations via existing Council owned and managed open space. As such, Council has advised that it will be focusing funding on other areas in the LGA, primarily in the north, where public open space is deficient for existing and future populations (Review Submission p.12).

52. Council also advised that, of relevance, in May 2017, the Land and Environment Court (**L&E Court**) approved the subdivision of the industrial land immediately to the west of the site (which is under the same ownership). Approval was granted for subdivision, site remediation and landscape works, and required the creation of a right of way (**ROW**) to the subject site via an internal road (see **Figure 2**). Without this privately provided site access, Council advises that the site is not readily accessible to the public.

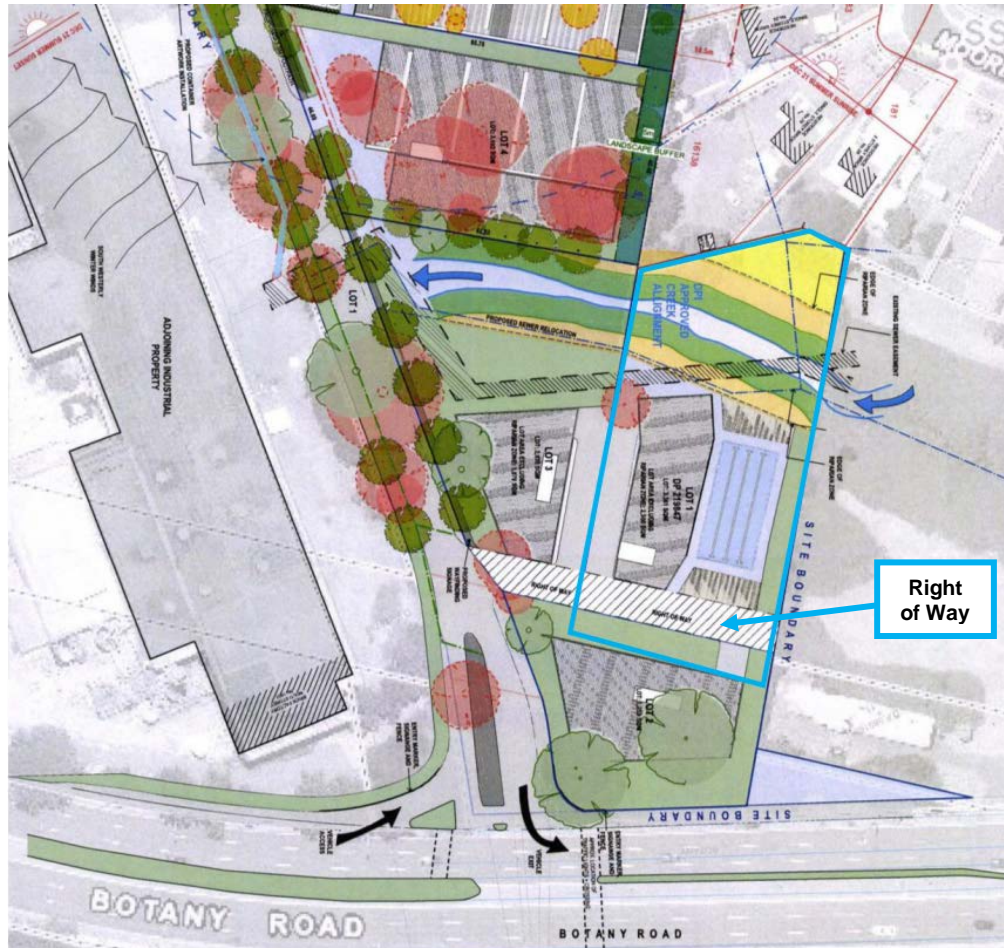


Figure 2 “Indicative development plan showing site access, riparian corridor and potential future uses (source: Council’s response to questions on notice dated 8 February 2022, p.15)

53. The Commission understands the L&E Court approval has been physically commenced. In its response to questions taken on notice, received by the Commission on 8 February 2022, Council advised that a number of modifications to the consent have been approved, as well as a development application for business identification signage for the industrial precinct. In addition, two complying development certificates have been issued for warehouse buildings within the subdivision.
54. The Review Submission indicates that the site currently acts as a buffer between the industrial land to the west and residential land located along Moorina Avenue. This buffer is maintained under the L&E Court approval noted above, which requires a riparian corridor along Bunnerong Creek to be approved by the Department of Primary Industries. Under the NSW *Water Management Act 2000*, setbacks (riparian zones) are required on waterfront land, up to 40m from the waterway bank to form a transition zone between the terrestrial environment and the watercourse. This riparian zone would ensure that that site will continue to act as an appropriate buffer between uses (Review Submission p.12).

55. In its presentation to the Commission, Council pointed out that under the RE1 Public Recreation zone, the range of permissible land uses include Recreation facilities (indoor, outdoor and major), childcare centres, restaurants and cafes and community facilities. These uses are also permissible under the RE2 Private Recreation zone. As such, the rezoning to RE2 could allow for the site to be developed as a recreation facility that is open to the public (Council presentation notes p.15).
56. Council submit that given the site is currently inaccessible to pedestrians or vehicles and is of poor quality, the rezoning to RE2 Private Recreation “*would facilitate the redevelopment of the site for a use that would service the recreational and social needs of the community while reflecting the private ownership of the land.*” (Review Submission p.12).

The Department’s Consideration

57. In its GRJA Report, the Department argues that there is insufficient justification in the Review Request to demonstrate that:
 - the proposal would not result in a net loss of existing and/or potential public or publicly accessible open space, both across the LGA and for the locality; and
 - there is no longer a need for Council to acquire the site for the purposes of local open space to support the open space and recreation needs for existing and future population (GRJA Report p.9).
58. The Department supports the retention of the existing RE1 Public Recreation zoning for several reasons. The **Green Grid** is the network of green space known as the Sydney Green Grid, identified in the Greater Sydney Region and District Plans (see **Figure 3**). The site is in proximity to the Green Grid connections of Fitzgerald Avenue and Heffron Park Open Space and the Great Coastal Walk, as identified in the Government Architect’s *Sydney Green Grid* (see **Figure 3**, No. 23 and No. 2 respectively).
59. In addition, the site provides a local response to public open space for resident and worker populations, could contribute to canopy cover and securing the site would help protect Bunnerong Creek (GRJA Report p.10).



Figure 3 Excerpt from *Central Green Grid Opportunities* map with approximate location of the site shown as a red dot (Source: GRJA p.11)

60. The Department further states that a rezoning to RE2 Private Recreation would reduce the likelihood and potential for future delivery of the site as public open space due to the range of development types that are permitted with consent in the RE2 Private Recreation zone (GRJA Report p.9).
61. The Department notes the aforementioned L&E Court approval and the requirement for a ROW from the new internal road but suggests that there is currently no consent or certainty around the type of development that may occur on the site. If the land were to be rezoned to RE2 Private Recreation, there would be no certainty of the site's potential contribution to serving public recreational needs or access (GRJA Report p.10).
62. The Department points out that the proposed rezoning or the removal of the site from Council's acquisition obligations is not identified under Council's *Open Space and Recreation Needs Study (Draft) (December 2020)*. The Department also notes that one of the reasons Council has not been able to purchase the site includes Council's financial position but indicates this is not a relevant planning consideration (GRJA Report p.11).
63. The Department contends that the proposed rezoning is inconsistent with local and State strategic planning documents, including the Premier's Priorities, the Eastern City District Plan, Randwick LSPS and draft Randwick Open Space and Recreation Strategy (GRJA p.11 Report).
64. Having regard to the above, the Department recommends that Gateway condition 1(d) remain.

Commission's Findings

65. The Commission notes the site is comparatively small (approximately 3,300m²), is fully fenced (as is the adjacent Council-owned RE1 zoned land) and is physically isolated. As a consequence, it does not make a significant contribution to the local open space network. The Commission believes it could potentially be more valuable as part of the Green Grid if there was some possibility of a future connection to the north to Purcell Park or the Green Grid. However, based on the information provided by Council in its response to questions taken on notice, any formal pedestrian access through the adjacent industrial subdivision – necessary to achieve this connectivity – is unlikely.
66. The Commission notes that current site access arrangements, together with the condition of the L&E Court subdivision approval to provide a riparian corridor along Bunnerong Creek, do not readily support the use of the site as publicly accessible open space. Furthermore, the site has not been accessible to the public for a considerable period of time due to it being held in private ownership and fully fenced.
67. The Commission notes that the range of permissible uses in the RE1 and RE2 zones are very similar, with the only substantive difference being registered clubs and takeaway food and drink premises being permissible in the RE2 zone.
68. The site is currently inaccessible to the public. The Commission does not expect that this will change if the current RE1 zoning is maintained, particularly having regard to Council's apparent inability to acquire the land and its advice that there are no plans to progress its existing RE1 zoned land (to the east of the subject site) in the short to medium term.
69. The Commission agrees with Council that rezoning the land to RE2 Private Recreation may facilitate the redevelopment of the site for a use that would serve the recreational and social needs of the community. The Commission further notes that development of the subject land for recreation purposes could potentially stimulate and encourage upgrading of the adjacent RE1 zoned land.

70. The Commission agrees with the views of Council and finds that the Gateway Determination should be amended to delete Gateway condition 1(d).

4 THE COMMISSION'S ADVICE

71. The Commission has undertaken a review of the Gateway Determination as requested by the Department. In so doing, the Commission has considered the Material, submissions by Council and reasons given for the determination in the Department's Gateway Report.
72. The Commission agrees with the views of the Department and recommends that the Gateway Determination should not be amended to delete Gateway condition 1(b).
73. The Commission agrees with the views of the Department and recommends that the Gateway Determination should not be amended to delete Gateway condition 1(c).
74. The Commission agrees with the views of Council and recommends that the Gateway Determination should be amended to delete Gateway condition 1(d).
75. The Commission advises the Minister's delegate that the Gateway Determination issued on 12 September 2021 in respect of Gateway conditions 1(b) and 1(c) should be retained for the reasons provided in Sections 3.3 and 3.4 of this Gateway Determination Advice Report.
76. In relation to Gateway condition 1(d), the Commission advises the Minister's delegate that the Gateway Determination issued on 12 September 2021 should be amended to delete Gateway condition 1(d) for the reasons provided in Section 3.5 of this Gateway Determination Advice Report.



Dr Peter Williams (Chair)
Member of the Commission



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Member of the Commission