

Planning and Assessment

IRF19/1894

Gateway determination report

LGA	Northern Beaches
PPA	Northern Beaches Council
NAME	Manly Creek Native Vegetation (0 homes, 0 jobs)
NUMBER	PP_2019_NBEAC_002_00
LEP TO BE AMENDED	Warringah Local Environmental Plan 2011
ADDRESS	Manly Vale and Allambie Heights
DESCRIPTION	Part Lot 7370 DP1165551 (land adjoining 102 King Street, Manly Vale) Part Lot 7369 DP1165551 (Wandella Road, south of Jenna Close, Allambie Heights) Lot 7371 DP1165577 (located to the rear of properties south of Blamey Street and east of Bate Avenue, Allambie Heights) Part unmade road at the southern end of Wandella Road, Allambie Heights connecting to King Street, Manly Vale
RECEIVED	6 May 2019
FILE NO.	IRF19/1894
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required.
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal.

1. INTRODUCTION

1.1 Description of planning proposal

The planning proposal applies to four parcels of land in the suburbs of Manly Vale and Allambie Heights. The site is partially within the riparian corridor of Manly Creek, situated downstream of Manly Dam.

The planning proposal seeks to amend Warringah Local Environmental Plan (LEP) 2011 by:

- rezoning the land from R2 Low Density Residential to RE1 Public Recreation;
- removing height of building development standards; and
- removing minimum subdivision lot size development standards.

The purpose of the planning proposal is to provide for a range of recreational settings, activities and land uses that are compatible with the values and existing use of the land.

1.2 Site description

The subject lands are within the suburbs of Manly Vale and Allambie Heights, approximately 6.5km south-east of Frenchs Forest, in the local government area of the Northern Beaches (**Figure 1**).

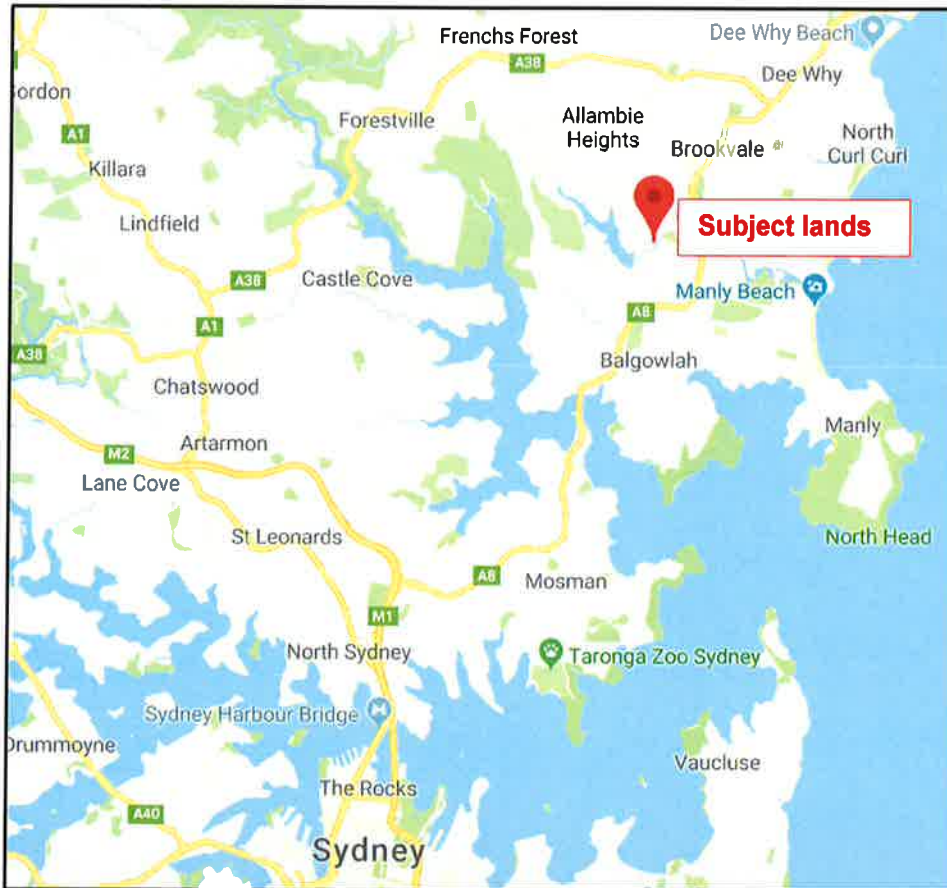


Figure 1: Context map (Source: Google Maps)

Three of the four lots form part of a place known by the local community as 'Mermaid Pool', which includes a waterfall and waterhole that is fed from Manly Dam via Manly Creek and discharges into Manly Lagoon (**Figure 2**). The land is occupied by native vegetation and partly includes the riparian corridor of Manly Creek.

The fourth parcel of land is also occupied by native vegetation and is north of David Thomas Reserve (**Figure 2**).

All the land parcels are Crown land.

Council's Natural Environment and Climate Change Division advise the subject lands contain two listed Aboriginal places.



Figure 2: Aerial view of subject land (entire lot boundaries shown where relevant) (Source: NSW Spatial Services 17/08/2018)

1.3 Existing planning controls

Under Warringah LEP 2011 the subject lands are zoned R2 Low Density Residential with Lot 7370 and Lot 7369 being part RE1 Public Recreation (**Figure 3**). For land zoned R2, an 8.5 m maximum building height (**Figure 4**) and 600m² minimum lot size (**Figure 5**) applies. These same development standards apply to the surrounding low scale residential development of Allambie Heights and Manly Vale. No floor space ratio applies to the land under the Warringah LEP 2011.



Figure 3: Existing Land Zoning (Source: Dept of Planning, Industry & Environment)



Figure 4: Existing Height of Buildings (Source: Dept of Planning, Industry & Environment)

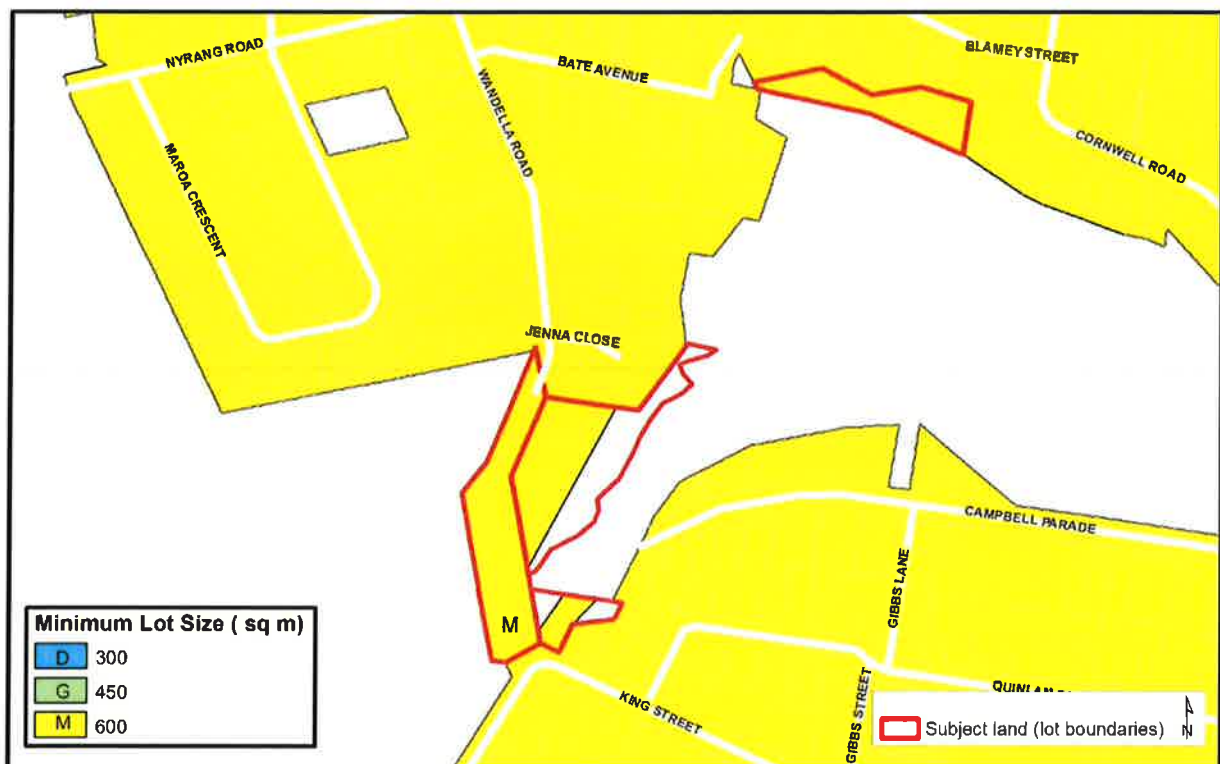


Figure 5: Existing Minimum Subdivision Lot Size (Source: Dept of Planning, Industry & Environment)

1.4 Surrounding area

The subject lands are surrounded by:

- to the north, low density residential development in Allambie Heights;
- to the east, recreational uses, being David Thomas Reserve playing fields;
- to the south, low density residential development in Manly Vale; and
- to the west, the UNSW Water Research Laboratory and Manly Hydraulics Laboratory. Further west of the subject lands is Manly Dam (Figure 6).

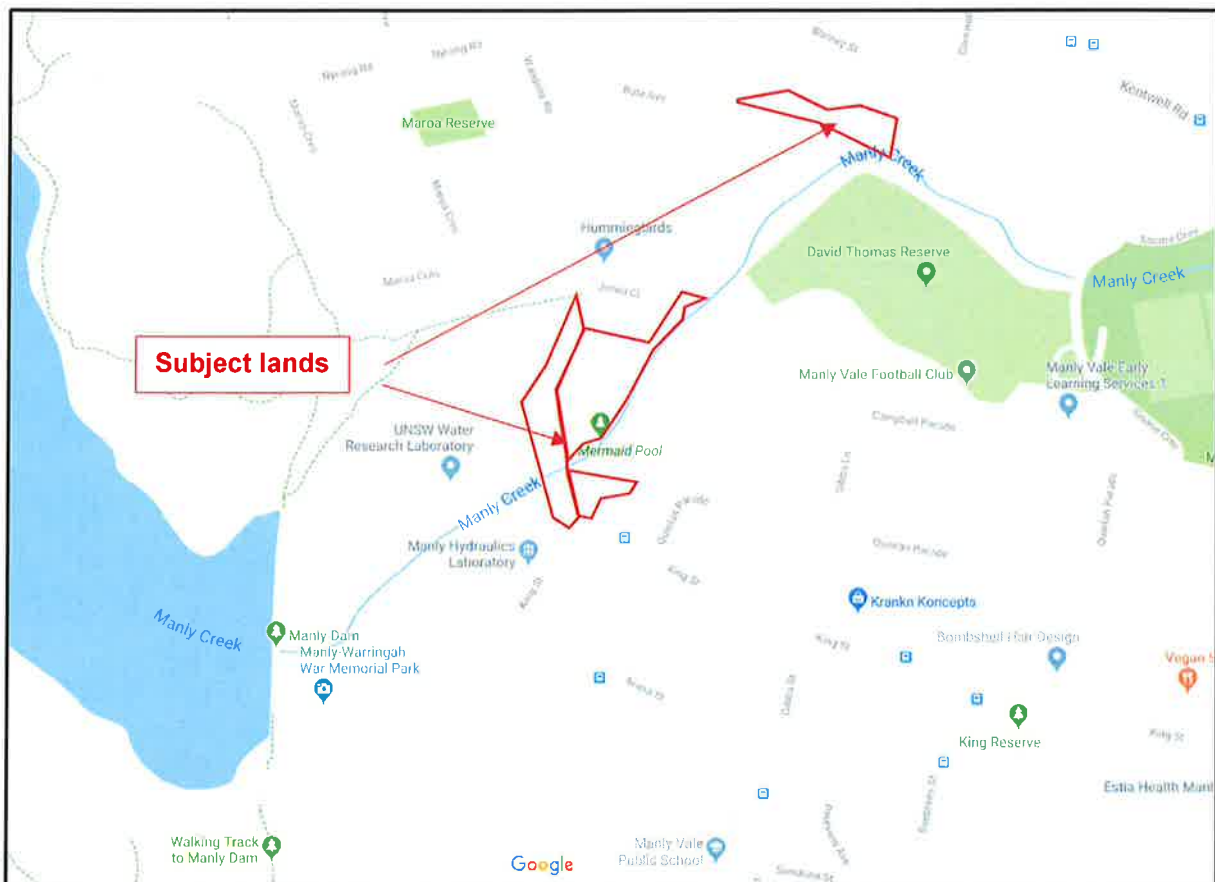


Figure 6: Surrounding land map (Source: Google Maps)

1.5 Summary of recommendation

It is recommended the planning proposal proceed subject to conditions as the proposal will:

- provide for a range of recreational activities and land uses that are compatible with the values of the land;
- protect and enhance the natural environment for recreational purposes;
- ensure that the future land use is consistent with the public open space management of the land; and
- not result in any likely detrimental environmental, social or economic impacts.

2. PROPOSAL

2.1 Objectives or intended outcomes

The planning proposal's intended outcome is to rezone Crown land parcels of native vegetation, including riparian corridor lands of Manly Creek, from R2 Low Density Residential to RE1 Public Recreation. In addition, the proposal will remove any maximum building height and minimum lot size controls as residential land uses will no longer be permitted in the proposed RE1 zone.

The proposal's intended outcome adequately describes the objective of the planning proposal.

2.2 Explanation of provisions

The planning proposal seeks to amend Warringah LEP 2011 in relation to the subject lands by:

- rezoning the land parcels from Zone R2 Low Density Residential to Zone RE1 Public Recreation (requiring an amendment to Land Zoning Map sheet LZN_008); and
- removing height of building controls (requiring an amendment to Height of Buildings Map sheet HOB_008); and
- removing minimum subdivision lot size controls from the subject lands (requiring an amendment to Lot Size Map sheet LSZ_008).

The outcome of the proposed rezoning will be that the subject lands will be zoned RE1 in their entirety (some of the land parcels are currently zoned part R2 and part RE1).

The explanation of provisions is considered clear and adequate for the purposes of the planning proposal.

2.3 Mapping

The planning proposal requires the amendment of three maps identified in section 2.2 Explanation of provisions – Land Zoning Map, Height of Buildings Map and Lot Size Map.

Indicative mapping has been included in the planning proposal, in the form of extract showing existing and proposed zoning, height of building and minimum lot size. These figures are an appropriate size and scale, however they vary in image quality, with map annotations being difficult to read.

Prior to community consultation, the planning proposal is to be updated to replace the maps in Part 4 of the proposal with extracts of the relevant Standard Instrument (SI) LEP maps prepared in accordance with the *Standard Technical Requirements for Spatial Datasets and Maps* (2017). This will ensure the maps include labels for roads and suburbs, and that each polygon is clearly annotated with a reference corresponding to the legend (R2, RE1 etc). Direct annotation or labelling of information improves colour accessibility.

Map sheet references are incorrect and will need to be revised prior to community consultation. It is also recommended that the planning proposal is updated to include a map identifying the legal description (where relevant) of the subject lands.

At the time of requesting the making of the plan, the planning proposal is to include new maps sheets to replace the corresponding SI LEP maps.

3. NEED FOR THE PLANNING PROPOSAL

The planning proposal is not the result of any strategic study or report. The proposal was initiated following consideration of *Item 12.5 - Notice of Motion No 65/2018 - Rezoning of parcels of land, Manly Warringah War Memorial Park* at Council Meeting dated 27 November 2018. The Notice of Motion sought the rezoning of five lots in and around Manly Warringah War Memorial Park, from R2 Low Density Residential to RE1 Public Recreation due to what appears to be an anomaly in the translation of Warringah LEP 2000 to Warringah LEP 2011. Council resolved to rezone the five lots owned by the Crown and Sydney Water, as well as rezone an additional two lots of Crown land in the vicinity of 'Mermaid Pool' (which are the subject of this planning proposal):

- Lot 7370 DP 1165551; and
- Lot 7368 DP 1165551

In preparing a planning proposal to rezone Lot 7370 and Lot 7368, Council identified a further two lots of Crown land in the vicinity which were recommended for rezoning in the same manner:

- Lot 7371 DP 1165577; and
- Part unmade road at the southern end of Wandella Road and east of Manly Water Laboratory (Research Station).

Several studies identified and detailed in the planning proposal provide support for the protection and management of these parcels of native vegetation due to their ecological value.

Council has also commissioned a biological study from independent consultants Niche Environmental and Heritage to provide a full species inventory and, determine and map native vegetation. The study will also include a habitat assessment and targeted surveys for threatened species, as well as provide an assessment of the area's function as a wildlife corridor.

The planning proposal states the study will assist Council in its future management of the native vegetation lands and that it is not expected to result in a different land zone use or additional LEP amendments at a later date beyond what it currently proposed in the planning proposal.

The planning proposal acknowledges that whilst an E2 Environmental Conservation zone provides a higher level of environmental protection, the extent of the Manly Warringah Memorial Park, Mermaid Pool and much of the riparian corridor is zoned RE1 Public Recreation.

The planning proposal states the local community in conjunction with Save Manly Dam Catchment Committee have been working to protect the bushland around Mermaid Pool since 2002. A volunteer bush regeneration group meets monthly to rehabilitate the bush from weeds and degradation.

The area is frequently used for public recreation activities, including bush walking, mountain bike riding and picnics. The subject lands connect with adjacent land for public recreation, including Manly Dam and David Thomas Reserve.

The proposal to rezone the subject lands is considered the best means of maintaining the use of these lands for public open space purposes and to protect and enhance the natural environment for recreational purposes.

4. STRATEGIC ASSESSMENT

4.1 District

North District Plan

The North District Plan, released on 18 March 2019, contains planning priorities and actions to guide growth of the North District while improving the district's social, economic and environmental assets. It contains the planning priorities and actions for implementing the Greater Sydney Region Plan, *A Metropolis of Three Cities*, at a district level and is a bridge between regional and local planning.

The subject lands are located within the North District and is considered to be generally consistent with the priorities and actions of the North District Plan. In particular, the following priorities have been identified as relevant to the planning proposal:

Planning Priority N15 – Protecting and improving the health and enjoyment of Sydney Harbour and Waterways

The planning proposal enables the protection and enhancement of native vegetation in the vicinity of Manly Creek, which forms part of the Manly Lagoon Catchment. The proposal will allow for the ongoing use of the land for recreational purposes.

Planning Priority N16 – Protecting and enhancing bushland and biodiversity

The planning proposal to rezone the subject land to RE1 Public Recreation supports the protection of the existing bushland for recreational purposes. Bush regeneration activities carried out by a group of volunteers on a monthly basis assists in the rehabilitation and restoration of the bushland in an established urban area.

Planning Priority N17 – Protecting and enhancing scenic and cultural landscapes

The planning proposal will protect the cultural landscape of the subject lands which contains two listed Aboriginal places, as advised by Council's Natural Environment and Climate Change Division. In terms of protecting and enhancing scenic landscapes, the planning proposal will ensure the protection of natural landforms that provide aesthetic value, including waterfalls, and sandstone cliffs and escarpments.

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

The planning proposal will secure the future land use of the subject lands for community access to places for recreation and exercise, as well as support walking and cycling connections that are part of the Greater Sydney Green Grid.

Planning Priority N20 – Delivering high quality open space

The planning proposal facilitates the protection of urban bushland land currently used for public open space and recreational purposes, including nature-based recreation and leisure trips.

4.2 Local

Northern Beaches Community Strategic Plan 2017-2028 'SHAPE 2028'

'SHAPE 2028' is Northern Beaches Council's Community Strategic Plan (CSP) that reflects a shared vision of what the Northern Beaches community values and aspires to over a ten-year period. The CSP guides and informs Council's decisions in developing its four-year Delivery Program and annual Operational Plans that together details the specific actions that Council will take to achieve the strategies and objectives in the CSP.

The planning proposal states the following goals in SHAPE 2028 are relevant to the proposal:

- Goal 1 Our bushland, coast and waterways are protected to ensure safe and sustainable use for present and future generations.
- Goal 2 Our environment and community are resilient to natural hazards and climate change.
- Goal 3 Our community is well-supported in protecting the environment.
- Goal 5 Our built environment is developed in line with best practice sustainability principles.

This local strategy has not been endorsed by the Department.

4.4 Policy Directions for Plan Making (Section 9.1 Ministerial Directions)

The following policy directions for plan making are relevant to the planning proposal:

- 3.1 Residential Zones;
- 4.1 Acid Sulfate Soils;
- 4.2 Flood Prone Land; and
- 4.3 Planning for Bushfire Protection.

The following discussion addresses any inconsistencies with the above Directions.

3.1 Residential Zones

The objectives of this Direction are to:

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

This Direction applies to planning proposals that would affect land within an existing or proposed residential zone. The planning proposal is inconsistent with this Direction as the proposed rezoning of the subject lands to RE1 Public Recreation will prohibit residential development.

The Department considers that rezoning the four Crown land parcels for public recreation purposes would not adversely impact on housing supply in the Northern Beaches local government area. It is highly unlikely the subject lands would ever be

developed for residential purposes given the physical environmental constraints of the land (sandstone cliffs and escarpments); bushfire hazard; as well as the important ecological, scientific, cultural and aesthetic values of the land. The Secretary's delegate may therefore be satisfied that any potential inconsistency with this Direction is of minor significance.

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 containing acid sulfate soils. This Direction requires the planning proposal authority to consider Acid Sulfate Soils Planning Guidelines and the appropriateness of a change of land use given the presence of acid sulfate soils.

The planning proposal is consistent with this Direction as the land is mapped as Class 5 Acid Sulfate Soils (ASS), the lowest risk category. The proposed rezoning of the land is not intended to result in any intensification of land uses. Warringah LEP 2011 contains existing provisions to ensure the consideration of ASS during development assessment.

4.2 Flood Prone Land

The objectives of this direction are:

- 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
- 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.

This Direction applies when a planning proposal authority prepares a planning proposal that creates, removes or alters a zone or a provision that affects flood prone land. Part of subject lands are within the flood planning area. The planning proposal is consistent with this Direction as Warringah LEP 2011 contains existing provisions that give effect to and are consistent with the NSW Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005 (including the Guideline on Development Controls on Low Flood Risk Areas). The proposal will also remove the permissibility of residential uses on the land.

4.3 Planning for Bushfire Protection

The objectives of this direction are:

- to protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas; and
- to encourage sound management of bush fire prone areas.

This Direction applies when a planning proposal authority (PPA) prepares a planning proposal that will affect, or is in proximity to land mapped as bushfire prone land. The subject lands are identified as Vegetation Category 1 and 2, as well as within the 30 m and 100 m buffer on the Bush Fire Prone Land Map.

This Direction provides that the PPA must consult with the Commissioner of the NSW Rural Fire Service (RFS). Consultation with the RFS is required after a Gateway

determination is issued; until this consultation has occurred the inconsistency of the proposal with the direction remains unresolved.

4.5 State environmental planning policies (SEPPs)

The following SEPPs are relevant to the planning proposal:

- State Environmental Planning Policy No 19 – Bushland in Urban Areas; and
- State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017.

SEPP No 19 – Bushland in Urban Areas

The general aim of SEPP No 19 is to protect and preserve bushland within specified local government areas (LGAs) in metropolitan Sydney, including land identified in the former Warringah LGA. The SEPP provides that when preparing a draft LEP, council is to have regard to the general and specific aims of the SEPP, and give priority to retaining bushland, unless it is satisfied that significant environmental, economic or social benefits will arise which outweigh the value of the bushland. The planning proposal is consistent with the SEPP as rezoning the subject land to RE1 Public Recreation will protect and preserve the native vegetation for public recreational purposes.

SEPP (Vegetation in Non-Rural Areas) 2017

The aim of this SEPP is to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and preserve the amenity of these areas through the preservation of trees and other vegetation. Relevant to the existing zone of the subject lands, the SEPP applies to land in Northern Beaches zoned R2 Low Density Residential. The planning proposal is consistent with the SEPP as rezoning the subject land to RE1 Public Recreation will protect the biodiversity values of the native vegetation that occupies the site.

4.5 Other Legislation

Biodiversity Conservation Act 2016

The purpose of the *Biodiversity Conservation Act 2016* (BC Act) is to maintain a healthy, productive and resilient environment for the greatest well-being of the community, now and into the future, consistent with the principles of ecologically sustainable development.

One of the land parcels subject to the planning proposal, Lot 7371 DP 1165551, is identified on the Biodiversity Values (BV) Map prepared by the Office of Environment and Heritage (OEH) under Part 7 of the BC Act. The BV Map identifies land with high biodiversity value that is particularly sensitive to impacts from development and clearing. The zoning of this land as RE1 Public Recreation will remove much of the development potential of the land.

Aboriginal Land Rights Act 1983

The *Aboriginal Land Rights Act 1983* (ALR Act) is important legislation that recognises the rights of Aboriginal people in New South Wales. The preamble of the legislation recognises that land in New South Wales was traditionally owned and occupied by Aboriginal people, and is of spiritual, social, cultural and economic importance to Aboriginal people. The ALR Act provides that the New South Wales Aboriginal Land Council and Local Aboriginal Land Councils may make claim(s) to claimable Crown land(s).

Land which is the subject of the planning proposal is identified as having undetermined Aboriginal land claims.

The Metropolitan Local Aboriginal Land Council (MLALC) is the relevant local Aboriginal land council. The MLALC will be consulted with as a requirement of the Gateway determination.

5. SITE-SPECIFIC ASSESSMENT

5.1 Social

The planning proposal states the proposed rezoning of the subject lands to RE1 Public Recreation aligns with the community aspirations for this area, including volunteer bush regeneration events in and around the site. The proposal states the subject lands are the subject of an ongoing community restoration project which gained recognition and impetus under the national 'Clean Up Australia Day' campaign in 2011/2022 and the 'Return of the Mermaids' project.

In light of the above, it is considered the planning proposal will have a positive social impact on the community.

5.2 Environmental

The planning proposal states the proposed RE1 Public Recreation zone will introduce new zone objectives and land use permissibility that will provide for a range of recreational settings, activities and compatible land uses. It will better protect and enhance the natural environment and values of the land.

The proposal also states that the likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats may be identified on the land will warrant further ecological study. In this regard, Council has commissioned a biological study from independent ecological consultants as discussed in the planning proposal. Council expects the study to be completed by July 2019, and will further inform the planning proposal.

It is considered the planning proposal will have positive environmental impact on the subject lands comprised of native vegetation near Manly Creek.

The proposed rezoning of the subject lands is considered compatible with existing and future surrounding uses, including the low density residential suburbs of Manly Vale and Allambie Heights, as well as the neighbouring RE1 zoned land of David Thomas Reserve.

5.3 Economic

The planning proposal states Council does not foresee any likely economic consequences arising from the planning proposal.

6. CONSULTATION

6.1 Community

Council proposes to place the planning proposal on public exhibition in accordance with the Gateway determination and ensure consistency with Council's Community Engagement Policy. The planning proposal does not specify a proposed exhibition period.

In accordance with the Department's *A guide to preparing local environmental plans* (August 2016), the planning proposal is not considered to be a low impact proposal.

It is therefore considered that a community consultation period of a minimum of 28 days is appropriate.

6.2 Agencies

Council proposes to consult with NSW Crown Lands and the Metropolitan Local Aboriginal Land Council (MLALC). All four parcels of land subject to the planning proposal are owned by the Crown. Consultation with the MLALC is proposed as the planning proposal identifies a number of undetermined land claims under the *Aboriginal Land Rights Act 1983* which form part of the subject lands.

The planning proposal states that Council's Natural Environment and Climate Change Division advise the area contains two (2) listed Aboriginal Places. As such, consultation with the Office of Environment and Heritage is recommended.

Consultation with the NSW Rural Fire Service will be required given the outstanding section 9.1 Direction 4.4 Planning for Bushfire Protection.

Council has proposed to consult with environmental conservation group, Save Manly Dam Catchment Committee, who have been actively involved with the subject lands since 2002, including restoration of Mermaid Pool.

Consultation with the above-mentioned agency / incorporated body / community group is considered appropriate.

7. TIME FRAME

The planning proposal includes a six-month timeframe that indicates a request for plan finalisation by September 2019.

Given the outstanding section 9.1 Direction 4.4 Planning for Bushfire Protection and need to consult with the NSW Rural Fire Service; as well as a number of other agencies, a nine-month timeframe is considered more appropriate. The planning proposal's project timeline should be updated to reflect a request for LEP finalisation nine months from when the Gateway determination is issued.

8. LOCAL PLAN-MAKING AUTHORITY

Council has requested local plan-making authority for this proposal. As the proposal involves an outstanding section 9.1 inconsistency, it is not appropriate for Council to have plan making delegations.

9. CONCLUSION

The planning proposal to rezone four Crown land parcels of native vegetation in the vicinity of Manly Creek from R2 Low Density Residential to RE1 Public Recreation, and remove associated residential development standards, is supported to proceed with conditions, as the proposal has been adequately justified and will provide for the ongoing public open space use of the land as well as protect and enhance the natural environment for recreational purposes.

10. RECOMMENDATION

It is recommended that the delegate of the Secretary:

1. agree that any inconsistencies with section 9.1 Direction 3.1 Residential Zones are minor or justified; and

2. note that the consistency with section 9.1 Direction 4.4 Planning for Bushfire Protection is unresolved and will require justification.

It is recommended that the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions:

1. Prior to community consultation, the planning proposal is to be updated to:
 - (a) replace the existing and proposed maps in Part 4 with extracts of the relevant Standard Instrument (SI) LEP maps prepared in accordance with the Standard Technical Requirements for Spatial Datasets and Maps (2017);
 - (b) include a map that identifies the land subject to the planning proposal by its legal description (where relevant); and
 - (c) correct all map sheet references.
2. Prior to community consultation, Council is to consult with the NSW Rural Fire Service in relation to Direction 4.4 Planning for Bushfire Protection.
3. The planning proposal should be made available for community consultation for a minimum of 28 days.
4. Consultation is required with the following public authority / organisation:
 - NSW Crown Lands
 - Metropolitan Local Aboriginal Land Council
 - Office of Environment and Heritage
5. The time frame for completing the LEP is to be nine (9) months from the date of the Gateway determination.
6. Given the nature of the planning proposal, Council should not be authorised to be the local plan-making authority to make this plan.



2/8/19

Jazmin van Veen
Acting Team Leader, Sydney Region East



Amanda Harvey 9/8/19
Director, Sydney Region East
Places, Design and Public
Spaces

Assessment officer: Yolande Miller
Senior Planner, Sydney Region East
Phone: 9274 6500