

## Planning Services

### Plan Finalisation Report

Local government area: Northern Beaches

File number: IRF18/4322

#### 1. NAME OF DRAFT LEP

Pittwater Local Environmental Plan 2014 (Amendment No 11)

#### 2. SITE DESCRIPTION

The planning proposal (**Attachment A**) applies to 2 Macpherson Street, Warriewood (**Figure 1**). The site consists of a single parcel of land legally known as Lot 25 Section C DP 5464.

The site has a total area of approximately 2.1ha and has a frontage of approximately 120m to Macpherson Street. Narrabeen Creek flows along the northern and eastern boundaries of the site, influencing the land's irregular shape.

The site has been cleared, except for vegetation along the perimeter associated with the creek line and the wetland area to the west. Previously the site operated as a plant nursery (market garden). Vehicular access to the site is from Macpherson Street.

The site is zoned R3 Medium Density Residential and is situated within the Warriewood Valley Release Area as identified on the urban release area map under the Pittwater Local Environmental Plan (LEP) 2014.



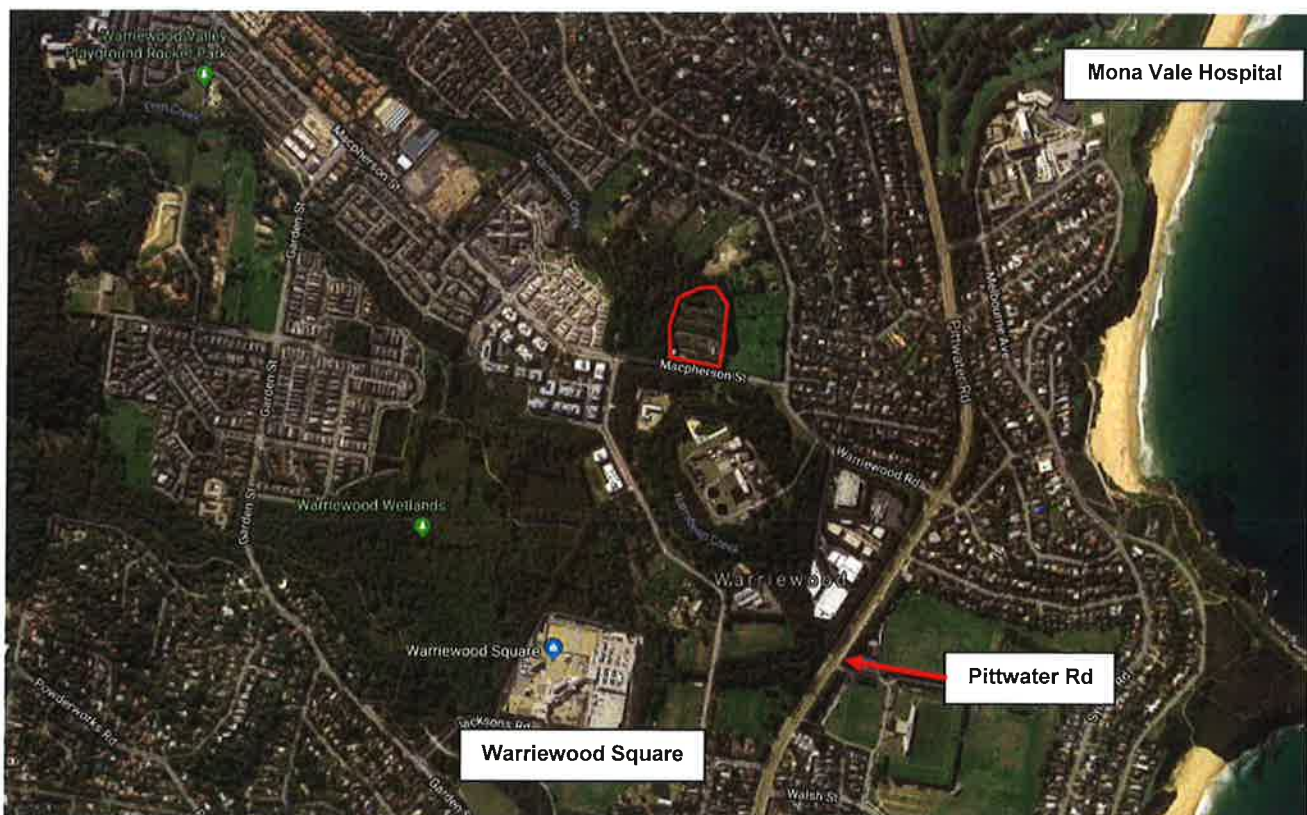
Figure 1: Aerial view of site (shown in red outline) (source: Nearmap 14/09/18)

The land surrounding the site (as shown in **Figure 1**) includes the following:

- North: The site to the immediate north of the subject site is a housing estate known as Karinya. It offers conventional land lots and land and home packages for sale. Once completed, the housing estate will comprise more than 30 homes.
- East: The site is bound to the east by three lots encompassing 23-27 Warriewood Road, separated from the subject site by Narrabeen Creek. The adjoining lots are under construction to develop a two-storey and three-storey residential aged care facility comprising 130 single-occupancy high-care rooms.
- South: Across Macpherson Street to the south is the Warriewood Wastewater Treatment Plant operated by Sydney Water.
- West: Land to the immediate west of the site is undeveloped and characterised by mature vegetation. Further west at 6-14 Macpherson Street is the Warriewood Brook retirement village, operated by Anglicare. Warriewood Brook consists of: a 119-bed residential care facility and 89 self-contained dwellings in apartment-style buildings; community facilities; car parking; internal roads; site landscaping, including a large water quality detention pond landscaped with natives; a boardwalk; and a village green. There are also 59 self-contained dwellings with a community building, bowling green, landscaping, car parking and internal roads.

### **Site Context**

The site is located in Warriewood on Sydney's Northern Beaches between the suburbs of Mona Vale and North Narrabeen. North Sydney CBD and Sydney CBD are approximately 23km and 26km to the south respectively. Mona Vale Hospital is located approximately 700m to the north-east and Warriewood Square is situated approximately 700m south (**Figure 2**).



**Figure 2: Aerial view of the site in context (site outlined in red) (Source: Google Maps 16/10/18)**



### 3. PURPOSE OF PLAN

The primary objective of the draft LEP is to facilitate the delivery of up to 22 new residential dwellings on the site, consistent with the site's current R3 Medium Density Residential zoning.

Under the Pittwater LEP 2014, the potential to carry out residential development consistent with the existing R3 zone objectives and permissible land uses is prevented by Clause 6.1 Warriewood Valley Release Area under the Pittwater LEP 2014. The clause states:

*(3) Development consent must not be granted for development on land in a buffer area or sector or at an address mentioned in Column 1 of the table to this clause unless the consent authority is satisfied that the total number of dwellings shown opposite that buffer area, sector or address in Column 2 of that table will be erected.*

Column 1	Column 2
Buffer area, sector or address	Number of dwellings to be erected
Buffer area 1m	No dwellings

The urban release area map of the Pittwater LEP 2014 identifies the site as 'buffer area 1m' (**Figure 3**).

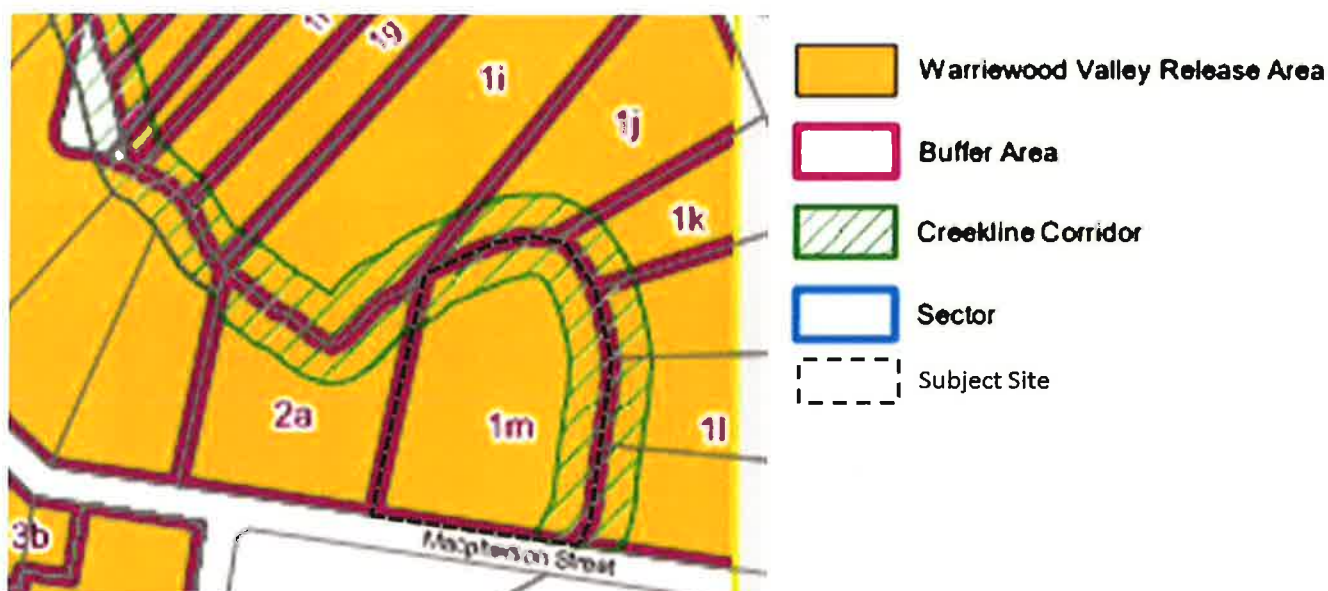


Figure 3: Extract of urban release area map (sheet URA\_012) (source: NSW Legislation).

An indicative subdivision plan (Bonacci, August 2016) submitted with the planning proposal illustrates the 22 lots ranging in size from 253m<sup>2</sup> to 303m<sup>2</sup> that could be accommodated on the site. These lots have a width ranging from 10m to 22m and a depth ranging from 17m to 32m. The built form to be developed on the site would be subject to detailed planning at the development assessment stage.

The draft LEP seeks to amend clause 6.1(3) of the Pittwater LEP 2014 by removing the 'no dwellings' restriction and allowing a maximum of 22 dwellings on the site.

#### 4. STATE ELECTORATE AND LOCAL MEMBER

The site falls within the Pittwater State Electorate. The Hon Rob Stokes MP is the State Member for Pittwater.

The site falls within the Mackellar Federal Electorate. Mr Jason Falinski MP is the Federal Member for Mackellar.

On 2 August 2018, the Hon Anthony Roberts MP, Minister for Planning, received representations from Minister Stokes on behalf of Mr Angus Gordan OAM. Minister Stokes identified the site's flood-related constraints and asked the Minister for Planning to review the matter. The Minister responded to Minister Stokes on 10 September 2018 (**Attachment L**).

**NSW Government Lobbyist Code of Conduct:** There have been no meetings or communications with registered lobbyists with respect to this proposal.

**NSW Government reportable political donation:** There are no donations or gifts to disclose and a political donation disclosure is not required.

#### 5. REZONING REVIEW

The planning proposal was subject to a rezoning review due to Northern Beaches Council's resolution of 31 January 2017 not to support the planning proposal as lodged on 11 November 2016.

The proponent lodged a rezoning review request with the Department on 2 March 2017. On 30 March, Council responded to the Department's request for comments on the original planning proposal stating it did not support the proposal as insufficient information was provided to demonstrate that the site could accommodate dwellings.

On 12 April 2017, the Sydney North Planning Panel (Panel) unanimously determined that the proposed instrument should be submitted for a Gateway determination because the proposal demonstrated strategic and site-specific merit.

The Panel noted that the preclusion of residential development on the site under the Warriewood Valley Strategic Review (2013) was predicated on the lack of flood-free access. The Panel noted that flood-free access to the site was under construction and the limitations on residential development could be removed. The Panel therefore found that the limitations should be overturned and recommended the information identified in Council's written response to the rezoning review be exhibited with the proposal.

#### 6. PLANNING PROPOSAL AUTHORITY

On 11 May 2017, Council declined the role of planning proposal authority (PPA). On 24 May, the Panel as delegate of the Greater Sydney Commission determined to appoint itself as the PPA to progress the matter.

#### 7. GATEWAY DETERMINATION

The Gateway determination issued on 30 June 2017 (**Attachment B**) determined that the proposal should proceed subject to conditions and required finalisation of the draft plan by 6 July 2018.

The Gateway required, prior to public exhibition, that the planning proposal be revised to:

- demonstrate consistency with section 9.1 Direction 4.3 Flood Prone Land; and
- address the flooding concerns raised by Council in its submission of 30 March 2017, including the proposed cut and fill on the site, implications for on-site flood

behaviour, potential flood impacts upstream and downstream of the site and flood emergency response, which caters for flood events up to the probable maximum flood (PMF) level.

The Gateway required the revised planning proposal to be publicly exhibited for a minimum of 28 days and specified a range of public authorities to be consulted.

On 25 September 2017, the proponent submitted a revised planning proposal to address Gateway conditions.

The revised proposal dated 17 September 2017 was considered suitable for public exhibition and agency consultation.

## **8. PUBLIC CONSULTATION**

In accordance with the Gateway determination, community consultation was undertaken from 16 October to 13 November 2017. Sixteen submissions were received from the community, or which were associated with the Warriewood Residents Association and 12 were independent submissions (**Attachment C**). All the community submissions did not support the proposal.

Concerns were raised in relation to the following key issues:

- flood management;
- inconsistency with Council's Warriewood Valley Strategic Review;
- traffic generation, transport and parking associated with the development; and
- infrastructure capability.

A detailed discussion of the key issues raised in submissions is provided in the Department's submissions report (**Attachment D**). The proponent was given the opportunity to respond to key issues raised in submissions. The proponent's response is also summarised in the Department's submission report.

The Department considers that issues raised have been adequately addressed by additional information lodged by the proponent or can be resolved at the development assessment stage.

## **9. ADVICE FROM PUBLIC AUTHORITIES**

The planning proposal authority was required to consult the following authorities in accordance with the Gateway determination:

- Northern Beaches Council;
- State Emergency Service;
- Office of Environment and Heritage; and
- Sydney Water.

These authorities were consulted. Submissions were received from Northern Beaches Council, State Emergency Service and Office of Environment and Heritage. No response was received from Sydney Water. Public authority submissions are at **Attachment E**.

Key concerns raised by public authorities related to flood impact assessment and shelter-in-place strategies.

A detailed discussion of the key issues raised by public authorities is provided in the Department's submissions report (**Attachment D**). The proponent was given the

opportunity to respond to key issues raised in submissions. The proponent's response is also summarised in the Department's submission report.

#### Northern Beaches Council

Council provided a submission raising several questions and requesting further information that would be required for any future development application, including:

- additional flood impact maps showing the full extent of modelling used in assessment;
- that the proponent demonstrates that the water quality facilities in the creek line buffer zone are above the 20% annual exceedance probability (AEP);
- that the proposed ring road on the site is to be raised above the 1% AEP;
- consideration of the impacts of creek works on adjacent properties; and
- minimum floor space requirements for the shelter-in-place emergency response.

Council also noted that in any future development application for the site the proponent should address:

- compliance with the Warriewood Valley Water Management Specification;
- consideration of using strip bio-retention as an alternative water quality facility;
- consideration of impacts on inundation patterns by proposed retaining walls;
- addressing recommendations of the Narrabeen Creek Concept Design Report; and
- reducing encroachment of residential lots into the 25m creek line buffer zone.

The Department notes that the proponent provided a revised flood assessment requested by Council, which addresses detailed flooding specifications for the creek line buffer area and developable footprint of the site. While the community has not had an opportunity to comment on this additional information, it will be able to provide feedback at the development assessment stage if the planning controls are amended.

It is also noted that the site's proposed finished floor level of 4.29m AHD complies with the flood planning level in the Pittwater LEP 2014. The revised flood assessment provides assurance that dwellings will be flood-free up to the 1% AEP, factoring in a 30% variance for climate change and 0.9m sea level rise.

The Department is satisfied that the issues raised have been adequately addressed by additional information lodged by the proponent or can be resolved at the development assessment stage.

#### State Emergency Service

State Emergency Service (SES) made a submission during the exhibition period (10 November 2017) and provided two further submissions following the formal exhibition period (29 January and 4 April 2018). SES does not wholly support the proposal due to the risk to life of future occupants and responding emergency service personnel if occupants are required to 'shelter-in-place' at the site.

The Department acknowledges that shelter-in-place is being proposed by the proponent in the case of a probable maximum flood (PMF) event. The PMF is the largest flood that could conceivably occur at a particular location, usually estimated from probable maximum precipitation, and where applicable, snow melt, coupled with the worst flooding producing catchment conditions. The PMF defines the maximum extent of flood prone land, that is, the floodplain.

The proponent's flood impact assessment (Cardno, 13 September 2017) states that in a PMF event, properties onsite are subject to inundation with depths of approximately 0.7 metres potentially present onsite in this event. Similarly, Macpherson Street in the PMF event will be overtopped and cannot be relied upon to enable evacuation of the site. The proponent concludes that shelter-in-place is an appropriate emergency management solution for the proposed development and is consistent with other measures in place for similar developments in the area.

As noted in the Department's submission report, any future dwellings will be flood-free up to the 1% AEP plus freeboard, factoring in a 30% variance for climate change and 0.9m sea level rise. The SES Flood Plan Glossary defines that the annual exceedance probability for PMF is once in 10,000 to 10,000,000 years.

Given that surrounding roads and dwellings in the Warriewood Valley will also be affected by a PMF event, the Department considers a shelter-in-place strategy may be used by residents in this rare event. The evacuation route for the site to flood-free land at Warriewood Road is 170m (or approximately three minutes walk) and, where possible, evacuation should be used by future residents. Future residents should be familiar with evacuation procedures, be encouraged to prepare a flood safe plan and be aware of the flood warning systems in the area. These requirements should be part of any development consent for the site.

The Department is satisfied that emergency evacuation has been adequately considered. The Department notes that SES has provided recommendations that must be considered at the development assessment stage to reduce any risk to life from major flooding events.

#### Office of Environment and Heritage

Office of Environment and Heritage (OEH) provided advice related to the proponent's flood impact assessment, recommending further floodplain modelling, as well as raised concern that the 'shelter-in-place' strategy is not considered to be appropriate in this location and poses an unacceptable risk to life.

As discussed in the Department's submission report and noted above, the proponent has provided a revised flood assessment that was requested by Council, which addresses detailed flooding specifications for the creek line buffer area and developable footprint of the site.

The proposed development does not rely on shelter-in-place as the main means of emergency response. The proponent notes that shelter-in-place would only be required in extreme flood events where short warning times would not allow residents to evacuate.

The Department is satisfied that flood emergency management, including the requirement to shelter-in-place in a PMF event has been adequately considered.

## **10. PUBLIC MEETING**

On 4 July 2018, the Panel held a public meeting about the proposal. No community members spoke at the meeting. The Panel heard from the proponent and two Council representatives. Issues discussed included:

- Macpherson Street upgrade;
- emergency evacuation;
- development application under Council assessment to conduct civil works on the site;

- submission from State Emergency Service;
- Flood planning level and Probable Maximum Flood event; and
- Council's policy for virtual refuge (or 'shelter-in-place').

After the meeting, the Panel determined to recommend to the Minister that the proposed instrument proceed to plan finalisation without changes (**Attachment F**).

## 11. POST-EXHIBITION CHANGES

No amendments were made to the planning proposal following public exhibition.

## 12. ASSESSMENT

### Planning Circular

*PS 07-003 New guidelines and changes to section 117 direction and EP&A Regulation on flood prone land*

This Circular provides advice on a package of changes concerning flood-related development controls on residential development on land above the 1-in-100 year flood and up to the Probable Maximum Flood (PMF). The *Guideline on development controls on low risk areas—Floodplain Development Manual* (the Guideline) is to assist councils in determining the appropriate Flood Planning Level (FPL) for residential development as well as to determine what are appropriate flood-related development controls on residential development in low flood risk areas. This Guideline confirms that, unless there are exceptional circumstances, councils should adopt the 100 year flood plus an appropriate freeboard (typically 0.5m) as the FPL for residential development.

In accordance with the PS 07-003, Direction 4.3 Flood Prone Land and in relation to the intention to use the land for residential purposes, Clause 7.3 of Pittwater LEP 2014 currently includes provisions that give effect to and is consistent with the *NSW Flood Prone Land Policy* and the principles of the *Floodplain Development Manual 2005*, including the Guideline.

### Clause 7.3 Flood Planning (Pittwater LEP 2014)

The objectives of Clause 7.3 Flood planning are to:

- *to minimise the flood risk to life and property associated with the use of land,*
- *to allow development on land that is compatible with the land's flood hazard, taking into account projected changes as a result of climate change,*
- *to avoid significant adverse impacts on flood behaviour and the environment.*

Clause 7.3 identifies the flood planning level as the level of a 1:100 average recurrent interval flood event plus 0.5 metres freeboard, or other freeboard determined by an adopted floodplain risk management plan.

The flood planning level for the site is 1% AEP, factoring in a 30% variation for climate change and sea level rise of 0.9m.

As part of any development application on the land that is at or below the flood planning level, the applicant will need to satisfy the consent authority that the development:

- *is compatible with the flood hazard of the land, and*
- *will not significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and*
- *incorporates appropriate measures to manage risk to life from flood, and*



- *will not significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and*
- *is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.*

Consequently, the proponent will need to demonstrate suitable measures to manage risk to life of those in any future dwellings on the site, and the Council would ordinarily consult with State Emergency Service at this development assessment stage.

## Section 9.1 Directions

### *Direction 4.3 Flood Prone Land*

This Direction aims to ensure that development of flood-prone land is consistent with the NSW Government's Flood Prone Land Policy and that potential flood impacts are considered. This Direction applies to the planning proposal as the site contains flood-prone land (i.e. land susceptible to flooding by the PMF event).

The planning proposal is inconsistent with this Direction as it contains provisions that apply to the flood planning area which permits a significant increase in the development of that land (clause 6(c)).

The planning proposal states that to address flood impacts, the finished floor level of the development will be modified and raised to the flood planning level (1% AEP, factoring in a 30% variation for climate change and sea level rise of 0.9m). The flood planning level for this site is 4.29m AHD. The internal roadway within the development ranges from 3.50m AHD to 4.10m AHD. It will not have 1% AEP, factoring in a 30% variation for climate change and sea level rise of 0.9m immunity, however is deemed trafficable in this event.

Council's upgrade to Macpherson Street was undertaken to allow Macpherson Street over Narrabeen Creek to be a Flood Evacuation Route. These upgrade works are discussed in more detail in the Department's submission report (**Attachment D**) and were completed by Council in December 2017.

Based on the finished floor level of the development being raised to the flood planning level for the site and Council's completion of the Macpherson Street upgrade, the Department recommends that the delegate of the Secretary agree that the inconsistency of the planning proposal with Direction 4.3 Flood Prone Land is considered to be justified on the basis of minor significance.

### State environmental planning policies (SEPPs)

The draft LEP is consistent with relevant SEPPs or deemed SEPPs. An assessment of the proposal against the relevant SEPPs was conducted before the Gateway determination was issued. No changes to the planning proposal have made it inconsistent with the relevant SEPPs.

### Regional and district plans

The Greater Sydney Region Plan and the North District Plan, both released by the Greater Sydney Commission in March 2018, are the relevant strategic regional and district plans for the site.

The region plan sets a 40-year vision (to 2056) and establishes a 20-year plan to manage growth and change for Greater Sydney in the context of social, economic and environmental matters. The proposal is consistent with the plan's Objective 10: Greater housing supply and Objective 11: Housing is more diverse and affordable.

The North District Plan is a 20-year plan to manage growth in the context of economic, social and environmental matters to achieve the 40-year vision for Greater Sydney. It is a guide for implementing the region plan at a district level and is a bridge between regional and local planning.

Planning Priority N5 *Providing housing supply, choice and affordability, with access to jobs, services and public transport* identifies a need for an additional 92,000 homes in the North District from 2016 to 2036. The draft LEP gives effect to this planning priority by contributing to the diversity and availability of new housing within the Warriewood Valley Release Area.

### **13. CONSULTATION WITH THE PLANNING PROPOSAL AUTHORITY**

The Sydney North Planning Panel as the planning proposal authority was consulted on the terms of the draft instrument under clause 3.36(1) of the *Environmental Planning and Assessment Act 1979 (Attachment G)*. The Panel confirmed on 1 August 2018 that the draft LEP is consistent with the its requirements and the plan should be made **(Attachment H)**.

### **14. PARLIAMENTARY COUNSEL OPINION**


On 3 September 2018, Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made. This Opinion is provided at **Attachment PC**.

### **15. RECOMMENDATION**

The planning proposal is supported as it will enable the provision of up to 22 dwellings in accordance with land uses already permitted under the site's existing R3 Medium Density Residential zoning. In addition, the planning proposal will contribute to housing choice and diversity within the locality.

The Panel, as the planning proposal authority, has satisfied all conditions of the Gateway determination, including community and public authority consultation.

Based on the Department's assessment, it is recommended that the planning proposal proceed to finalisation.

 28/9/18

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