



IRF22/822

Plan finalisation report – PP_2020_WOOLL_012_00 (PP-2020-4098)

Woollahra LEP 2014 – Double Bay Bowling Club, 18
Kiaora Road, Double Bay

April 2022

Published by NSW Department of Planning and Environment

dpie.nsw.gov.au

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Acknowledgment of Country

The Department of Planning and Environment acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

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1 Introduction

1.1 Overview

1.1.1 Name of draft LEP

Woollahra Local Environmental Plan 2014 (Map Amendment No.1).

The primary objective of the planning proposal is to ensure Lot 101 in Deposited Plan (DP) 614016 (the site), currently occupied by the Double Bay Bowling Club, continues to be used for private recreation purposes. The site was previously owned by Council and was sold to the Double Bay Bowling Club in 1948. The sale included a restrictive covenant placed on the land providing that it could only be used for recreational purposes in connection with a bowling club, except with the written consent of Council.

The planning proposal seeks to ensure the site continues to be used for private recreation purposes by amending the Woollahra LEP 2014 to rezone the site from R3 Medium Density Residential to RE2 Private Recreation and increase the minimum lot size applicable to the site from 700 sqm to 8,800 sqm.

The proposal also proposes administrative amendments by updating the cadastre layer of relevant Woollahra LEP 2014 maps applicable to the site, ensuring its southern boundary is accurately located and correctly depicts its dimensions and alignment as per DP 614016.

1.1.2 Site description

Table 1 Site description

Site Description	The planning proposal (Attachment A) applies to land at 18 Kiaora Road, Double Bay (Lot 101, DP 614016)
Type	Site
Council / LGA	Woollahra Municipal Council
LGA	Woollahra

The planning proposal relates to 18 Kiaora Road, Double Bay, known as the Double Bay Bowling Club. The site is approximately 8,860 sqm in area, flat and generally rectangular in shape, with its long axis orientated north-west to south-east. Vehicular access to the site is provided from Kiaora Road where it crosses an open stormwater drain that runs parallel to the site's south-western boundary. The site contains three bowling greens, a single storey club house building and scattered mature vegetation along its north-eastern boundary as seen in **Figure 1** below.



Figure 1 Aerial view of the subject site (outlined in red) (Base source: Nearmap)

The immediate locality surrounding the site is generally characterised by low density residential development, comprising mainly of single detached dwelling houses on small allotments (ranging from 180 to 420 sqm). The open stormwater drain, which runs parallel to the site's south-western boundary and Kiaora Road, discharges at a stormwater management system 150 m directly south of the site adjacent to the Lough Playing Fields. New South Head Road and the Double Bay local centre are located approximately 500 m to the north-west of the site.

1.1.3 Purpose of plan

The table below outlines the current and proposed controls for the LEP.

Table 2 Current and proposed controls

Control	Current	Proposed
Zone	R3 Medium Density Residential	RE2 Private Recreation
Minimum lot size	700 sqm	8,800 sqm

The proposal also seeks administrative cadastre corrections to the land application, land zoning, lot size, height of buildings, floor space ratio, land reservation acquisition, acid sulfate soils and flood planning maps* of the Woollahra LEP 2014 (as applicable to the site).

The proposal does not seek any changes to the existing floor space ratio and height of buildings development standards of 0.65:1 and 9.5m respectively,

*The Department recommends a post-exhibition change to remove the reference in the proposal to the flood planning map in the Woollahra LEP 2014. Refer to section 3.3.2 of this report for details.

1.1.4 State electorate and local member

The site falls within the Vaucluse state electorate. Ms Gabrielle Upton MP is the State Member.

The site falls within the Wentworth federal electorate. Mr Dave Sharma MP is the Federal Member.

To the team's knowledge, neither MP has made any written representations regarding the proposal.

There are no donations or gifts to disclose, and a political donation disclosure is not required.

There have been no meetings or communications with registered lobbyists with respect to this proposal.

2 Gateway determination and post-Gateway changes

The Gateway determination issued on 17/06/2021 (**Attachment B**) determined that the proposal should proceed subject to conditions. The Gateway determination required the following revisions to the planning proposal prior to public exhibition:

- Correct mapping to accurately reflect how the site is currently shown in the maps to the Woollahra LEP 2014. Specifically, all excerpts of existing Land Zoning and Lot Size Maps are to be updated to reflect the existing cadastre;
- Correct mapping to describe the proposed changes to the Woollahra LEP 2014. Specifically, all proposed Land Zoning and Lot Size Maps are to show the proposed zoning and lot size standard respectively;
- Update part of the proposal regarding Ministerial Direction 2.6 and SEPP 55 Remediation of Land in the planning proposal to specify that a preliminary site investigation will be undertaken before finalisation.

In June 2021, Council amended the planning proposal to satisfy the above conditions of the Gateway determination so that the proposal could proceed to public exhibition.

Council has met all the Gateway determination conditions, except for adhering to the timeframe to report to council for a final recommendation and the timeframe to complete the LEP.

In accordance with the Gateway determination the proposal was due to be finalised on 16/01/2022.

3 Public exhibition and post-exhibition changes

In accordance with the Gateway determination, the proposal was publicly exhibited by Council from 14/07/2021 to 13/08/2021.

A total of 12 community submissions were received, comprising of 3 objections and 9 submissions supporting the proposal (**Attachment C**).

3.1 Public submissions during exhibition

3.1.1 Submissions supporting the proposal

The 9 submissions of support raised the following key points:

- The maintenance of the recreational use of the land for the long term is critical to the community
- There are not enough community sport centres for the over 50s
- The proposal seems to correct an error in the existing residential zoning as it would reflect the historical and current recreation use
- There is a need to maintain soft surfaces rather than covering large areas with hard surfaces
- The facility is seen as an cultural place that has served the community for generations
- The recreation facility is valued – it is quiet, low impact and provides community benefit

3.1.2 Submissions objecting to and/or raising issues about the proposal

There were 3 submissions in objection, including an objection from GLN Planning, the planning consultancy representing the landowner (the Double Bay Bowling Club), with the other two from members of the local community.

It is noted that the GLN Planning submission states there is no objection to the administrative cadastre amendments.

On 1 April 2022, GLN Planning forwarded a copy of their submission to Council (dated 12 August 2021), their correspondence to the councillors prior to the Council Meeting of 28 March 2022, as well as summaries of existing planning controls for other RE2 zoned land within the LGA.

A summary of the key issues raised is provided below. Further details on Council's response to the submissions are available in Council's post-exhibition report as contained in the Environmental Planning Committee Agenda dated 7 March 2022 (**Attachment C**).

Table 3 Summary of Key Issues

Issue raised	Council response and Department assessment of adequacy of response
<p>Council's reasons for preparing the planning proposal:</p> <ul style="list-style-type: none"> - Did not commence within a strategic planning programme - Was in reaction to litigation and not for a proper planning purpose 	<p>Council Response:</p> <p>Council stated that the proposal was initiated by a Notice of Motion adopted by Council on 24 August 2020 which sought to preserve the land for private recreational use to meet the community's ongoing needs in a dense area of the LGA. The proposal was granted a Gateway determination to proceed by the Department which demonstrates that it has strategic and site-specific merit. Further, the proposal's objectives are in line with Council's broader strategic planning framework, including the Woollahra Local Strategic Planning Statement (LSPS) as outlined in the planning proposal.</p> <p>Department Response:</p> <p>The Department notes the proposal is not a direct result or a specific action identified in an endorsed LSPS, strategic study or report, however is consistent with the relevant strategic planning framework applicable to the site as outlined in the planning proposal and Department's Gateway determination report.</p> <p>The Bowling Club's submission alluded to Council's decision to prepare this proposal as a reaction to a court case* for the lifting of the restrictive covenant over the adjoining land at 42 Glendon Road, Double Bay for which development consent to develop a dual occupancy had been granted. According to GLN Planning who acts on behalf of the Club, this covenant has been extinguished as a result of the NSW Supreme Court's decision despite Council's attempt to seek compensation for its removal.</p> <p>The litigation that occurred between Council and the Club in relation to the covenant on 42 Glendon Road is noted but is not relevant to the planning merit of this proposal.</p> <p><i>*Double Bay Bowling Club v Council of the Municipality of Woollahra trading as Woollahra Municipal Council [2020] NSWSC 1861</i></p>
<p>Proposal unnecessary to ensure the land is used as a bowling club</p>	<p>Council Response:</p> <p>Rezoning the site from R3 to RE2 best reflects the current and intended future use of the land. The recreation facility (outdoor) and registered club land uses being carried out are not permitted under the existing R3 zoning but are</p>

Issue raised	Council response and Department assessment of adequacy of response
	<p>permitted under RE2 zoning. Rezoning the land will rectify this anomaly and align the site's current and intended use with the objectives of the RE2 land use zone.</p> <p>Department Response:</p> <p>The Department concurs with Council's response.</p> <p>GLN Planning's submission states that "<i>There is no proposal or intention to cease the bowling club use of the land</i>" (p.3). The planning proposal seeks to ensure the on-going and continued use of the site as a private recreation facility and is consistent with the above intent. The Club/landowner's concern regarding land value is addressed below.</p>
<p>A 8,800 sqm minimum lot size is inconsistent with the surrounding subdivision pattern</p>	<p>Council Response:</p> <p>The increased minimum lot size is to facilitate the retention of a significant parcel of privately owned land for private recreation and open space purposes. The smaller surrounding subdivision pattern is appropriate for the residential uses on those sites and would not be appropriate for the current or intended future use of the site for private recreation.</p> <p>Department Response:</p> <p>The Department acknowledges that the proposed minimum lot size would support the primary objective of the proposal around ensuring the site is continued to be used for private recreation purposes.</p>
<p>RE2 zoning will reduce the underlying value of the Club</p>	<p>Council Response:</p> <p>The RE2 zone best reflects the site's current and intended future use. There is restricted availability and high cost for land in the Woollahra LGA and thus limited opportunities for Council or private recreation providers to acquire additional land suitable for sport and recreational uses.</p> <p>Council identifies that the <i>Woollahra Draft Recreation Study 2021</i> (note: this is referred to as the <i>Draft Woollahra Recreation Strategy 2021</i> on Council's website) recommends the retention of bowling club facilities in the LGA for community recreation purposes. It also notes that due to the aging population in the LGA, access to low impact activities will become more important to support community's needs in future.</p> <p>Department Response:</p> <p>The Department concurs that the RE2 zone would best reflect the site's current use.</p> <p>Council's existing <i>Recreational Needs Assessment and Strategy</i> dates back to August 2006 and is under review by Council. This Strategy notes that the demographic profile of the Woollahra LGA suggested there would be continued demand for lawn bowls, however, there was no support for additional facilities.</p> <p>Whilst the <i>Draft Woollahra Recreation Strategy 2021</i> has not yet been exhibited (anticipated in May 2022 as per Council's website), the recommendations in it with regards to retaining bowling club facilities in the LGA are noted and would support the proposal. Page 40 of the Draft Recreation Strategy considers the provision of lawn bowls clubs in the LGA and states '<i>essentially the only viable</i></p>

Issue raised	Council response and Department assessment of adequacy of response
	<p><i>facility in the LGA is the Double Bay club with uncertain future management options and uses for the Vaucluse and Paddington facilities.'</i></p> <p>In terms of recreation needs, the Draft Recreation Strategy looks at demographic influences, including an aging population in the LGA, and finds one of the considerations for the Strategy is that '<i>older population will be looking for low impact activities</i>' (p. 19).</p> <p>There is also commentary at p.38 of the Draft Recreation Strategy stating, '<i>There is an overall lack of active open space in the LGA and Eastern City District, with limited capacity to develop new spaces now and into the future.</i>'</p> <p>These statements align with findings in other strategic documents around the need for recreation land and open space now and into the future.</p>
<p>Rezoning will enable potentially greater scale development of the registered club, subject to consent</p>	<p>Council Response:</p> <p>Council stated that existing use rights under the <i>Environmental Planning and Assessment Act 1979</i> (EP&A Act) and EP&A Regulation 2000 (clause 41(1)) may, with development consent, enable the redevelopment of the Club building to a greater scale than the existing premises. Rezoning the site means the existing use will be permitted with consent under the proposed RE2 zone and existing use rights will no longer need to be relied upon. This will provide certainty to the owners and adjoining residents about the type and scale of development that can occur on the site. Council notes the proposal does not seek to amend the maximum height of building (HOB) (9.5m) or floor space ratio (FSR) (0.65:1) control for the site.</p> <p>Department Response:</p> <p>The Department concurs with Council's response and notes the EP&A Regulation 2000 was repealed and replaced by the EP&A Regulation 2021 which commenced on 1 March 2022. Clause 41(1) of the EP&A Regulation 2000 is now section 163(1) of the EP&A Regulation 2000.</p>
<p>Proposal seeks to impose planning controls in an inconsistent manner to other similar facilities in the LGA</p>	<p>Council Response:</p> <p>The site's planning controls were developed using a place-based approach reflective of the unique characteristics of the site, its size and relationship to the surrounding residential context. The retention of the existing 9.5m HOB and 0.65:1 FSR will facilitate future redevelopment of an appropriate scale that is consistent with the desired future character of the surrounding residential area.</p> <p>Department Response:</p> <p>It is noted that no changes to the site's height of building or floor space ratio control are proposed and they have been deemed suitable by Council in light of site-specific considerations and the broader locality.</p>
<p>A preliminary site investigation is an unnecessary cost to ratepayers</p>	<p>Council Response:</p> <p>Council stated that the preliminary site investigation (PSI) was prepared in response to a Gateway determination condition imposed by the Department in accordance with section 3.34 of the EP&A Act.</p> <p>Department Response:</p> <p>Council's response is correct. A Gateway determination condition was imposed requiring a PSI to be prepared as consistency with section 9.1 Ministerial</p>

Issue raised	Council response and Department assessment of adequacy of response
	<p>Direction – 4.4 (formerly 2.6) Remediation of Contaminated Land was unresolved at the Gateway stage due to incomplete historical knowledge on the use of the land prior to the 1940s. This Direction seeks to reduce the risk of harm to human health and the environment by ensuring that contamination and remediation are considered by planning proposal authorities.</p>
<p>The proposal and PSI prepared by Council do not examine the source of the landfill on the site.</p> <p>(Note: this issue was raised by GLN Planning in an email to the Department, which attached their submissions to Council)</p>	<p>Department Response:</p> <p>The PSI prepared by Council has considered the source, quality and contamination potential of the landfill used for construction of the bowling club.</p> <p>The rezoning would not result in a change of use that would increase the risk to health or the environment from contamination. The RE2 zone contains permissible land uses that are more restrictive than the existing R3 zone. In any case, the existing private recreation use of the site is not proposed to change and overall, the level of investigation is considered appropriate with regards to the nature of the proposal and carrying out of a PSI. Further consideration and investigation regarding potential contamination from fill and use of chemicals can be undertaken and if necessary, soil sampling, as part of any future development assessments.</p> <p>Further discussion on this matter is provided in section 4.1.1 below.</p>
<p>Proposal is inconsistent with objects of the EP&A Act in section 1.3 – (a) <i>to promote the social and economic welfare of the community and a better environment</i>, (c) <i>to promote the orderly and economic use and development of land</i>, and (g) <i>to promote good design and amenity of the built environment</i>.</p>	<p>Council Response:</p> <p>Council outlined that Section 6 of the proposal sets out the justification for the strategic merit of the proposal and there is consistency with all relevant strategies and environmental planning instruments that give effect to the EP&A Act objectives. The proposal has been prepared in accordance with section 3.33 of the EP&A Act and in line with the Department's <i>A Guide to Preparing Planning Proposals (Dec 2018)</i> that applied at the time.</p> <p>Department Response:</p> <p>The Department concurs with Council's response</p>

3.1.3 Other issues raised – Seniors housing

Another matter of concern raised by submissions related to the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 ('Seniors SEPP'). GLN Planning's submission stated that the proposal will not prevent the operation of the Seniors SEPP which would continue to permit housing for seniors or people with a disability on the subject land, as it is used for the purposes of an existing registered club and clauses 4(1)(b) and 23 apply. The issue raised appears to suggest that the planning proposal would not achieve its intended purpose of protecting the land for private recreation purposes.

The Seniors SEPP provisions are discussed at section 3.2 below in response to the submission from the Office of Sport.

3.2 Advice from agencies

In accordance with the Gateway determination, Council was required to consult with the following agencies: Sydney Water, Office of Sport and Transport for NSW. All except for Transport for NSW provided a submission, and the agency feedback is summarised below.

Table 4 Advice from public authorities

Agency	Advice raised	Council response
Sydney Water	Sydney Water requested it is consulted if any future works are proposed on the site to ensure measures are taken to protect existing adjacent stormwater assets. It noted the Club is responsible for the maintenance of the existing bridge across Sydney Water's stormwater channel.	Council would consult Sydney Water if a development application is lodged for the site, as it is an adjoining landowner. Department's Response: Council's response is satisfactory.
Office of Sport	<ul style="list-style-type: none"> Commends Council for valuing public and private open space and safeguarding these into the future. Notes that the RE2 zone permits other uses such as centre-based childcare facilities, [<i>sic: Information and</i>] education facilities, respite day care centres – which may be more profitable and preferable to the bowling club use and conducive to the loss of open space. The State Environmental Planning Policy (Housing for Seniors or People with a Disability) 'Seniors SEPP' permits registered clubs to be redeveloped into seniors housing (clause 4(1)(b)). The site is subject to a restrictive covenant however clause 7(1) of the Seniors SEPP states that "...any agreement or covenant imposing restrictions on any such development, to the extent necessary to serve that purpose, does not apply to the development." There is concern that the proposal will not prevent the operation of the Seniors SEPP. Many bowling clubs are being redeveloped in Sydney with 20 out of 48 bowling greens closed in recent years. <p>Agrees the existing restrictive covenant on the site must be maintained in perpetuity to maintain the site as a private recreation space.</p>	<p>The new State Environmental Planning Policy (Housing) 2021 (Housing SEPP) commenced on 26 November 2021 and repealed and replaced the Seniors SEPP. The Housing SEPP permits seniors housing on RE2 zoned land if the development is taking place on land used for the purposes of an existing registered club that adjoins a prescribed zone (clause 86). This clause would apply to the site.</p> <p>However, clause 9(2)(a) of the Housing SEPP states that a covenant imposed by Council is not suspended by a planning instrument such as the Housing SEPP. This means that the existing restrictive covenant to preserve the use of the land for a lawn bowling facility remains in effect.</p> <p>Council staff are satisfied that the recommendations of the proposal, existing provisions of the Woollahra LEP 2014, Housing SEPP and the restrictive covenant will preserve the ongoing recreational use of the site and prevent seniors housing development.</p> <p>Department Response:</p> <p>The rezoning from R3 to RE2 would not result in a greater propensity for redevelopment of the site to other 'more profitable' or intensive uses as such. In fact, the range of higher order uses under R3 is broader than that of RE2</p>

(various types of housing and business uses to name a few).

Section 9(2)(a) of the Housing SEPP provides that any suspension of covenants does not apply to one *'imposed by a council or that the council requires to be imposed'*. The Department concurs with Council's comment in this respect.

The Department considers Council has adequately addressed matters raised in submissions from public authorities.

3.3 Post-exhibition changes

3.3.1 Council resolved changes

At Council's Ordinary Meeting on 25/03/2022, Council resolved to proceed with the planning proposal with no amendments made to the proposal (**Attachment D**).

3.3.2 The Department's recommended changes

Following the receipt of the revised planning proposal from Council for finalisation, the Department has made a minor change in relation to the administrative cadastre updates.

The Flood Planning map is no longer required to be amended as another LEP amendment (Amendment No. 20) that was notified on 26 March 2021, corrected the boundary error, amongst other amendments. Further, the Department's flood-prone land package commenced on 14 July 2021, and flood maps are no longer part of the new mandatory standard instrument flood planning clause. Previous references to the Flood Planning Map were removed from the Woollahra LEP via the State Environmental Planning Policy Amendment (Flood Planning) 2021. The Department advised Council of this and no objection was made.

4 Department's assessment

The proposal has been subject to detailed review and assessment through the Department's Gateway determination (**Attachment B**) and subsequent planning proposal processes. It has also been subject to a high level of public consultation and engagement.

The following reassesses the proposal against relevant Section 9.1 Directions, SEPPs, Regional and District Plans and Council's Local Strategic Planning Statement. It also reassesses any potential key impacts associated with the proposal (as modified).

As outlined in the Gateway determination report (**Attachment E**), the planning proposal submitted to the Department for finalisation:

- Remains consistent with the regional and district plans relating to the site.
- Remains consistent with the Council's Local Strategic Planning Statement.
- Remains consistent with all relevant Section 9.1 Directions, with any inconsistency appropriately justified.
- Remains consistent with all relevant SEPPs.

The following tables identify whether the proposal is consistent with the assessment undertaken at the Gateway determination stage. Where the proposal is inconsistent with this assessment,

requires further analysis or requires reconsideration of any unresolved matters these are addressed in Section 4.1.

Table 5 Summary of strategic assessment

	Consistent with Gateway determination report Assessment	
Regional Plan	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
District Plan	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Local Strategic Planning Statement	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Section 9.1 Ministerial Directions	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No, refer to section 4.1
State Environmental Planning Policies (SEPPs)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1

Table 6 Summary of site-specific assessment

Site-specific assessment	Consistent with Gateway determination report Assessment	
Social and economic impacts	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Environmental impacts	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Infrastructure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1

4.1 Detailed assessment

The following section provides details of the Department's assessment of key matters and any recommended revisions to the planning proposal to make it suitable.

4.1.1 Section 9.1 Ministerial Direction and contaminated land investigations

Consistency with Direction 2.6 Remediation of Contaminated Land was unresolved at the Gateway determination stage and a condition was imposed. Gateway condition 5.i. requires that prior to finalisation, the planning proposal:

Justify consistency with Section 9.1 Ministerial Direction 2.6 Remediation of Contaminated Land, by providing a preliminary site investigation carried out in accordance with the contaminated land planning guidelines. For the purpose of this condition, contaminated land planning guidelines means guidelines under clause 3 of Schedule 6 to the Environmental Planning and Assessment Act 1979.

Note: Direction 2.6 has since been renumbered as Direction 4.4 as of 1 March 2022 and will be referred to its new numbering for the remainder of this report.

A Preliminary Site Investigation (PSI) regarding site contamination (**Attachment F**) was undertaken by Council staff prior to public exhibition. The PSI examines land ownership, site history, aerial photographs, reviews NSW Environment Protection Authority's public databases and includes a section 10.7(2) and (5) Planning Certificate. Council stated that a site inspection was not

possible at the time of the report preparation due to Public Health Orders and restrictions in response to the COVID-19 pandemic.

Council have reviewed the history of the site including uses and ownership by the Metropolitan Water, Sewerage and Drainage Board (now Sydney Water) prior to Council purchasing the site in 1940. The PSI concludes that *'based on the current and historical land use records assessed for this report, Council staff are satisfied that the site is suitable for the proposed rezoning in its current condition and no further investigation into potential contamination is required at this time.'* It was not considered that development for a purpose referred to in Table 1 to the contaminated land planning guidelines has been carried out.

The PSI found the key issues relate to the potential application of pesticides and herbicides on the bowling greens, and the application of uncontrolled fill during construction of the bowling club. The report states it is probable that pesticides and/or herbicides have been applied as part of the maintenance of the bowling greens and landscaped areas on the site throughout its history. However, the proposal does not involve any physical alterations or change to a more sensitive use.

The PSI indicated that the site may have the potential for contaminants through the use of unknown fill material. Council records indicate that filling material from the amplification of the stormwater channel adjacent to the site was likely used to level the site in the early 1940s. The report does not expect the fill material to present a risk of contamination on the site however recommends that *'further investigation including sub-surface sampling be undertaken to verify the nature of both natural and fill material if a development proposal for physical alterations or change to a more sensitive use is proposed in the future.'*

The rezoning would not result in a change of use that would increase the risk to health or the environment from contamination. The RE2 zone contains permissible land uses that are more restrictive than the existing R3 zone. In any case, the existing private recreation use of the site is not proposed to change and overall, the level of investigation is considered appropriate with regards to the nature of the planning proposal and carrying out of a preliminary site investigation. Further consideration and investigation regarding potential contamination from fill and use of chemicals can be undertaken and if necessary, soil sampling, as part of any future development assessments.

The Department is satisfied that the planning proposal is consistent with this Direction.

Note: With regards to the former State Environmental Planning Policy No 55 – Remediation of Land, the overarching objective of the SEPP is to provide a State-wide approach for the remediation of land to reduce the risk of harm to human health and the environment. Clause 6 – 'Contamination and remediation to be considered in zoning or rezoning proposal' in the former SEPP was repealed in April 2020 and now forms part of section 9.1 Ministerial Direction, 4.4 Remediation of Land which has been assessed above.

While not relevant to the assessment of this proposal, on 1 March 2022, SEPP 55 was repealed and transferred to Chapter 4 of the State Environmental Planning Policy (Resilience and Hazards) 2021 which commenced on 1 March 2022.

4.1.2 Woollahra Local Housing Strategy (LHS) 2021

Local housing strategies are required to link Council's vision for housing with the housing objectives and targets of the NSW government and District Plan. Since the Gateway determination was issued, on 25 October 2021 Council resolved to endorse the Woollahra LHS and in January 2022 sent the LHS to the Department for endorsement. On 11 March 2022 the Department approved the Woollahra LHS, subject to requirements and advisory notes.

Council has included commentary on the Woollahra LHS and its consistency with this planning proposal in its post-exhibition report (**Attachment C**). Council comments that the LHS identifies that there is already a pipeline to meet the 6-10 year housing supply target (500 dwellings) and that

the review of the Edgecliff Commercial Centre provides opportunity to accommodate uplift that would meet the 10-20 year housing supply target (400 dwellings). Council concludes that *‘Accordingly, the site of the Double Bay Bowling Club at 18 Kiaora Road is not required to meet our short, medium or long-term housing targets.’*

The Department notes that the LHS does not identify the site as an opportunity to facilitate future housing growth. The proposal is not expected to reduce the housing supply due to its longstanding private recreation use, continued and planned continuation of this use, and the covenant on the land which limits potential land uses. The rezoning would not impact on Council’s ability to achieve the medium- and long-term housing targets nominated in the LHS and the planning proposal is not considered inconsistent with the LHS actions.

The Department’s Local Strategies and Plan Making team, who were responsible for assessing the Woollahra LHS, were consulted during the preparation of this report and did not raise objection.

4.1.3 Section 9.1 Ministerial Direction 6.1 Residential Zones

At the Gateway determination stage, the inconsistency with section 9.1 Direction 6.1 (formerly numbered 3.1) Residential Zones was considered justified in accordance with the terms of the Direction. The key reasons for this are outlined below and remain valid and consistent at finalisation stage:

- The site has been in use for recreational purposes for over 75 years.
- The restrictive covenant on the title of the land prevents the site being used for residential purposes (or any other purpose) other than a bowling club without Council’s consent. It is Council’s intent to maintain the site for recreational use. Therefore, rezoning the site to RE2 Private Recreation will not reduce any capacity of the site to be used for residential purposes, as such capacity does not currently exist.
- The R3 zoning of the site is inconsistent with its current and historic use.
- The planning proposal relates to a single allotment which has no known history of use for residential purposes.

In addition, as discussed above, the Woollahra LHS has been considered and the proposal would not impact on Council’s ability to achieve its housing targets.

5 Post-assessment consultation

The Department consulted with the following stakeholders after the assessment.

Table 7 Consultation following the Department’s assessment

Stakeholder	Consultation	The Department is satisfied with the draft LEP
GIS	Seven maps have been prepared by Council and checked by the Department’s GIS team. They meet the Department’s technical requirements.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details

Stakeholder	Consultation	The Department is satisfied with the draft LEP
Council	<p>Council was consulted on the terms of the draft instrument under clause 3.36(1) of the <i>Environmental Planning and Assessment Act 1979</i> (Attachment G).</p> <p>Council confirmed on 12/04/2022 that it approved the draft and that the plan should be made (Attachment H).</p>	<p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No, see below for details</p>

As this is a map only amendment, a Parliamentary Counsel Opinion is not required.

6 Recommendation

It is recommended that the Minister's delegate as the local plan-making authority determine to make the draft LEP under clause 3.36(2)(a) of the Act because:

- it is consistent with the Gateway Determination.
- the proposal demonstrates strategic and site-specific merit, and is consistent with the Eastern City District Plan, Waverley Local Strategic Planning Statement and relevant SEPPs. The proposal is largely consistent with Section 9.1 Ministerial Directions, and any inconsistencies have been previously deemed minor at the Gateway stage and have remained so.
- the preservation of the site for recreational uses aligns with the long-term use of the site as a bowling club and will ensure the provision of recreational land in the locality for future community use.
- it will correct existing cadastre anomalies in various Woollahra LEP 2014 maps.
- issues raised during consultation have been addressed, and there are no outstanding agency objections to the proposal.



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Attachments

Attachment	Document
A	Planning Proposal dated June 2021
B	Gateway determination
C	Council's post-exhibition report
D	Council final resolution
E	Gateway determination report
F1-F5	Preliminary site investigation
G	Section 3.36(1) consultation with Council
H	Council comments on draft LEP
I	Email from GLN Planning on behalf of landowner