

Ku-ring-gai Council

SECTION 3.36 PLANNING REPORT

To amend the KLEP (Local Centres) 2012 to permit '*Recreation Facility (indoor)*' as an additional permitted use at 169-177 Mona Vale Road, St Ives

December 2018

PLANNING PROPOSAL DETAILS:

PP_2018_KURIN_002_00

PLANNING PROPOSAL SUMMARY:

To amend the Ku-ring-gai Local Environmental Plan (Local Centres) 2012 to add '*Recreation Facilities (indoor)*' as an additional permitted use at 169-177 Mona Vale Road, St Ives

DATE OF GATEWAY DETERMINATION:

21 September 2018

1.0 SUMMARY

Relevant background issues and rationale for proceeding with the proposal:

Zones/development standards to be amended:

The planning proposal does not seek to amend the zoning or any development standards applying to the site.

The Planning Proposal seeks to add "*Recreation Facility (indoor)*" as an additional permitted use under Schedule 1 of the KLEP (LC) 2012.

Key exhibition dates:

The planning proposal was placed on public exhibition from 11 October 2018 to 26 October 2018.

Main points raised in submissions:

The main matters raised in the submissions received as a result of the public exhibition of the planning proposal are as follows:

- *Request for restriction on operating hours*
- *Objection to proposed use*
- *Should the proposed amendment be made, requests the following needs to be implemented:*
 - *Protection of residential amenity*
 - *Hours of operation restricted to business hours*
 - *Sound proofing*
 - *Adequate staffing levels*

Summary of any key amendments made to the planning proposal as a consequence of public exhibition or agency consultation:

No amendments were made to the planning proposal as a result of the public exhibition or agency consultation.

Other relevant background:

The site that is the subject of this Planning Proposal is collectively known as 169-177 Mona Vale Road St Ives (Lots 11 and 12 DP1230991). The site has an area of 3,647sqm. The site has recently been developed with a 5 storey mixed use building which comprises commercial/office/medical suites on the ground floor, and residential units above. Parking for the development is provided by basement carparking.



Image 1 – 169-177 Mona Vale Road, St Ives

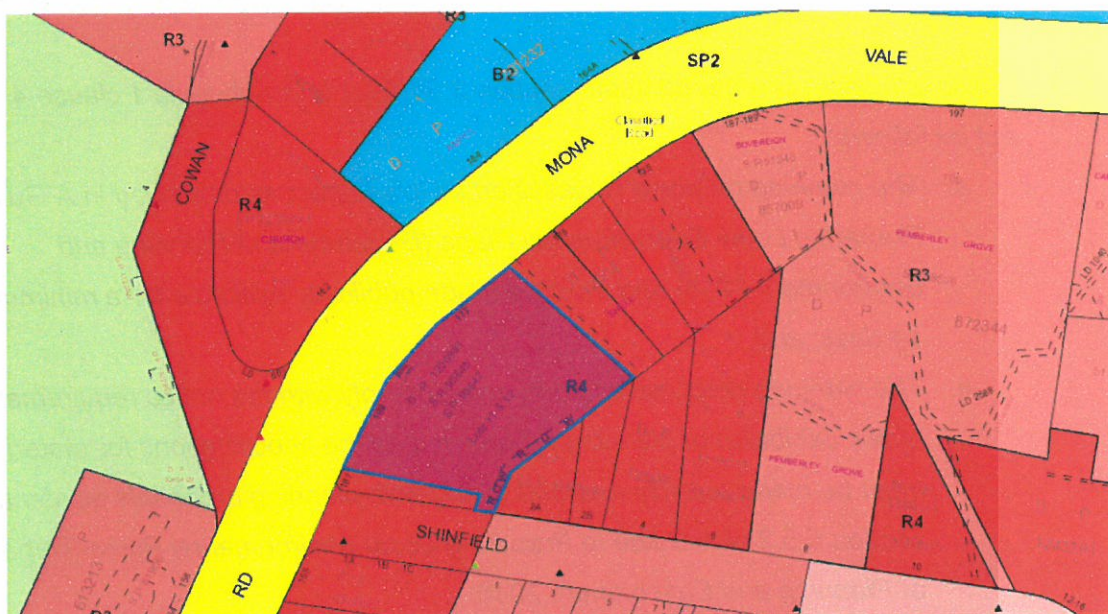


Image 2 – Zoning map extract 169-177 Mona Vale Road, St Ives

The site is zoned R4 High Density Residential under the KLEP (LC) 2012, and the site benefits from Additional Permitted Uses of '*Commercial Premises*' and '*Office Premises*' under Schedule 1.

The Planning Proposal outlines that the purpose of the amendment is to allow for a gymnasium on the ground floor of the current mixed use building, which would be subject to a future development application.

2.0 GATEWAY DETERMINATION

Date Determination issued:

21 September 2018

Timeframe for completion of proposal:

6 months following the date of the Gateway Determination

Was the Gateway determination subject to a review request, if so what were the outcomes of that request?

No – the Gateway Determination was not subject to a review request.

Have the conditions included in the Gateway Determination been complied with, if not, what is the justification for the non-compliance, and what are the impacts non-compliance may/will have on the LEP?

Yes – the conditions of the Gateway Determination have been complied with as follows:

1. *Public exhibition is required under section 3.34(2)(c) and Schedule 1 clause 4 of the Act as follows:*
 - a. *The planning proposal is classified as low impact as described in A Guide to Preparing Local Environmental Plans (Department of Planning and Environment 2016) and must be made publically available for a minimum of 14 days; and*
 - b. *The planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of A Guide to Preparing Local Environmental Plans (Department of Planning and Environment 2016).*

Council Comment: The Planning Proposal was publically exhibited for the minimum of 14 days from 11 October 2018 to 26 October 2018.. The Planning Proposal and exhibition material were publically notified on Councils website, in the North Shore Times and notification letters were sent to surrounding properties. The Planning Proposal and supporting exhibition material was publically available on Councils website, and at Councils customer service counter.

2. *A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the Act. This does not discharge Council from any*

obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).

Council Comment: No public hearing was held.

3. *The planning proposal authority is authorised as the local-plan making authority to exercise the functions under section 3.36(2) of the Act subject to the following:*
- a. The planning proposal authority has satisfied all the conditions of the Gateway Determination;*
 - b. The planning proposal is consistent with section 9.1 Directions or the Secretary has agreed that any inconsistencies are justified; and*
 - c. There are no outstanding written objections from public authorities.*

Council Comment:

- a. The Planning Proposal has satisfied all the conditions included in the Gateway Determination.
- b. In the letter to Council dated 21 September 2018 regarding the issuing of the Gateway Determination, the Department noted *'I have also agreed, as delegate of the Secretary, the planning proposals inconsistency with Section 9.1 Direction 6.3 Site Specific Provisions is justified in accordance with the terms of the Direction. No further approval is required in relation to this Direction'*.
- c. The Gateway Determination did not require any consultation with public authorities, and accordingly there are not outstanding written objections from public authorities

All the conditions of the Gateway Determination have been satisfied, and accordingly Council is authorised to act as the local-plan making authority.

4. *The time frame from completing the LEP is to be 6 months following the date of the Gateway determination*

Council Comment: The Planning Proposal and LEP amendment will be completed within the 6 month timeframe as specified on the Gateway Determination.

3.0 COMMUNITY CONSULTATION

Dates of exhibition:

The planning proposal was publically exhibited from 11 October 2018 to 26 October 2018.

Number of submissions received:

A total of 2 submissions were received.

Issues raised during exhibition:

The matters raised within the submissions received from the public exhibition of the planning proposal include:

- *Request for restriction on hours of operation, and no 24 hour access for public or private use.*
- *Object to the permitted additional use of indoor recreation facility*
- *Should the proposed amendment be made, requests the following to be implemented:*
 - *Protection of residential amenity*
 - *Hours of operation restricted to business hours*
 - *Sound proofing to be installed*
 - *Adequate levels of staffing during operational hours*

Responses to issues:

This is a Planning Proposal which only considers an amendment to the Local Environmental Plan. A Planning Proposal cannot consider the detailed design or operation matters raised in the submissions such as hours of operation, staffing levels or sound proofing. These matters would be considered and assessed as part of a merit assessment of any future Development Application lodged.

It is acknowledged that uses, such as gyms, which fall under the definition of '*Recreation Facility (indoor)*' may have the potential to result in noise and amenity impacts. Some uses will generate more noise than other – this depends on the size, but also the types of activities and equipment used. At the Planning Proposal stage, this detailed information is not available, and is unable to be considered.

Was the Planning Proposal re-exhibited, if so, provide all relevant details as above?

No – the planning proposal was not re-exhibited.

Were the consultation requirements included in the Gateway Determination complied with?

The Gateway Determination included the following condition with regard to community consultation:

1. *Public exhibition is required under section 3.34(2)(c) and Schedule 1 clause 4 of the Act as follows"*
 - a. *The Planning Proposal is classified as low impact as described in A Guide To Preparing Local Environmental Plans (Department of Planning and Environment 2016) and must be made publically available for a minimum of 14 days; and*
 - b. *The planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specification for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of A Guide to Preparing Local Environmental Plans (Department of Planning and Environment 2016).*

The planning proposal was publically exhibited from 11 October 2018 to 26 October 2018 in accordance with the requirements of the Gateway Determination. 120 letters were sent to surrounding property owners advising them of the public exhibition of the planning proposal. The planning proposal was also advertised in the North Shore Times and on Councils website.

The Planning Proposal and exhibition material were publically available on Councils website and a hard copy was available at Council Chambers.

Were amendments made to the Planning Proposal in response to the issues raised during public exhibition?

No amendments were made to the planning proposal in response to the matters raised during public exhibition.

4.0 VIEWS OF PUBLIC AUTHORITIES

Which agencies were consulted?

The Gateway Determination did not require any consultation with agencies. This was confirmed with the Department of Planning, who advised that due to the low impact and minor nature of the Planning Proposal, consultation with agencies was not required.

Which agencies provided a response?

N/A

What were the views of those agencies?

N/A

How were any objections or issues resolved?

N/A

Did agency consultation occur in accordance with the requirements of the Gateway determination?

The Gateway Determination did not require any consultation with agencies.

What amendments were made to the Planning Proposal to respond to the issues raised by agencies?

N/A

5.0 CONSISTENCY WITH S.117 DIRECTIONS AND OTHER STRATEGIC PLANNING DOCUMENTS

Is the planning proposal consistent, justifiably inconsistent or inconsistent with all relevant s117 Directions?

Directions under S117	Objectives	Consistency
1. EMPLOYMENT AND RESOURCES		
1.1 Business and Industrial Zones	<p>The objectives of this direction are to:</p> <p>(a) Encourage employment growth in suitable locations,</p> <p>(b) protect employment land in business and industrial zones, and support the viability of identified strategic centres.</p>	This direction is not applicable to the subject planning proposal.
2. ENVIRONMENT AND HERITAGE		
2.1 Environment Protection Zones	The objective of this direction is to protect and conserve environmentally sensitive areas.	The subject land is not identified as being located within an environmentally sensitive area.
2.3 Heritage Conservation	The objective of this direction is to conserve items, areas, objects and places of	The subject site is not heritage listed, nor is it located within a Heritage Conservation Area (HCA).

Directions under S117	Objectives	Consistency
	environmental Heritage significance and indigenous heritage significance.	
3. HOUSING, INFRASTRUCTURE AND URBAN DEVELOPMENT		
3.1 Residential Zones	<p>The objectives of this direction are:</p> <ul style="list-style-type: none"> (a) to encourage a variety and choice of housing types to provide for existing and future housing needs, (b) to make efficient use of existing infrastructure and services and ensure that new housing has appropriate access to infrastructure and services, and (c) to minimise the impact of residential development on the environment and resource lands. 	The planning proposal is consistent with the objectives of this direction as the Planning Proposal will not reduce the permissibility of residential development on the site, as it will only apply to the ground floor commercial tenancies within an existing mixed use building.
3.2 Caravan Parks and Manufactured Home Estates	<p>The objectives of this direction are:</p> <ul style="list-style-type: none"> (a) to provide for a variety of housing types, and (b) to provide opportunities for caravan parks and manufactured home estates. 	This direction is not applicable to the subject planning proposal.
3.3 Home Occupations	The objective of this direction is to encourage the carrying out of low-impact small businesses in dwelling houses.	This direction is not applicable to the planning proposal.
3.4 Integrating Land Use and Transport	<p>The objective of this direction is to ensure that urban structures, building forms, land use locations, development designs, subdivision and street layouts achieve the following planning objectives:</p> <ul style="list-style-type: none"> (a) improving access to housing, jobs and services by walking, cycling and public transport, and (b) increasing the choice of available transport and reducing dependence on 	The planning proposal is consistent with the relevant objectives of this direction as the site is well located within the St Ives town centre, providing convenient access to public transport and services.

Directions under S117	Objectives	Consistency
	<p>cars, and</p> <p>(c) reducing travel demand including the number of trips generated by development and the distances travelled, especially by car, and</p> <p>(d) supporting the efficient and viable operation of public transport services, and</p> <p>(e) providing for the efficient movement of freight.</p>	
4. HAZARD AND RISK		
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 is not applicable to the subject planning proposal.
4.2 Mine Subsidence and Unstable Land	The objective of this direction is to prevent damage to life, property and the environment on land identified as unstable or potentially subject to mine subsidence.	This direction is not applicable to the planning proposal.
4.3 Flood Prone Land	<p>The objectives of this direction are:</p> <p>(a) to ensure that development of flood prone land is consistent with the NSW Government's Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005, and</p> <p>(b) to ensure that the provisions of an LEP on flood prone land is commensurate with flood hazard and includes consideration of the potential flood impacts both on and off the subject land</p>	This direction is not applicable to the planning proposal, as the subject land is not identified as flood prone land.
4.4 Planning for Bushfire Protection	The objectives of this direction are:	This direction is not applicable to the planning proposal, as the subject land

Directions under S117	Objectives	Consistency
	<p>(a) 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</p> <p>(b) to encourage sound management of bush fire prone areas.</p>	is not identified as bushfire prone land.
6. LOCAL PLAN MAKING		
6.1 Approval and Referral Requirements	The objective of this direction is to ensure that LEP provisions encourage the efficient and appropriate assessment of development.	The planning proposal will facilitate efficient and appropriate development.
6.2 Reserving Land for Public Purposes	<p>The objectives of this direction are:</p> <p>(a) to facilitate the provision of public services and facilities by reserving land for public purposes, and</p> <p>(b) to facilitate the removal of reservations of land for public purposes where the land is no longer required for acquisition.</p>	This direction is not applicable to the subject planning proposal.
6.3 Site Specific Provisions	The objective of this direction is to discourage unnecessarily restrictive site specific planning controls.	<p>The planning proposal is justifiably inconsistent with this direction for the following reasons:</p> <ul style="list-style-type: none"> it is inappropriate to include the proposed additional permitted use '<i>Recreation facility (indoor)</i>' in the Land Use Table for the R4 High Density Residential zone, which would apply to all land zoned R4 under the KLEP LC 2012. There are unique circumstances applying to the site: <ul style="list-style-type: none"> The site was specifically zoned for mixed use residential, with non-retail commercial uses. This was achieved by zoning the site R4 High Density Residential and then specifying

Directions under S117	Objectives	Consistency
		<p>additional permitted uses of commercial and office premises under Schedule 1. Other R4 zoned sites within Ku-ring-gai do not permit such commercial uses.</p> <ul style="list-style-type: none"> ○ The site has been developed as a mixed use building, consistent with a mixed use building that would be developed within the B2 Local Centre or B4 Mixed Use zone. The B2 and B4 zones permit the use 'Recreation Facility (indoor)' with consent. In this regard, the outcome of the Planning Proposal is consistent with the outcomes for other mixed use buildings, and mixed use zoned land within Ku-ring-gai. ○ The site is located in close proximity to the St Ives local centre, and land zoned B1 Local Centre. <ul style="list-style-type: none"> • The Planning Proposal has been prepared in response to a site specific development that requires the additional permitted use to proceed.
7. METROPOLITAN PLANNING		
7.1 Implementation of the Metropolitan Strategy	The objective of this direction is to give legal effect to the vision, land use strategy, policies, outcomes and actions contained in the Metropolitan Strategy.	<p>The planning proposal is consistent with the following objectives of the Greater Sydney Region Plan – A Metropolis of Three Cities:</p> <ul style="list-style-type: none"> • Objective 6 – services and infrastructure meet communities changing needs • Objective 7 – Communities are healthy, resilient and socially connected • Objective 22 – investment and business activity in centres. <p>The Greater Sydney Region Plan outlines that liveability incorporates <i>access to housing, transport and employment as well as social, recreational, cultural and creative opportunities</i>. Improved health, public transport and accessibility outcomes are achieved through the provision of</p>

Directions under S117	Objectives	Consistency
		schools, recreation, transport, arts and cultural, community and health facilities in walkable mixed use places co-located with social infrastructure and local services. Mixed use neighbourhoods close to centres and public transport improve the opportunity for people to walk and cycle to local shops and services. Enhancing the safety, convenience and accessibility has many benefits, including healthier people and more successful businesses and centres.

Is the planning proposal consistent, justifiably inconsistent or inconsistent with all relevant SEPPs?

SEPP	Comment on Consistency
SEPP 1 Development Standards	The proposal will have no relevance to SEPP 1.
SEPP 4 Development Without Consent	The proposal will have no relevance to SEPP 4.
SEPP 6 Number of Storeys in a Building	The proposal will have no relevance to SEPP 6.
SEPP 19 Bushland in Urban Areas When preparing draft local environmental plans for any land to which SEPP 19 applies, other than rural land, the council shall have regard to the general and specific aims of the Policy, 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 proposal will have no relevance to SEPP 19.
SEPP 21 Caravan Parks	The proposal will have no relevance to SEPP 21.
SEPP 22 Shops and Commercial Premises	The proposal will have no relevance to SEPP 22.
SEPP 30 Intensive Agriculture	The proposal will have no relevance to SEPP 30.
SEPP 32 Urban Consolidation (Redevelopment of Urban Land)	The proposal will have no relevance to SEPP 32.
SEPP 33 Hazardous and Offensive Development	The proposal will have no relevance to SEPP 33.
SEPP 44 Koala Habitat Protection In order to give effect to the aims	The proposal will have no relevance to SEPP 44.

SEPP	Comment on Consistency
of this Policy, a council should survey the land within its area so as to identify areas of potential koala habitat and core koala habitat, and make or amend a local environmental plan to include land identified as a core koala habitat within an environmental protection zone, or to identify land that is a core koala habitat and apply special provisions to control the development of that land.	
SEPP 55 Remediation of Land SEPP 55 requires a planning authority to give consideration to contamination issues when rezoning land which allows a change of use that may increase the risk to health or the environment from contamination and requires consideration of a report on a preliminary investigation where a rezoning allows a change of use that may increase the risk to health or the environment from contamination.	The proposal will have no relevance to SEPP 55.
SEPP 60 Exempt and Complying Development	The proposal will have no relevance to SEPP 60.
SEPP 62 Sustainable Aquaculture	The proposal will have no relevance to SEPP 62.
SEPP 64 Advertising and Signage	The proposal will have no relevance to SEPP 64.
SEPP 65 Design Quality of Residential Flat Development	The proposal will have no relevance to SEPP 65.
SEPP 70 Affordable Housing (Revised Schemes)	The proposal will have no direct relevance to SEPP 70.
SEPP (Housing for Seniors or People with a Disability) – 2004	The proposal will have no direct relevance to this SEPP.
SEPP Building Sustainability Index : Basix 2004	The proposal will have no direct relevance to this SEPP.
SEPP Major Development	The proposal will have no direct relevance to this SEPP.
SEPP Mining, Petroleum Production and Extractive Industries	The proposal will have no direct relevance to this SEPP.
SEPP Temporary Structures 2007	The proposal will have no direct relevance to this SEPP.
SEPP Infrastructure 2007	The proposal will have no direct relevance to this SEPP.
SEPP Affordable Rental Housing 2009	The proposal will have no direct relevance to this SEPP.

SEPP	Comment on Consistency
<p>SEPP Exempt and Complying Development Codes 2008</p> <p>The Codes SEPP aims to provide streamlined assessment processes for development certain types of development that are of minimal environmental impact and identifying types of complying development that may be carried out in accordance with complying development codes.</p>	The proposal will have no direct relevance to this SEPP.

SREP	Comment on Consistency
<p>SYDNEY REP 20 Hawkesbury-Nepean River</p> <p>The SREP requires consideration be given to the impact of future land use in Hawkesbury-Nepean River catchment in a regional context. The plan covers water quality and quantity, environmentally sensitive areas, riverine scenic quality, agriculture, and urban and rural residential development.</p>	The proposal will have no direct relevance to this SREP.
<p>SYDNEY REP (Sydney Harbour Catchment) 2005</p> <p>The SREP aims to establish a balance between promoting a prosperous working harbour, maintaining a healthy and sustainable waterway environment and promoting recreational access to the foreshore and waterways. It establishes planning principles and controls for the catchment as a whole.</p>	The proposal will have no direct relevance to this SREP.

Is the planning proposal consistent, justifiably inconsistent or inconsistent with all other strategic planning documents?

North District Plan

The Planning Proposal is consistent with the following planning priorities of the North District Plan:

- Planning Priority N3 – Providing services and social infrastructure to meet peoples changing needs;
- Planning Priority N4 – Fostering healthy, creative, culturally rich and socially connected communities;

- Planning Priority N6 – Creating and renewing great places and local centres, and respecting the District's heritage

The subject site contains a mixed use building, and is well located within the St Ives local centre. The additional permitted use provides for increased local services for residents within the town centre. Co-locating activities, social infrastructure and local services in mixed use areas is a more efficient use of land and enhances the viability of and access to centres and public transport.

Community Strategic Plan

The Planning Proposal is consistent with the Ku-ring-gai Community Strategic Plan 2038 which establishes a vision and strategic framework that reflects the priorities of the community. The Planning Proposal is consistent with the following objectives and long term goals:

- C4.1 – A community that embraces healthier lifestyle choices and practices
- P4.1 – Our centres offer a broad range of shops and services and contain lively urban village spaces and places where people can live, work, shop, meet and spend leisure time
- P6.1 Recreation, sporting and leisure facilities are available to meet the community's diverse and changing needs.

KLEP (Local Centres) 2012

The Planning Proposal is consistent with the following aims of the KLEP (Local Centres) 2012:

- To guide future development of land and the management of environmental, social, economic, heritage and cultural resources in Ku-ring-gai for the benefit of present and future generations.
- To facilitate the development of centres to enhance Ku-ring-gai's economic role and cater to the retail and commercial needs of the local community
- To achieve land uses relationships that promote the efficient use of infrastructure

6.0 PARLIAMENTARY COUNSEL OPINION

Was an Opinion sought and given by Parliamentary Counsel?

An Opinion was sought from Parliamentary Counsel on the 16 November 2018.

Parliamentary Counsel issued an Opinion on 30 November 2018.

7.0 OTHER RELEVANT MATTERS

Have representations been received on the Planning Proposal from State or Federal members of Parliament?

Council has not received any representation from State or Federal members of Parliament on the planning proposal.

Has Council has met with the Minister in relation to the Planning Proposal?

Council has not met with the Minister in relation to this planning proposal.

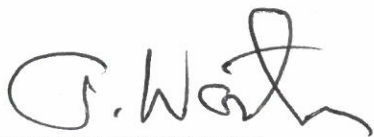
8.0 MAPPING

There is no mapping associated with this Planning Proposal.

9.0 RECOMMENDATION

At Council's meeting on 13 November 2018, Council resolved the following:

- A. *That Council adopts the Planning Proposal to allow 'Recreation Facility (indoor)' as an additional permitted use at 169-177 Mona Vale Road, St Ives.*
- B. *That Council as the local plan-making authority exercise the function under Section 3.36(2) of the Environmental Planning and Assessment Act 1979 and proceed to make the Plan under delegated authority.*
- C. *Those who made submissions be notified of Councils decision.*



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Andrew Watson

7/12/18

Director Strategy and Environment

APPENDICES

- PCO Legal Drafting - signed under delegation
- Department's Attachment 5 - Delegated plan making reporting template
- Gateway Determination
- Planning Proposal
- Council Report and Resolution 13 November 2018