



PLANNING PROPOSAL

Restaurants and cafes in the RE1 Public Recreation zone

30 July 2015

1 INTRODUCTION

North Sydney Council (Council) has prepared a Planning Proposal to amend North Sydney Local Environmental Plan 2013 (NSLEP 2013).

The primary intent of the Planning Proposal is to ensure the permissibility of '*outdoor dining*' on all land zoned *RE1 Public Recreation*. In addition, the proposed amendment seeks to provide increased flexibility in the use of Council's parks and reserves zoned *RE1 Public Recreation*. In particular, the proposed amendment seeks to amend the Land Use Table to include '*restaurants or cafes*' as a permissible land use in all areas zoned *RE1 Public Recreation*.

The need for the Planning Proposal has arisen in response to a business owner's concern regarding obtaining Council approval to undertake '*outdoor dining*' in a public road reserve located directly adjacent to their cafe, which is zoned *RE1 Public Recreation*. '*Outdoor dining*' is an ancillary activity to a '*restaurant or cafe*', which is a prohibited use in the zone.

The Planning Proposal has been prepared in accordance with Section 55 of the Environmental Planning and Assessment Act, 1979 (EP&A Act) and the Department of Planning and Environment's (DPE) document "*A guide to preparing planning proposals*" (October 2012).

2 BACKGROUND

Council's Engineering and Property Services (EPS) was approached by the business owner of Cafe Zallura at May Gibbs Place in Neutral Bay with regards to obtaining approval to undertake '*outdoor dining*' within the plaza adjacent to their cafe. All land comprising May Gibbs Place is zoned *RE1 Public Recreation*. '*Outdoor dining*' is an ancillary activity to a '*restaurant or cafe*,' which is a prohibited use within the *RE1 Public Recreation* zone.

In response to this query, EPS has requested that City Strategy (CIS) investigate the matter to ensure that existing and new '*outdoor dining*' activities can continue to occur within road reserves that are also zoned *RE1 Public Recreation*.

The review was requested on the basis that a prohibition of '*outdoor dining*' in road reserves like May Gibbs Place, which function as active plazas as opposed to passive recreational spaces, is contrary to the original design intent and construction of these spaces. The original intent is to encourage activities such as '*outdoor dining*' within the centre and along the edges of these spaces whilst accommodating comfortable pedestrian flow.

The review identified a total of seven road reserves which are zoned *RE1 Public Recreation*, which are also located directly adjacent to land zoned for business purposes and permit '*outdoor dining*.' As part of the review it was noted that '*outdoor dining*' could be undertaken as exempt development under State Environmental Planning Policy (Exempt and Complying Development) 2008. However, Council has been unable to confirm whether the land use must be permissible in the zone for it to be exempt also. Therefore, to remove any doubt, it is proposed to amend the LEP to make the activity permissible.

3 SITE LOCALITY

3.1 RE1 Public Recreation

The Planning Proposal relates to all land zoned *RE1 Public Recreation* on the Land Zoning Map (refer to Figure 1) to NSLEP 2013.

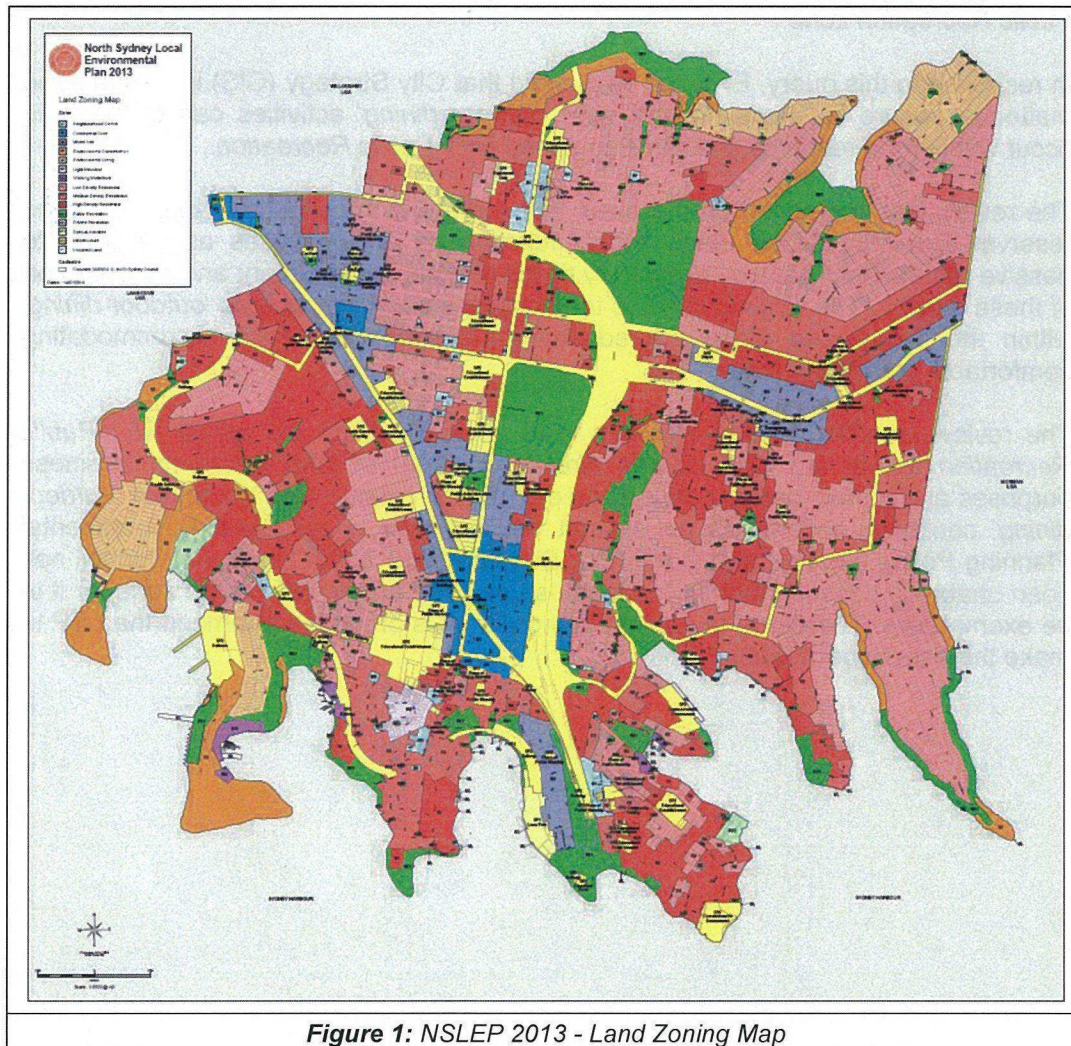


Figure 1: NSLEP 2013 - Land Zoning Map

The vast majority of land currently zoned *RE1 Public Recreation* is owned and controlled by North Sydney Council, with the remaining parcels of land zoned *RE1 Public Recreation*:

- owned by the State Government and under the care and control of Council; and
- in private ownership and identified for acquisition by either Council or the State Government for public recreational purposes.

3.2 Road Reserves

The Planning Proposal is primarily intended to relate to seven road reserves located within the *RE1 Public Recreation* zone. Each site is described in the following sub-sections.

3.2.1 'BRETT WHITELEY PLACE'

Brett Whitely Place previously formed part of Mount Street, located between the Pacific Highway and Elizabeth Plaza, North Sydney (refer to Figure 2), but is now closed to vehicular traffic.

The site comprises a down-ward sloping paved surface with deciduous trees demarkating the pedestrian walkway through the centre and edges of the plaza. A series of water features, terraced street art and street furniture characterise the site. There are also a number of restaurants, cafes and takeaway food premises fronting onto Brett Whitely Place.

Brett Whitely Place is a key pedestrian link with underground access points to Greenwood Plaza and North Sydney train station. It also functions as a major pedestrian thoroughfare connecting the eastern and western sectors of the North Sydney Centre.

Under the NSLEP 2013, the land on which the road reserve is located is zoned *RE1 Public Recreation* (refer to Figure 4), with adjacent land zoned *B3 Commercial Core* and *SP2 Infrastructure*.

The immediate locality is characterised by high-rise commercial office buildings and retail premises ranging between 3 and 16 storeys in height.

Brett Whitely Place exhibits reasonable potential for redevelopment and outdoor dining activities.

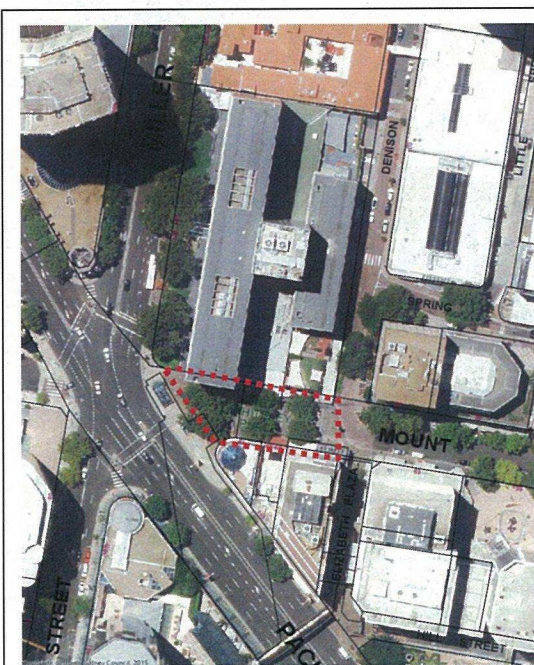


Figure 2: Aerial Photo

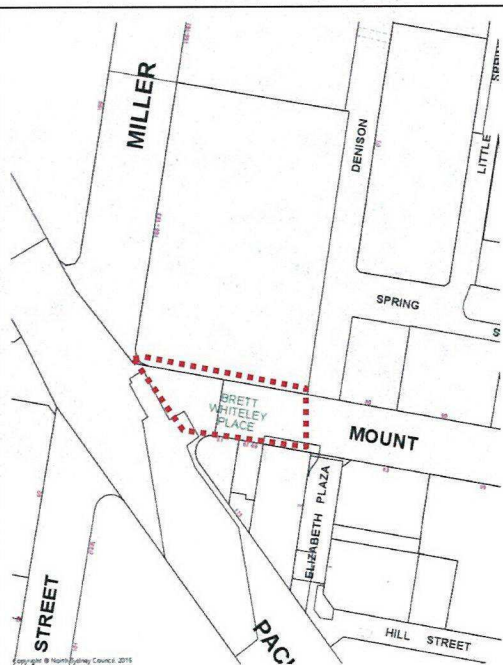
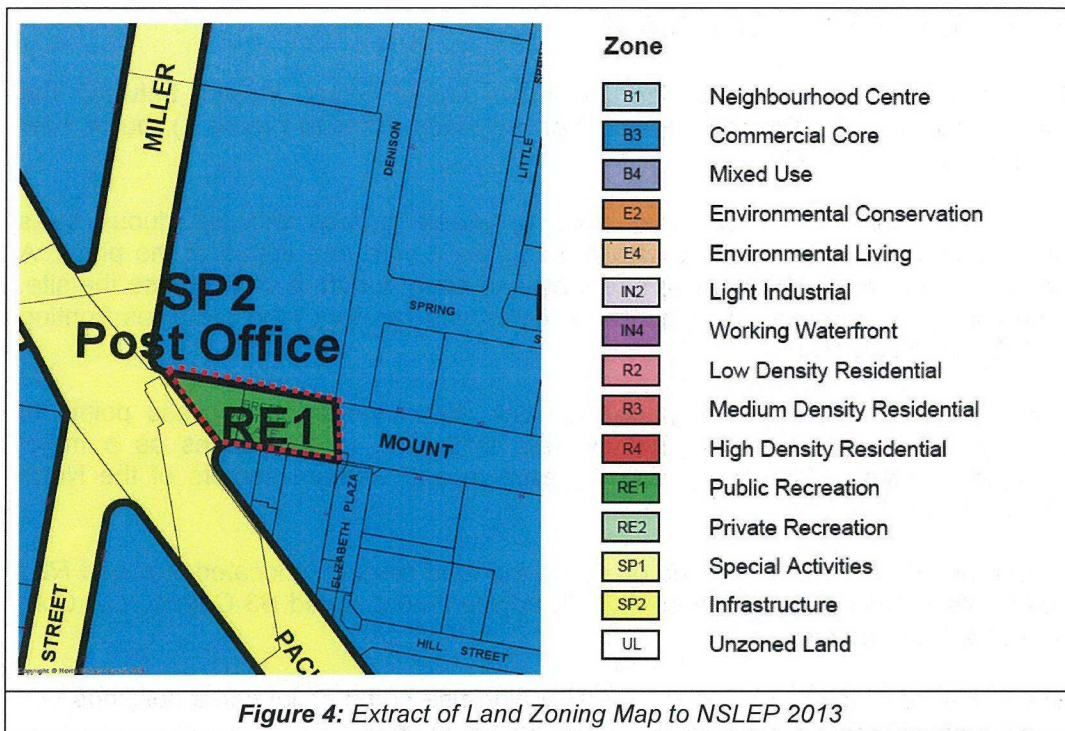


Figure 3: Extract of Land Application Map to NSLEP 2013

Planning Proposal – Restaurants in the RE1 Public Recreation zone



3.2.2 'CREMORNE GARDEN PLAZA'

Cremorne Garden Plaza is located at the southern end of Paling Street between Parraween Street and Military Road, Cremorne (refer to Figure 6).

The Plaza comprises of a raised paved surface in the centre with landscaping along its southern and northern edges. On the eastern and western edges of the plaza is a 2 storey outdoor mall consisting of commercial and retail premises, including three cafes and a restaurant with outdoor dining along the edge of the pedestrian walkways.

Under the NSLEP 2013, the land on which the Plaza is located is zoned *RE1 Public Recreation* (refer to Figure 8), with adjacent land zoned *B4 Mixed Use*.

The immediate locality is characterised by low-rise mixed commercial and retail uses and high density residential housing.

Cremore Garden Plaza exhibits reasonable potential for redevelopment and outdoor dining activities, particularly along its western and eastern edges.

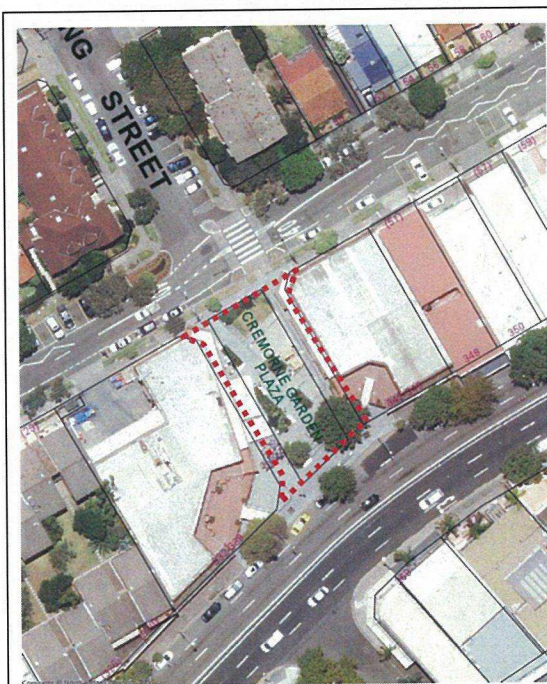


Figure 6: Aerial Photo



Figure 7: Extract of Land Application Map to NSLEP 2013

Planning Proposal – Restaurants in the RE1 Public Recreation zone

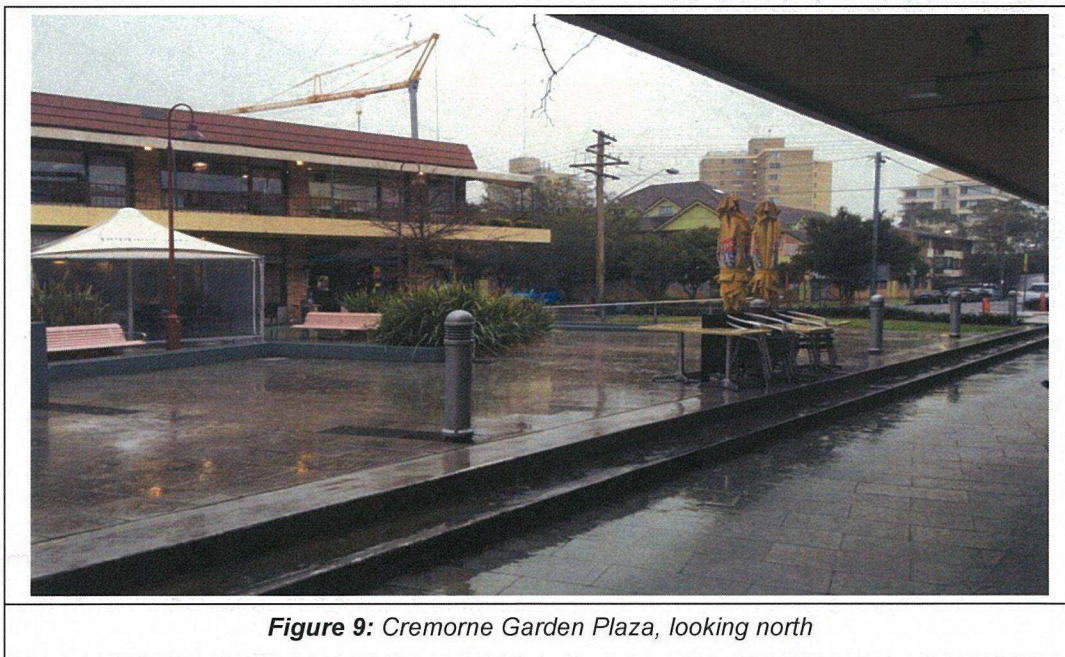
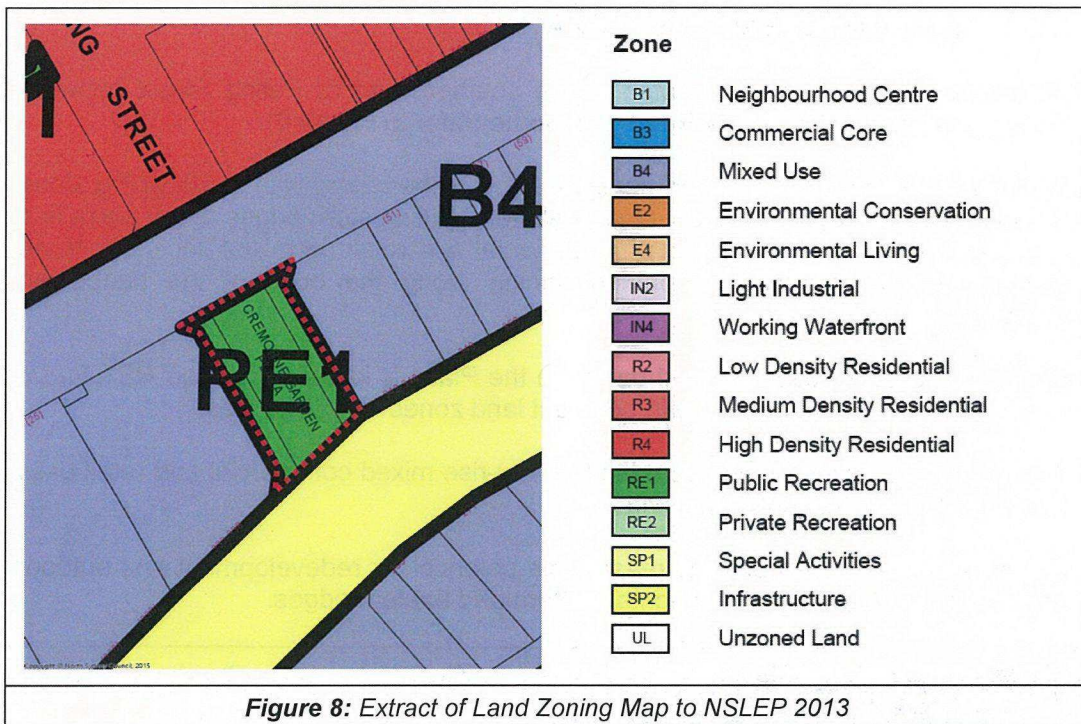




Figure 10: Cremorne Garden Plaza, looking west

3.2.3 'ERNEST PLACE'

Ernest Place is located at the western end of Ernest Street between Willoughby Road and Willoughby Lane, Crows Nest (refer to Figure 11).

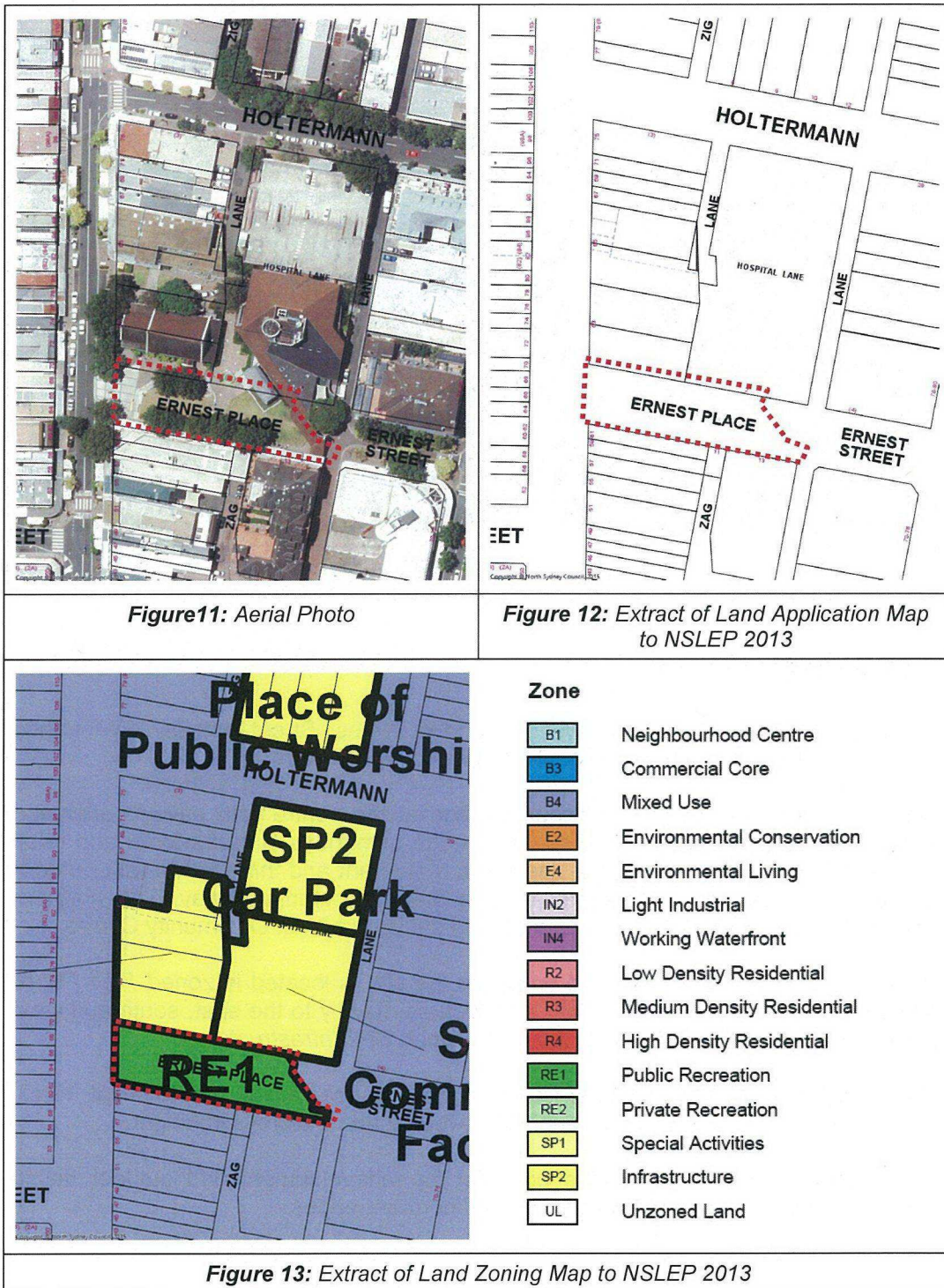
The site comprises a raised grassed surface at the centre with paved pedestrian walkways along each edge. The southern edge comprises of commercial and retail premises including a real estate agency, a restaurant and three cafes with outdoor dining directly outside the premises along the pedestrian walkway. The northern edge of the reserve consists of a Church and the Crows Nest Community Centre.

Under the NSLEP 2013, the land on which the site is located is zoned *RE1 Public Recreation* (refer to Figure 13), with land located directly to the east, south and west zoned *B4 Mixed Use*, and land to the north zoned *SP2 Infrastructure*.

The immediate locality is characterised by low-rise mixed commercial retail, residential and community uses ranging between 2 and 4 storeys in height.

Ernest Place exhibits reasonable potential for redevelopment and outdoor dining activities, particularly along its southern and northern edges.

Planning Proposal – Restaurants in the RE1 Public Recreation zone



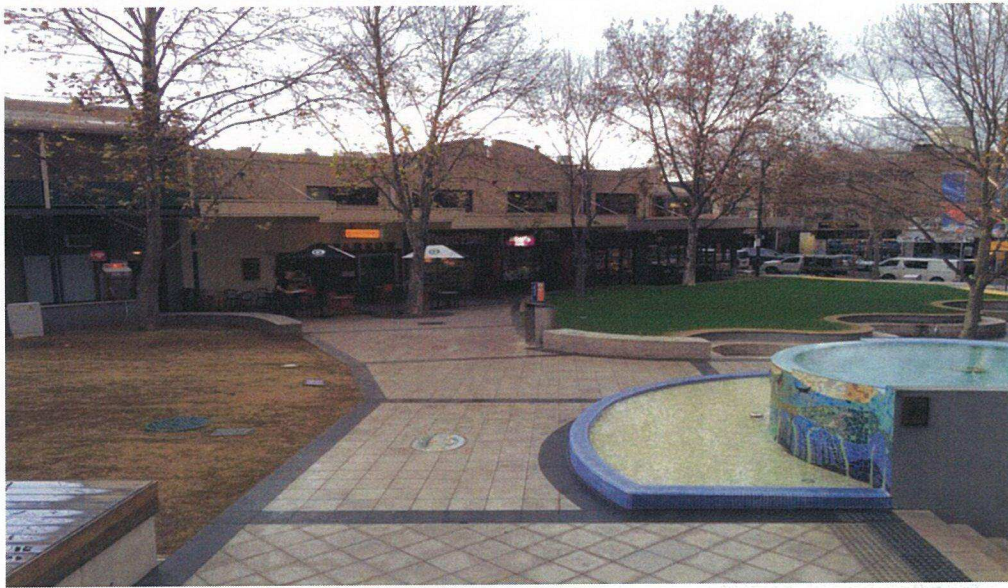


Figure 14: Ernest Place, looking south-west

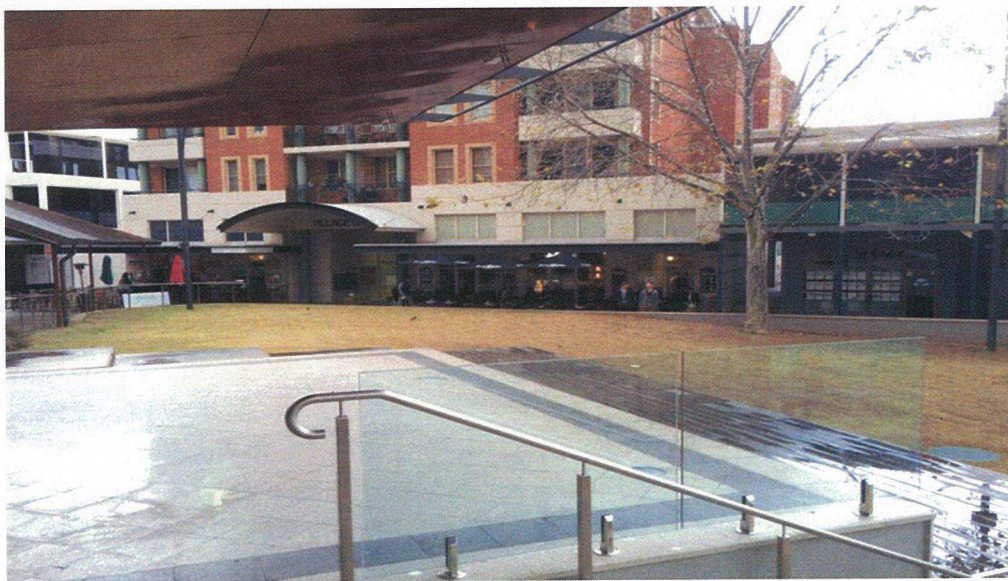


Figure 15: Ernest Place, looking south-east

3.2.4 'MAY GIBBS PLACE'

May Gibbs Place is located at the northern end of Barry Street, between May Lane and Military Road, Neutral Bay (refer to Figure 16).

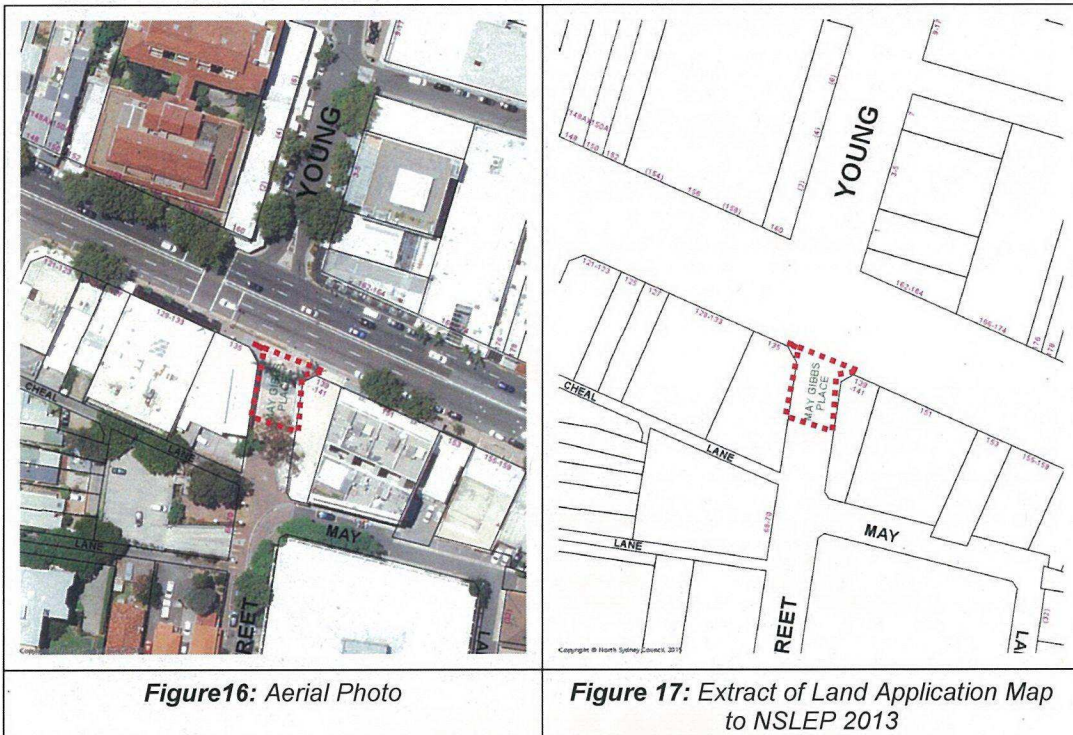
The site comprises of a paved surface with public seating, bicycle racks and murals. Retail premises, including a cafe with outdoor dining, fronts the eastern side of the site, with a post office oriented to Military Road fronting the western side. The western side of the plaza is not activated due to the orientation of the post office.

Planning Proposal – Restaurants in the RE1 Public Recreation zone

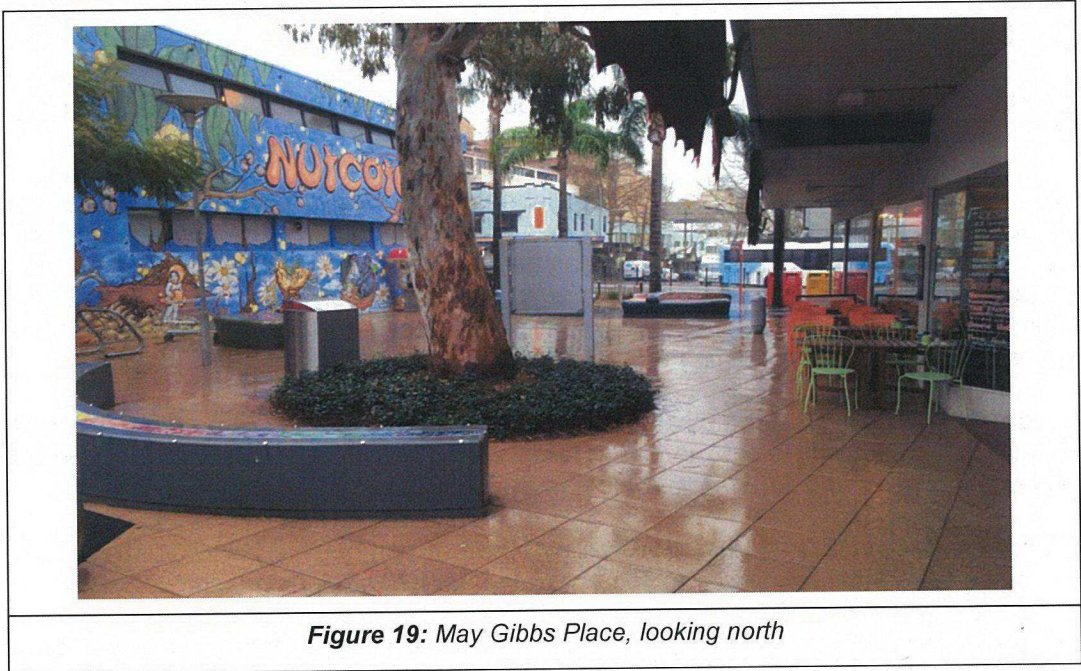
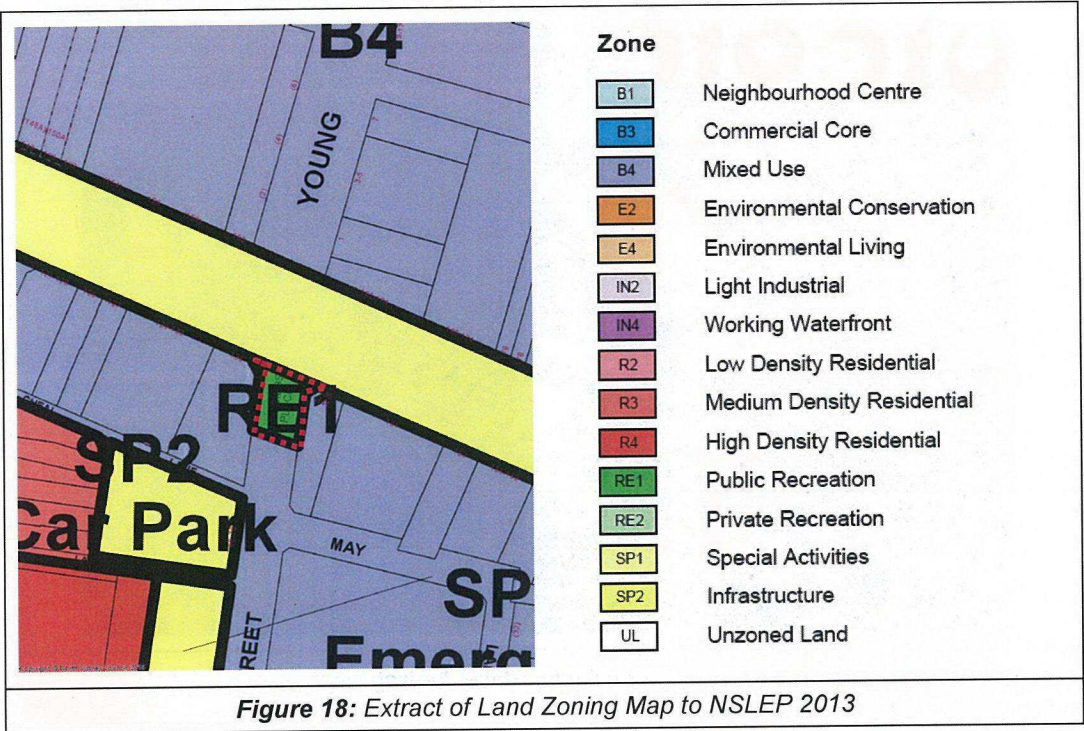
Under the NSLEP 2013, the land on which the road reserve is located is zoned *RE1 Public Recreation* (refer to Figure 18), with land to the east, south and west zoned *B4 Mixed Use*, and land to the north zoned *SP2 Infrastructure*.

The immediate locality is characterised by low-rise commercial and retail premises, ranging between 2 and 4 storeys in height.

May Gibbs Place exhibits reasonable potential for redevelopment and outdoor dining activities, particularly along its eastern and western edges.



Planning Proposal – Restaurants in the RE1 Public Recreation zone



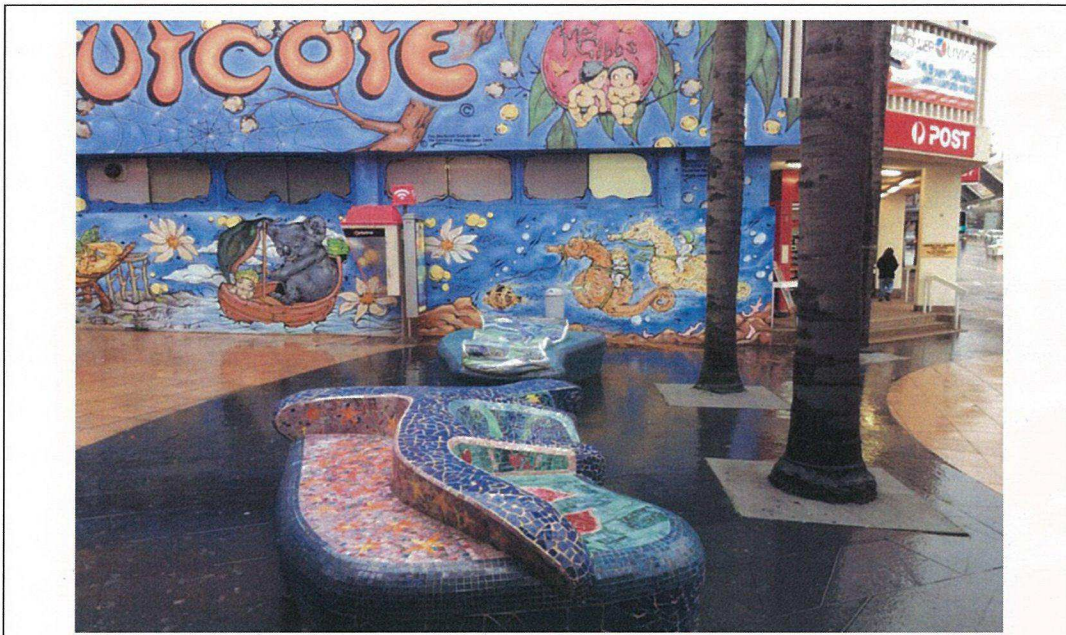


Figure 20: May Gibbs Place, looking west

3.2.5 'MITCHELL STREET PLAZA'

Mitchell Street Plaza is located at the southern end of Mitchell Street between Atchison Street and Pacific Highway, St Leonards (refer to Figure 21).

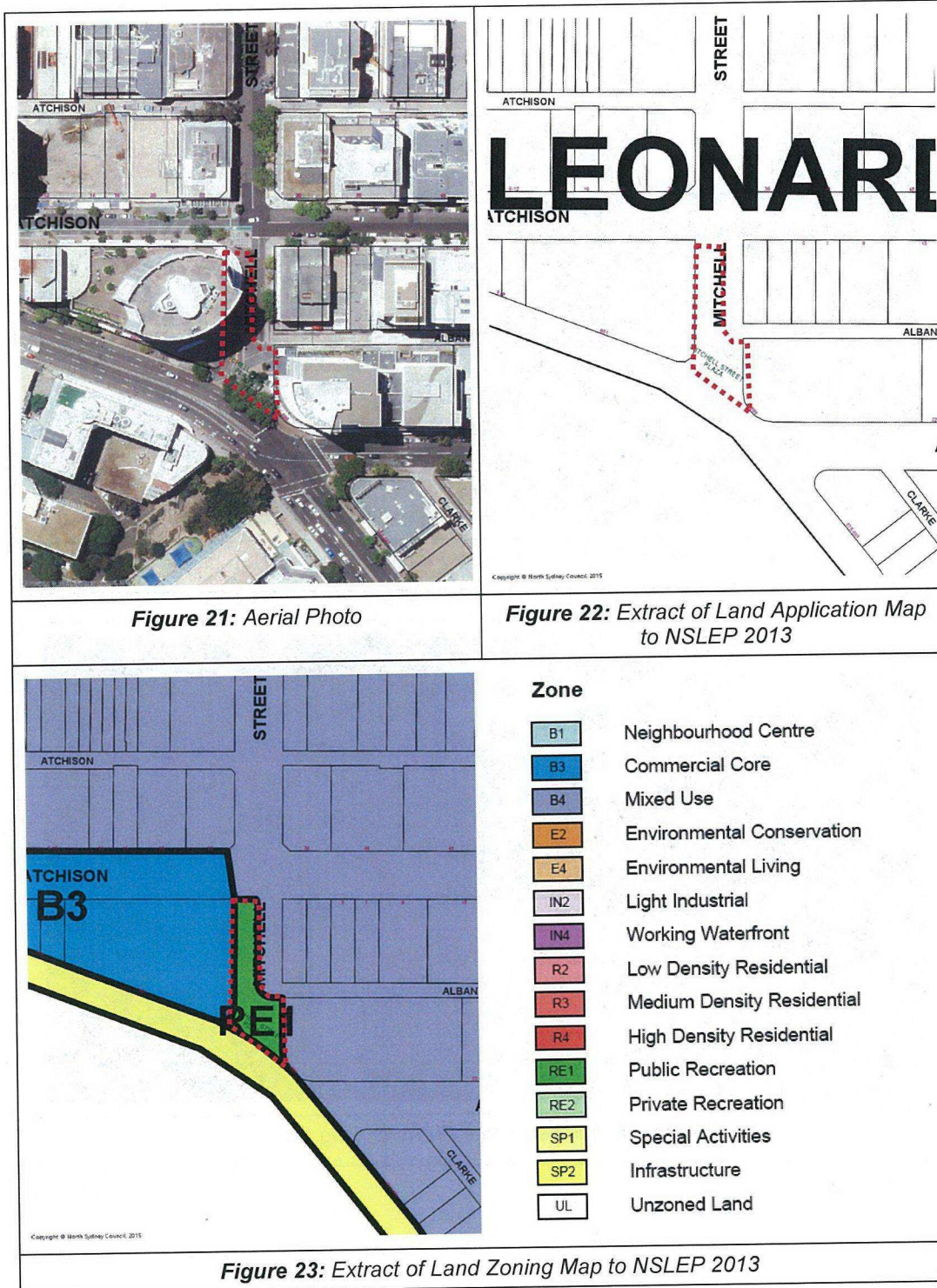
The plaza comprises a split level paved surface with landscaping demarkating the pedestrian walkways along its western and southern edges. At the southern end of the reserve is an enclosed utilities maintenance block. Buildings located on the adjacent site are setback from the plaza with little or poor activation of the public domain. On the south-eastern corner of Mitchell Street Reserve and Albany Street is a restaurant with outdoor dining on land adjacent to the reserve.

Under the NSLEP 2013, the plaza is located is zoned *RE1 Public Recreation* (refer to Figure 23), with land to the north and east zoned *B4 Mixed Use*, *B3 Commercial Core* to the west, and *SP2 Infrastructure* to the south.

The immediate locality is characterised by high-rise commercial office buildings and high-rise residential buildings ranging between 5 and 20 storeys in height.

Mitchell Street Plaza exhibits limited potential for redevelopment or outdoor dining activities, due to the setbacks of the buildings on adjacent sites.

Planning Proposal – Restaurants in the RE1 Public Recreation zone



Planning Proposal – Restaurants in the RE1 Public Recreation zone

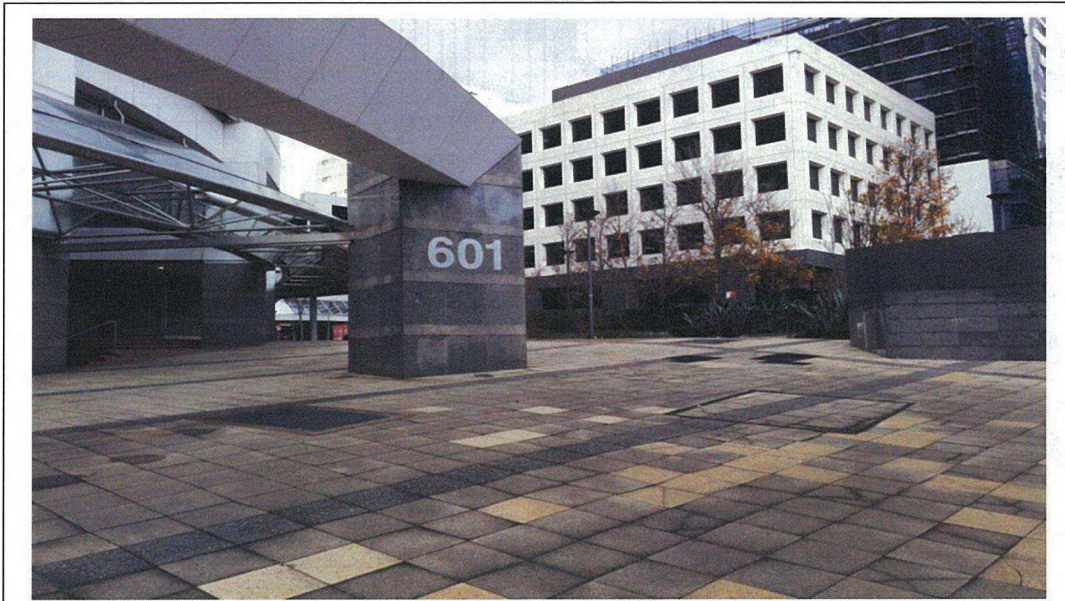


Figure 24: Mitchell Street Plaza, looking east



Figure 25: Mitchell Street Plaza, looking north

3.2.6 'LANGLEY PLACE'

Langley Place is located at the southern end of Langley Avenue between Parraween Street and Military Road, Cremorne (refer to Figure 26).

The site falls from north to south, with a generally level surface across its southern portion. The site comprises of retail premises, including a cafe with outdoor dining at the north-western corner of the site. Commercial offices front the eastern edge of the site with little to no activation due to the absence of doors.

Under the NSLEP 2013, the land on which the road reserve is located is zoned *RE1 Public Recreation* (refer to Figure 28), with land directly adjacent to the site zoned *B4 Mixed Use*, with the exception of land to the south which is zoned *SP2 Infrastructure*.

The immediate locality is characterised by mixed use developments with commercial and retail uses at the ground floor and residential housing above.

Langley Place exhibits limited potential for redevelopment but reasonable potential for outdoor dining activity, particularly along its western and eastern edges.

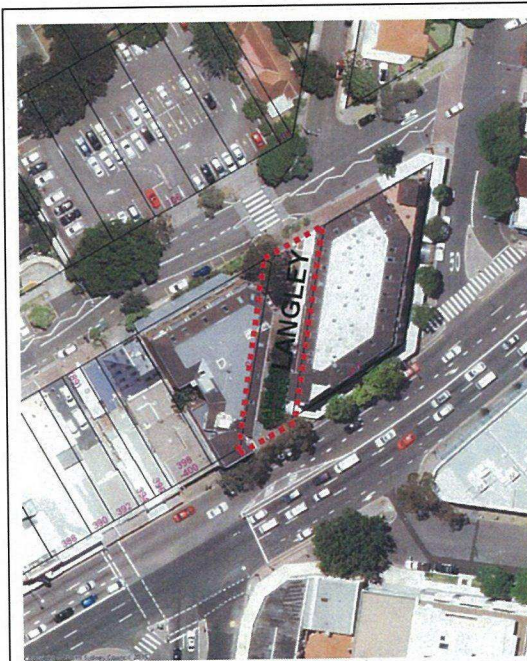


Figure 26: Aerial Photo

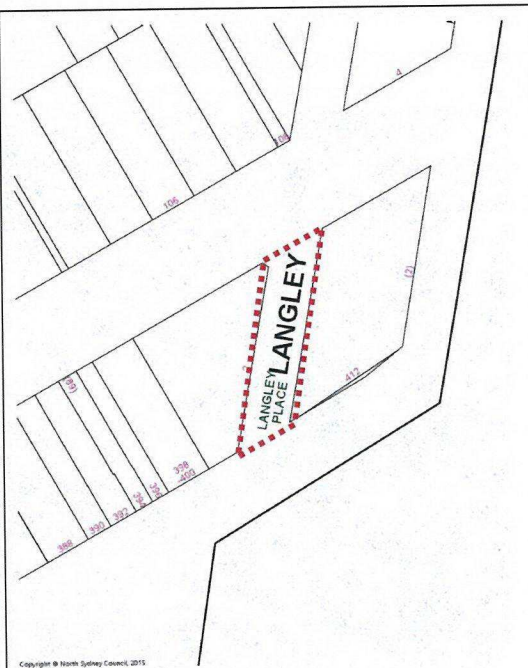


Figure 27: Extract of Land Application Map to NSLEP 2013

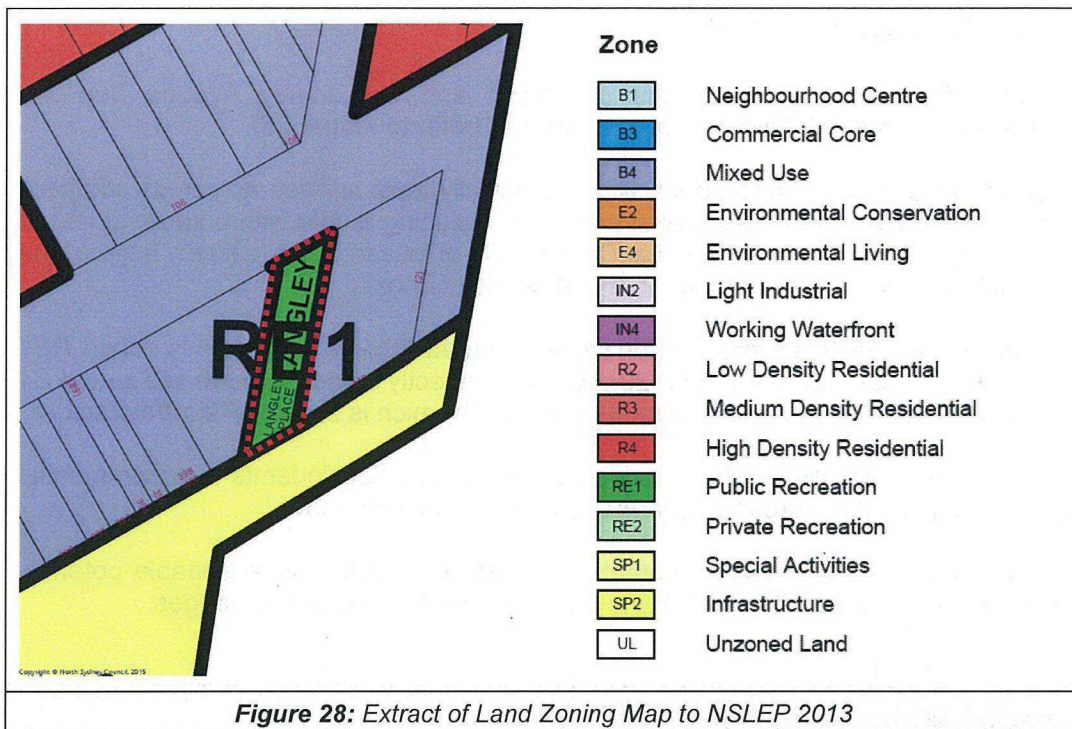


Figure 28: Extract of Land Zoning Map to NSLEP 2013

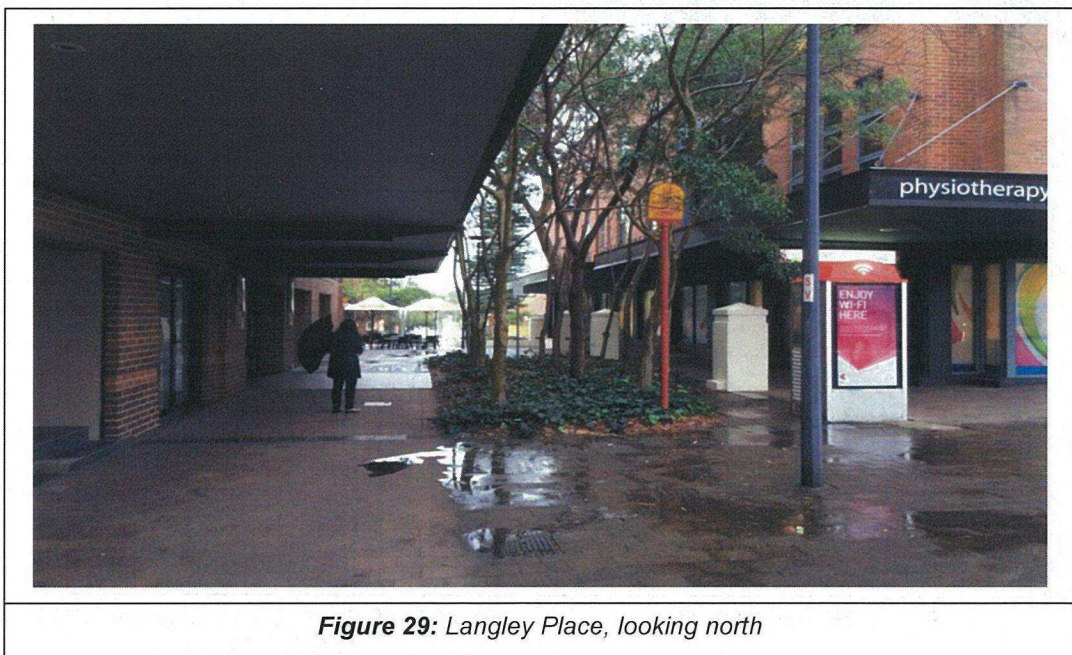


Figure 29: Langley Place, looking north

3.2.7 'ST PETERS PARK'

St Peters Park is located at the southern end of Miller Street at the junction of Blues Point Road and Blue Street, North Sydney (refer to Figure 31).

The site comprises of a down-ward sloping paved surface with a raised plinth set against the eastern edge of the site. The plinth contains street furniture and serves to demarkate the pedestrian walkway along the western edge of the site. Directly east

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of the site on the adjacent land is Zurich tower and North Sydney train station. Whilst the western edge of the site fronts onto Blues Point Road, and the southern edge fronts onto rear lane access to the adjacent Zurich tower.

Under the NSLEP 2013, the land on which the road reserve is located is zoned *RE1 Public Recreation* (refer to figure 33), with land to the north zoned *SP2 Infrastructure*, *B3 Commercial Core* to the east; and *R2 Medium Density Residential* to the south-west.

The immediate locality is characterised by high-rise commercial office buildings to the north and east, with low to medium density housing predominantly to the south-west (refer to Figure 33).

St Peters Park exhibits limited potential for redevelopment and outdoor dining activity.

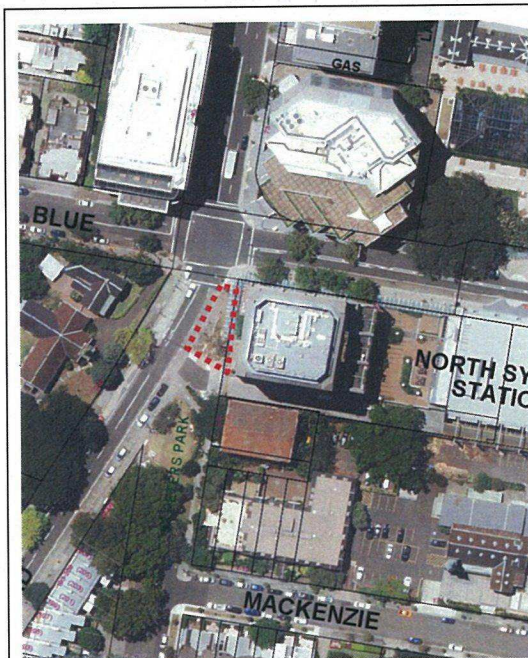


Figure 31: Aerial Photo

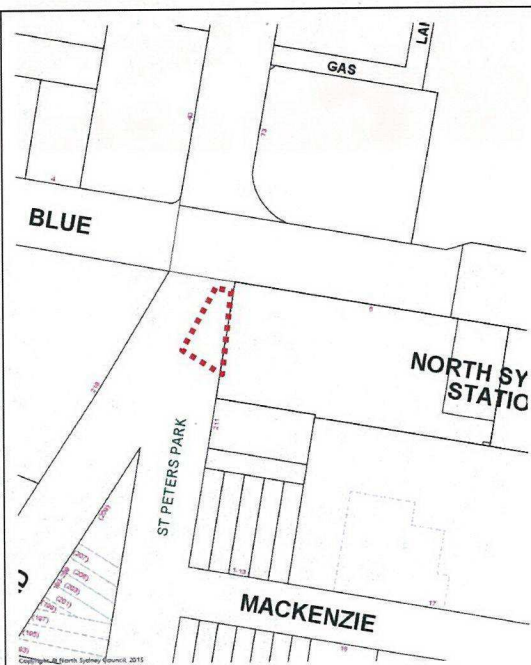
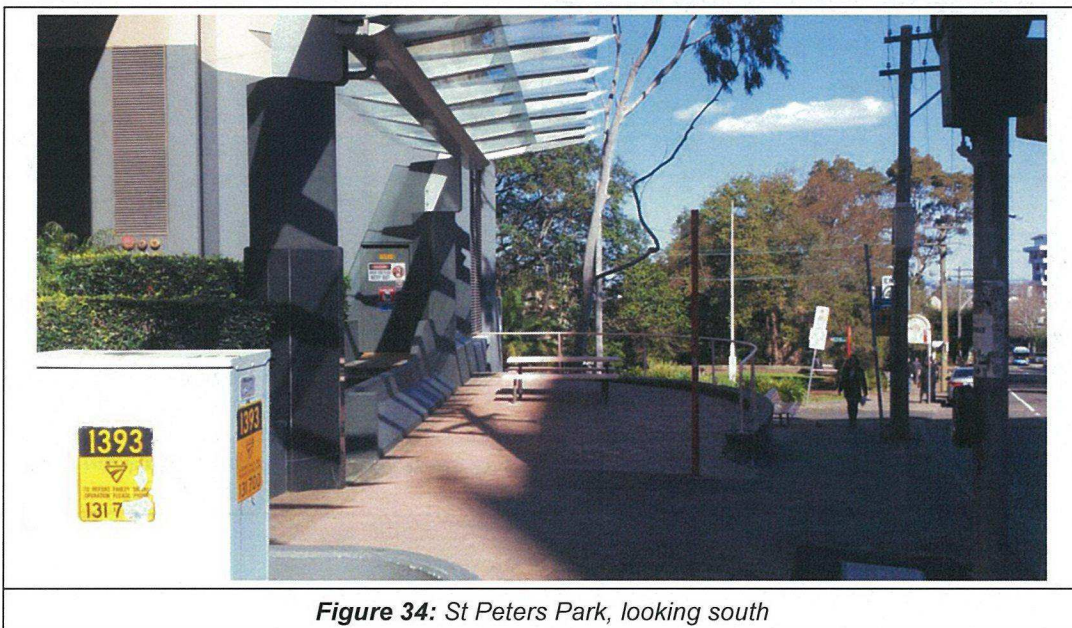
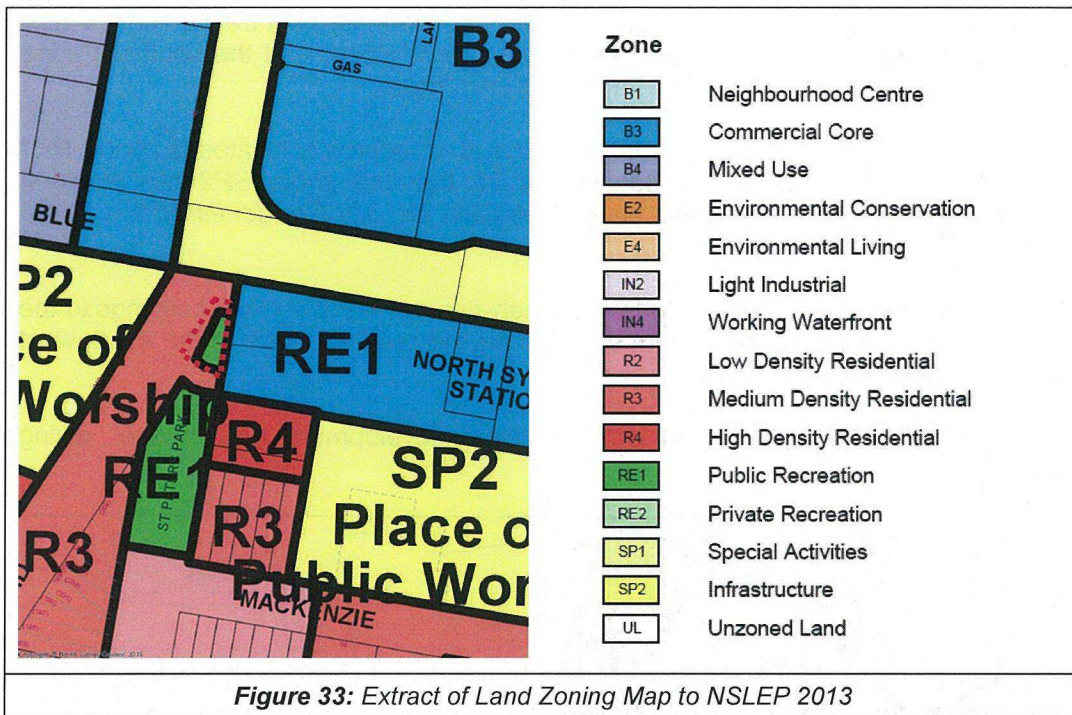


Figure 32: Extract of Land Application Map to NSLEP 2013

Planning Proposal – Restaurants in the RE1 Public Recreation zone



Planning Proposal – Restaurants in the RE1 Public Recreation zone

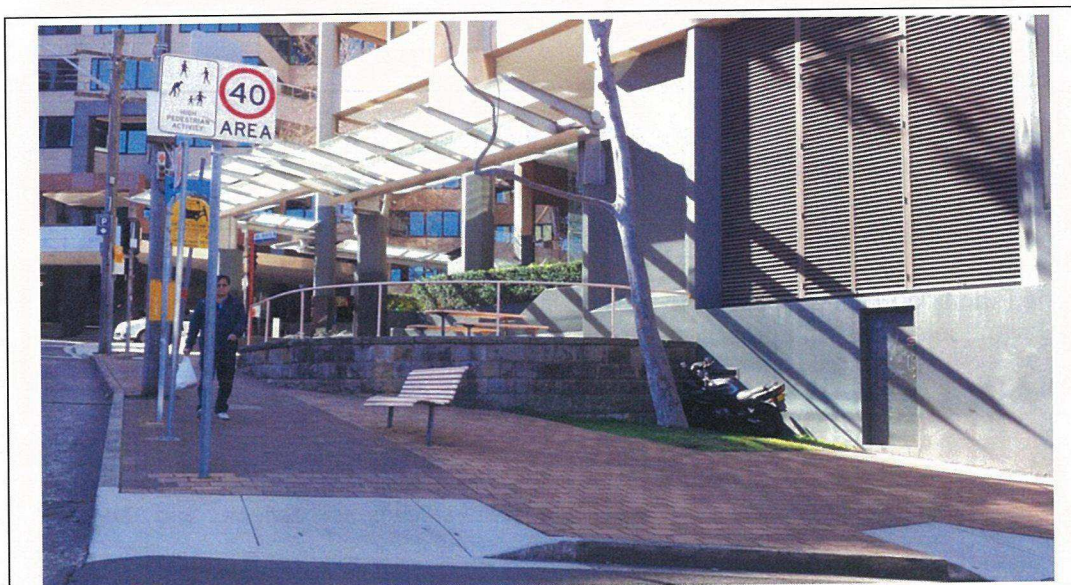


Figure 35: St Peters Park, looking North

4 STATUTORY CONTEXT

The relevant provisions of NSLEP 2013 that relate to the Planning Proposal are discussed in the following subsections.

4.1 Land Use Table

The Planning Proposal applies to all land in the *RE1 Public Recreation* zone. The relevant objectives and provisions to this zone state:

Zone RE1 Public Recreation

1 Objectives of zone

- To enable land to be used for public open space or recreational purposes.
- To provide a range of recreational settings and activities and compatible land uses.
- To protect and enhance the natural environment for recreational purposes.
- To ensure sufficient public recreation areas are available for the benefit and use of residents of, and visitors to, North Sydney.

2 Permitted without consent

Environmental protection works

3 Permitted with consent

Building identification signs; Business identification signs; Community facilities; Environmental facilities; Information and education facilities; Kiosks; Recreation areas; Recreation facilities (outdoor); Roads; Water recreation structures

4 Prohibited

Any development not specified in item 2 or 3

4.2 Definitions

Clause 1.4 of NSLEP 2013 makes reference to the Dictionary which provides definitions of terms used within the LEP. In particular, the relevant terms to the Planning Proposal are defined as follows:

food and drink premises means premises that are used for the preparation and retail sale of food or drink (or both) for immediate consumption on or off the premises, and includes any of the following:

- (a) a restaurant or cafe,
- (b) take away food and drink premises,
- (c) a pub,
- (d) a small bar.

Note. Food and drink premises are a type of retail premises—see the definition of that term in this Dictionary.

kiosk means premises that are used for the purposes of selling food, light refreshments and other small convenience items such as newspapers, films and the like.

Note. See clause 5.4 for controls relating to the gross floor area of a kiosk.

Kiosks are a type of retail premises—see the definition of that term in this Dictionary.

pub means licensed premises under the Liquor Act 2007 the principal purpose of which is the retail sale of liquor for consumption on the premises, whether or not the premises include hotel or motel accommodation and whether or not food is sold or entertainment is provided on the premises.

 Planning Proposal – Restaurants in the RE1 Public Recreation zone

Note. Pubs are a type of food and drink premises—see the definition of that term in this Dictionary.

restaurant or cafe means a building or place the principal purpose of which is the preparation and serving, on a retail basis, of food and drink to people for consumption on the premises, whether or not liquor, take away meals and drinks or entertainment are also provided.

Note. Restaurants or cafes are a type of food and drink premises—see the definition of that term in this Dictionary.

small bar means a small bar within the meaning of the [Liquor Act 2007](#).

Note. Small bars are a type of food and drink premises—see the definition of that term in this Dictionary.

take away food and drink premises means premises that are predominantly used for the preparation and retail sale of food or drink (or both) for immediate consumption away from the premises.

Note. Take away food and drink premises are a type of food and drink premises—see the definition of that term in this Dictionary.

Outdoor dining is not a defined term under the NSLEP 2013, however it is considered to be an ancillary activity to a food and drink premises.

4.3 Additional Permitted Uses for particular land

Clause 2.5 of NSLEP 2013 sets out when a specific use, not identified as being permissible with consent in the Land Use Table to the LEP, can be carried out with development consent. In particular, it states:

- (1) *Development on particular land that is described or referred to in Schedule 1 may be carried out:*
 - (a) *with development consent, or*
 - (b) *if the Schedule so provides—without development consent, in accordance with the conditions (if any) specified in that Schedule in relation to that development.*
- (2) *This clause has effect despite anything to the contrary in the Land Use Table or other provision of this Plan.*

Schedule 1 identifies the following sites where food and drink premises may be permissible with consent and land which is also zoned RE1 Public Recreation:

- 22 *Use of certain land at 4 Alfred Street South, Milsons Point*
[for the purposes of a restaurant or cafe]
- 23 *Use of certain land at 41 Alfred Street South, Milsons Point*
[for the purposes of a restaurant or cafe]

4.4 Development in RE1 Zone

Clause 6.7 of NSLEP 2013 sets out provisions for when development is undertaken within the RE1 or RE2 zone. In particular it states:

- (1) *This clause applies to land in the following zones:*
 - (a) *Zone RE1 Public Recreation,*
 - (b) *Zone RE2 Private Recreation.*

 Planning Proposal – Restaurants in the RE1 Public Recreation zone

- (2) *Development consent must not be granted for development on land to which this clause applies unless the consent authority has considered the following:*
- (a) *the need for the proposed development on the land,*
 - (b) *whether the proposed development is likely to have a detrimental impact on the existing or likely future use of the land,*
 - (c) *whether the height and bulk of any proposed building or structure has regard to the existing vegetation and topography,*
 - (d) *whether the proposed development will adversely impact on bushland and remnant bushland,*
 - (e) *whether the proposed development will adversely impact on stormwater flow,*
 - (f) *in the case of land in Zone RE1 Public Recreation, whether the proposed development will significantly diminish public access to, and use of, that public recreation area.*
- (3) *Development consent must not be granted for development on land to which this clause applies unless the consent authority is satisfied that:*
- (a) *the proposed development is consistent with the objectives of the zone of any adjacent land, and*
 - (b) *the proposed development is not likely to result in any adverse impacts on development that is permissible on any adjacent land, and*
 - (c) *the proposed development is consistent with the most restrictive development standards applying to any adjacent land in the following zones in relation to the height of buildings, floor space ratios and setbacks:*
 - (i) *Zone R2 Low Density Residential,*
 - (ii) *Zone R3 Medium Density Residential,*
 - (iii) *Zone R4 High Density Residential,*
 - (iv) *Zone B1 Neighbourhood Centre,*
 - (v) *Zone B3 Commercial Core,*
 - (vi) *Zone B4 Mixed Use,*
 - (vii) *Zone IN2 Light Industrial,*
 - (viii) *Zone IN4 Working Waterfront,*
 - (ix) *Zone E4 Environmental Living.*

4.5 Land Use Zone Map

The Land Use Zone Map comprises the following:

- LZN_001 5950_COM_LZN_001_010_20140708
- LZN_002 5950_COM_LZN_002_010_20140702
- LZN_002A 5950_COM_LZN_002A_005_20130607
- LZN_003 5950_COM_LZN_003_010_20130607
- LZN_004 5950_COM_LZN_004_010_20130607

A copy of these Plans are provided in Annexure A.

5 THE PLANNING PROPOSAL

5.1 PART 1: STATEMENT OF OBJECTIVES

The primary intent of the Planning Proposal is to:

- ensure the permissibility of outdoor dining on all land zoned *RE1 Public Recreation*; and
- enable increased flexibility in the use of Council's parks and reserves zoned *RE1 Public Recreation*.

5.2 PART 2: EXPLANATIONS OF PROVISIONS

The intent of the Planning Proposal can be achieved by amending the land use table, such that 'restaurants or cafes' are permissible with development consent in the *RE1 Public Recreation* zone. The specific amendments sought are identified in the following subsections.

5.2.1 Land Use Table

The intent of the Planning Proposal is proposed to be achieved by amending the land use table to the *RE1 Public Recreation* as follows (~~red strike through~~ represents a deletion and blue underline represents an insertion):

Zone RE1 Public Recreation

1 Objectives of zone

- To enable land to be used for public open space or recreational purposes.
- To provide a range of recreational settings and activities and compatible land uses.
- To protect and enhance the natural environment for recreational purposes.
- To ensure sufficient public recreation areas are available for the benefit and use of residents of, and visitors to, North Sydney.

2 Permitted without consent

Environmental protection works

3 Permitted with consent

Building identification signs; Business identification signs; Community facilities; Environmental facilities; Information and education facilities; Kiosks; Recreation areas; Recreation facilities (outdoor); Restaurants or cafes; Roads; Water recreation structures

4 Prohibited

Any development not specified in item 2 or 3

5.2.2 Schedule 1 – Additional Permitted Uses

By permitting 'restaurants or cafes' as a permissible use with consent as outlined in section 4.2.1, it results in a number of duplications under Clause 2.5 and Schedule 1 to the LEP. Therefore it is proposed to delete:

- Clause 22(2)(1) to Schedule 1; and
- Clause 23(2)(b) to Schedule 1

5.3 PART 3: JUSTIFICATION

5.3.1 Section A – Need for the planning proposal

1. *Is the planning proposal a result of any strategic study or report?*

No. The need to amend NSLEP 2013 has arisen from a Council initiative to review its *RE1 Public Recreation* zoning provisions in relation to outdoor dining. The review was instigated in response to a request received from the business owner of Cafe Zallura at May Gibbs Place in Neutral Bay to obtain Council approval to undertake outdoor dining in the central area of the plaza.

The review has highlighted the unreasonable restriction placed on activities such as *'outdoor dining'* in road reserves, which function as active plazas as opposed to passive recreational spaces. The initial intent associated with the design and construction of such spaces was to encourage activities such as *'outdoor dining'* to activate, enliven and enhance the quality of these public recreational spaces.

2. *Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?*

Yes. There are potentially four options that could be pursued to address the intent of the Planning Proposal, including:

1. Inserting *'restaurants or cafes'* as a permissible use within the Land Use Table to *RE1 Public Recreation* zone.
2. Inserting an additional permitted use provision under Schedule 1, stating that development for the purposes of a *'restaurant or cafe'* is permissible in respect to the sites identified in section 3.2 of this report only.
3. Inserting a local provision under Part 6, stating that development for the purposes of *'outdoor dining'* used in relation to a *'restaurant or cafe'* is permitted in all land zoned *RE1 Public Recreation*.
4. Amending Clause 2.40A of SEPP (Exempt and Complying Development Code) 2008 to provide further clarification as to whether the SEPP overrides the need for *'restaurants or cafes'* to be permissible in the zone under a LEP.

Each of these options is discussed in further detail below.

Option 1 – Permissibility in RE1 Public Recreation zones (preferred)

This option involves including the term *'restaurants or cafes'* as a permissible use within the Land Use Table to *RE1 Public Recreation* zone.

Whilst the initial intent is to permit *'outdoor dining'* as an associated activity to a *'restaurant or cafe'* within road reserves zoned *RE1 Public Recreation*, *'outdoor dining'* cannot be included in the Land Use Table because it is contrary to the Directions of the Standard Instrument – Local Environmental Plan (SI LEP). In particular, Direction 5 to the Land Use Table sets out the types of development that may be included in the table. The term *'outdoor dining'* is not identified as a defined land use term and consequently cannot be inserted into the Land Use Table.

Under NSLEP 2013, *'outdoor dining'* is considered to be an ancillary activity to a *'food and drink premises,'* which includes the following types of sub-uses:

- a restaurant or cafe,
- take away food and drink premises,
- a pub,
- a small bar.

It is proposed to restrict the amendment to '*restaurants or cafes*' to prevent unintended landuses occurring within the RE1 zone. The proposed amendment is therefore to insert '*restaurants or cafes*' as the appropriate higher-order land use term.

Whilst the proposed amendment to the Land Use Table to include '*restaurants or cafes*' will apply to all land zoned *RE1 Public Recreation*, including active and passive recreational spaces, it will not necessarily mean that '*restaurants or cafes*' will be permitted anywhere on land zoned *RE1 Public Recreation*. The use of Council parks and reserves will ultimately be determined by any associated Plan of Management which can further control how and where development can occur. Where a Plan of Management is absent, a merit assessment will be required to be completed.

The vast majority of land zoned *RE1 Public Recreation* is deemed to be '*public land*' under the Local Government Act 1993 (LG Act). Any land that is either owned or controlled by Council, with the exception of Crown land and road reserves, is deemed to be public land and must be classified as either '*community land*' or '*operational land*' pursuant to s25 and s26 of the LG Act. Furthermore, a principle requirement of the LG Act is the preparation of a Plan of Management for any land classified '*community land*.' All '*community land*' must be managed in accordance with the Plan of Management once in place, and these obligations can be enforced pursuant to s674 of the LG Act.

The classification of all public parks within the RE1 zone as '*community land*' will ensure that all future development is ultimately determined in accordance with the requirements of a Plan of Management, which is subject to community consultation and functions as a secondary assessment. In the case of *Seaton v Mosman Municipal Council* (1996) 93 LGERA 1, a successful action was brought against a council on the grounds that a lease had been issued to a building on community land for restaurant purposes when it was not authorised by the relevant Plan of Management.

In cases where a Plan of Management is not in place (such as for road reserves and a handful of parcels that are currently in private ownership and identified for acquisition for public purposes under NSLEP 2013), all development will be subject to a merit assessment. Clause 2.3(2) and 6.7 of NSLEP 2013 sets out all matters that must be considered by a consent authority when determining an application for development in *RE1 Public Recreation* zones (refer to section 4.4 of this report). Whilst '*outdoor dining*' in road reserves is generally consistent with the provisions of Clause 2.3(2) and 6.7, a merit assessment would ensure that approval is not automatically granted to any development considered to be excessive, inappropriate or contrary to the objectives of the *RE1 Public Recreation* zone.

In cases where land zoned *RE1 Public Recreation* is not owned or controlled by Council, but is identified for acquisition for public purposes, Clause 5.1A of NSLEP 2013 further restricts the use of this land to '*environmental facilities*'

and 'recreational areas' only (i.e. 'restaurants or cafes' would still be prohibited).

Option 1 is preferred as it will satisfy the primary intent of the Planning Proposal whilst enabling greater flexibility in the use of Council's parks and reserves zoned *RE1 Public Recreation*. Option 1 does not guarantee that 'restaurant or cafe' uses will be permissible anywhere on land zoned *RE1 Public Recreation*, but simply provides the potential for Council to approve such uses within the zone where it is considered reasonable. Ultimately Council would need to weigh up the merits of proposals having regard for Clauses 6.7, 2.3(2) and 5.1A and any relevant Plan of Management.

Furthermore, 'restaurants or cafes' was a permissible use within the equivalent zone under NSLEP 2001 and therefore, such an amendment to the LEP would enable the continuation of a previously endorsed policy position of Council.

Option 2 – Additional Permitted Uses

This option involves inserting an *Additional Permitted Uses* provision in *Schedule 1* of NSLEP 2013, stating that development for the purpose of 'restaurants or cafes' is permitted with development consent in respect to only the road reserves identified in section 3.2 of this report.

Whilst the initial intent is to permit 'outdoor dining' as an associated activity to a 'restaurant or cafe,' within road reserves zoned *RE1 Public Recreation*, 'outdoor dining' cannot be included within *Schedule 1* because it is contrary to the Directions of Clause 2.5 of SI LEP which relates to additional permitted uses. In particular, Direction 2 states:

A type of development may be included in Schedule 1 only if it is a type of development listed in Direction 5 at the beginning of the Land Use Table.

Direction 5 sets out the types of development that may be included in the land use table. The term 'outdoor dining' is not identified as a defined land use term and consequently, cannot be inserted into the *Schedule*.

As indicated, whilst option 2 could achieve the primary intent of the Planning Proposal by applying a more flexible zoning to the road reserves identified in section 3.2 of this report, there is a difficulty in clearly identifying these sites as they typically lack a legal property description. Although this issue of clarity may be overcome through additional mapping, this option is ultimately not supported because it does not provide Council sufficient flexibility to respond to future development scenarios concerning the future use of its parks and reserves.

Option 3 – Local Provisions

This option involves inserting a local provision into Part 6 of NSLEP 2013, stating that development for the purposes of *'outdoor dining'* used in relation to a *'restaurant or cafe'* is permitted with development consent in all land zoned *RE1 Public Recreation*, provided the development is within a road reserve and located directly adjacent to land zoned *B1 Neighbourhood Centre, B3 Commercial Core or B4 Mixed Use*.

Whilst this option would achieve the primary intent of the Planning Proposal by applying a more flexible zoning to road reserves, there is difficulty in identifying road reserves. *'Road reserves'* are not defined under NSLEP 2013, and typically lack a legal property description. For issues of clarity, the subject areas would need to be mapped.

This option is ultimately not supported as it does not provide Council with sufficient flexibility to respond to future development scenarios concerning its parks and reserves.

Option 4 – Amend SEPP (Exempt and Complying Development) 2008

This option involves amending Clause 2.40A of SEPP (Exempt and Complying Development Code) 2008 to provide further clarification as to whether the SEPP overrides the need for *'restaurants or cafes'* to be permissible under a LEP.

An amendment to the SEPP falls outside Council's powers, as the SEPP can only be amended by the State Government. Whilst a request could be put forward by Council it is uncertain whether such an amendment could be supported. Notwithstanding, whilst this option could achieve the primary intent of the Planning Proposal without imposing an amendment to NSLEP 2013, this option is not supported as it does not provide Council with sufficient flexibility to respond to future development scenarios concerning its parks and reserves.

5.3.2 Section B – Relationship to strategic planning framework

3. *Is the planning proposal consistent with the objectives and actions of the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?*

A Plan for Growing Sydney (2014)

Released in December 2014, *A Plan for Growing Sydney* (Metropolitan Plan) sets the planning framework for the growth of the Sydney metropolitan area over the next 25 years. The Metropolitan Plan sets targets for an additional 664,000 homes and 689,000 jobs by 2031.

There are no specific Directions and Actions identified in the Metropolitan Plan which are relevant to the Planning Proposal. Despite the absence of any relevant Directions or Actions, the Planning Proposal will not prevent the attainment of the goals aims of the Metropolitan Plan.

Draft Inner North Subregional Strategy

In July 2007, the NSW Government released the draft Inner North Subregional Strategy (draft INSS). The North Sydney LGA is located within the Inner North subregion with the other LGAs of Lane Cove, Ryde, Willoughby, Hunters Hill and Mosman. The Draft INSS sets targets of an additional 5,500 homes and 15,000 jobs by 2031 for the North Sydney LGA.

Directions and Actions identified in the draft INSS which are relevant to the Planning Proposal are as follows:

- Direction F2 – Provide a diverse mix of parks and public open spaces.
 - Action F2.1 – Improve the quality of local open space.
 - Action F2.3 – Provide for urban civic space in planning for centres.

The Planning Proposal is considered to be consistent with the above directions and actions of the draft INSS as it will:

- Provide opportunities to activate and enhance the quality of local open spaces, particularly road reserves located close to centres and along transport corridors where urban and residential growth is being located; and
- Provide opportunities to enhance existing civic spaces and provide new civic spaces.

North Sydney Local Development Strategy (2009):

Adopted in June 2011, North Sydney Local Development Strategy (NSLDS) is a translation of the strategic vision for North Sydney Council as identified in the Metropolitan and Subregional strategies. It adopts the same Directions and Actions as the draft INSS and former versions of versions of the Metropolitan Plan.

The Planning Proposal is considered to be consistent with the relevant Directions and Actions of the NSLDS.

4. *Is the planning proposal consistent with a council's local strategy or other local strategic plan?*

North Sydney Council Delivery Program 2010/11-2013/14

The North Sydney Council Delivery Program 2010/11-2013/14 (Delivery Program) was prepared in accordance with NSW State Government's Integrated Planning and Reporting Framework requirements. The Delivery Program outlines Council's priorities and service delivery programs over four years, set out under five key Directions.

The directions and goals of the Delivery Program which are relevant to the Planning Proposal are as follows:

Direction: 1 Our Living Environment

Outcomes: 1.2 Quality urban greenspaces.

Outcomes: 1.5 Public open space, recreation facilities and services that meet community needs.

Direction: 2 Our Built Environment

Outcomes: 2.3 Vibrant, connected and well maintained streetscapes and villages that build a sense of community.

Planning Proposal – Restaurants in the RE1 Public Recreation zone

The Planning Proposal will allow these directions and outcomes to be pursued in a robust and strategic manner.

5. Is the planning proposal consistent with applicable state environmental planning policies?

The Planning Proposal is consistent with those State Environmental Planning Policies (SEPPs) which are relevant to the North Sydney Local Government Area, as demonstrated in TABLE 1.

TABLE 1: Consistency with SEPPs		
Direction	Consistency	Comment
SEPP No. 1 – Development Standards	N/A	This SEPP does not apply pursuant to Clause 1.9 of NSLEP 2013.
SEPP No. 19 - Bushland in urban areas	YES	The Planning Proposal does not seek to reduce any bushland protection standards applying to land or adjacent land containing bushland.
SEPP No. 32 - Urban consolidation (redevelopment of urban land)	N/A	This SEPP does not apply as the Planning Proposal does not seek to alter the land use permissibility of any land to which the Planning Proposal relates.
SEPP No. 33 - Hazardous and offensive development	N/A	This SEPP does not apply as the Planning Proposal does not relate to land upon which hazardous and offensive development is permitted.
SEPP No. 50 - Canal estate development	YES	The Planning Proposal is consistent with the SEPP as it does not seek to permit canal estate development anywhere within the LGA.
SEPP No. 55 - Remediation of land	YES	The Planning Proposal seeks to introduce a new permissible use within the <i>RE1 Public Recreation</i> zone which may be sensitive to contamination issues. However, 'kiosks', which are a form of food and drink premises, are already permissible in the zone and share the same group definition as 'restaurants or cafes'. Accordingly, no detailed contamination assessments are required in this instance. Issues pertaining to contamination can be satisfactorily addressed at development application stage if relevant.
SEPP No. 64 - Advertising and signage	YES	The Planning Proposal is consistent with the SEPP as it does not affect the attainment of the SEPP's aims and objectives.
SEPP No. 65 - Design Quality of Residential Flat Development	N/A	This SEPP does not apply as the Planning Proposal does not relate to residential flat development.
SEPP (Affordable Rental Housing) 2009	N/A	This SEPP does not apply as the Planning Proposal does not relate to any residential development.

Planning Proposal – Restaurants in the RE1 Public Recreation zone

TABLE 1: Consistency with SEPPs		
Direction	Consistency	Comment
SEPP (Building Sustainability Index: BASIX) 2004	N/A	This SEPP does not apply as the Planning Proposal does not relate to residential building sustainability.
SEPP (Exempt and Complying Development Codes) 2008	YES	The Planning Proposal is consistent with the SEPP as it does not affect the attainment of the SEPP's aims and objectives.
SEPP (Housing for Seniors or People with a Disability) 2004 - <i>formerly SEPP (Seniors Living) 2004</i>	N/A	This SEPP does not apply as the Planning Proposal does not relate to residential development.
SEPP (Infrastructure) 2007	YES	The Planning Proposal is consistent with the SEPP as it does not affect the attainment of the SEPP's aims and objectives.
SEPP (Major Development) 2005 - <i>formerly SEPP Major Projects & SEPP State Significant Development</i>	N/A	This SEPP does not apply as the Planning Proposal does not relate to any state significant sites identified under this SEPP.
SEPP (Mining, Petroleum Production and Extractive Industries) 2007	YES	The Planning Proposal is consistent with the SEPP as it will not impede the attainment of the aims and objectives of this SEPP.
SEPP (Miscellaneous Consent Provisions) 2007 - <i>formerly SEPP (Temporary Structures) 2007</i>	YES	The Planning Proposal is consistent with the SEPP as it does not affect the attainment of the SEPP's aims and objectives.
SEPP (State and Regional Development) 2011	N/A	This SEPP does not apply as the Planning Proposal does not relate to state significant or regional development or the operation of joint regional planning panels.
Sydney REP (Sydney Harbour Catchment) 2005	YES	The Planning Proposal is consistent with the SEPP as it will not impede the attainment of the aims and objectives of this SEPP.

6. Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?

The Planning Proposal is consistent with the relevant Directions issued under Section 117(2) of the EP&A Act by the Minister to Councils, as demonstrated in TABLE 2.

TABLE 2: Consistency with s.117 Directions		
Direction	Consistency	Comment
1. Employment and Resources		
1.1 Business & Industrial Zones	N/A	This Direction does not apply as the Planning Proposal does not seek to reduce any commercial or industrial zoning under NSLEP 2013 nor does it seek to reduce the level of permissible

Planning Proposal – Restaurants in the RE1 Public Recreation zone

TABLE 2: Consistency with s.117 Directions		
Direction	Consistency	Comment
		non-residential floor space achievable on the affected lands.
1.2 Rural Zones	N/A	This Direction does not apply as there are no existing rural zones under NSLEP 2013 or proposed under the Planning Proposal.
1.3 Mining, Petroleum Production & Extractive Industries	YES	The Planning Proposal does not seek to alter the permissibility of these types of land uses.
1.4 Oyster Aquaculture	N/A	This Direction does not apply as the Planning Proposal does not propose any changes in land use.
1.5 Rural Lands	N/A	The Planning Proposal does not propose any changes that will affect development in a rural or environmental protection zone.
2 Environmental Heritage		
2.1 Environmental Protection Zones	N/A	The Planning Proposal does not affect land in an environmental protection zone.
2.2 Coastal Protection	N/A	This Direction does not apply as the Planning Proposal does not affect land within a coastal zone.
2.3 Heritage Conservation	YES	The Planning Proposal does not alter the existing heritage conservation provisions within NSLEP 2013 which already satisfy the requirements of the Direction.
2.4 Recreation Vehicle Areas	YES	The Planning Proposal does not enable land to be developed for the purposes of a recreational vehicle area.
3 Housing, Infrastructure & Urban Development		
3.1 Residential Zones	N/A	This Direction does not apply as the Planning Proposal does not seek to reduce any residential zoning under NSLEP 2013, nor does it seek to reduce the residential development potential on any site.
3.2 Caravan Parks & Manufactured Home Estates	N/A	The Planning Proposal does not seek to permit caravan parks or manufactured home estates under NSLEP 2013.
3.3 Home Occupations	N/A	The Planning Proposal does not seek to alter the existing provisions within NSLEP 2013 that relate to home occupations, which already satisfy the requirements of the Direction.
3.4 Integrating Land Use & Transport	YES	The Planning Proposal is considered to be consistent with the aims objectives and principles of "Improving Transport Choice – Guidelines for planning and development" and "The Right Place for Business and Services – Planning Policy" as it will not impede the attainment of the

Planning Proposal – Restaurants in the RE1 Public Recreation zone

TABLE 2: Consistency with s.117 Directions		
Direction	Consistency	Comment
		aims and objectives of this Direction.
3.5 Development Near Licensed Aerodromes	N/A	The Planning Proposal does not relate to land in the vicinity of a licensed aerodrome nor does it propose to amend a height limit that exceeds the Obstacle Limitation Surface level that applies to the North Sydney LGA.
3.6 Shooting Ranges	N/A	The Planning Proposal does not relate to land in the vicinity of a shooting range.
4 Hazard and Risk		
4.1 Acid Sulfate Soils	N/A	The Planning Proposal does not relate to land affected by Acid Sulfate Soils.
4.2 Mine Subsidence & Unstable Land	N/A	This Direction does not apply as the Planning Proposal does not relate to land affected by mine subsidence nor has it been identified as being unstable land.
4.3 Flood Prone Land	N/A	This Direction does not apply as the Planning Proposal does not relate to land identified as being flood prone land.
4.4 Planning for Bushfire Protection	YES	Some land to which the Planning Proposal applies is identified as bushfire prone land. Future development can be positioned to minimise any risk to occupants of a restaurant or cafe in accordance with Planning for Bushfire Protection 2006. Plans of Management currently severely restrict the location of any restaurants or cafes in parks and reserves.
5 Regional Planning		
5.1 Implementation of Regional Strategies	N/A	This Direction does not apply as the Planning Proposal does not relate to land affected by one of the identified strategies.
5.2 Sydney Drinking Water Catchment	N/A	This Direction does not apply as the Planning Proposal does not relate to any of the identified LGAs.
5.3 Farmland of State and Regional Significance on the NSW Far North Coast.	N/A	This Direction does not apply as the Planning Proposal does not relate to any of the identified LGAs.
5.4 Commercial and Retail Development along the Pacific Highway, North Coast.	N/A	This Direction does not apply as the Planning Proposal does not relate to any of the identified LGAs.
5.8 Second Sydney Airport: Badgerys Creek	N/A	This Direction does not apply as the Planning Proposal does not relate to any of the identified LGAs.
6 Local Plan Making		
6.1. Approval & Referral Requirements	YES	The Planning Proposal does not alter any concurrence, consultation or referral requirements under NSLEP 2013, nor does it identify any development as

TABLE 2: Consistency with s.117 Directions		
Direction	Consistency	Comment
		designated development.
6.2 Reserving Land for Public Purposes	N/A	The Planning Proposal does not create, alter or reduce existing zonings or reservations of land for public purposes.
6.3 Site Specific Provisions	YES	The Planning Proposal is considered to be consistent with this direction as it does not seek impose any development standards or requirements in addition to those already contained in the zone or the principal EPI.
7 Metropolitan Planning		
7.1 Implementation of the Metropolitan Plan for Sydney 2036	YES	Refer to question 3 of section 4.3.2 of this report.

5.3.3 Section C – Environmental, social and economic impact.

7. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

The Planning Proposal in part relates to road reserves in a densely urbanised area. It is therefore unlikely that the Planning Proposal will adversely affect any critical habitat or threatened species, populations or ecological communities, or their habitats in these instances.

The Planning Proposal also in part relates to parks, which may potentially contain critical habitat or threatened species, populations or ecological communities, or their habitats. However, the likelihood of any adverse impact occurring to a public park classified 'community land' is very low due to the bearing of any relevant Plan of Management.

8. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

The Planning Proposal principally relates to road reserves in a densely urbanised area. It is therefore unlikely that the Planning Proposal will have any adverse environmental impacts in these instances. All outdoor dining permits issued by Council are subject to conditions consistent with its outdoor dining policy. This policy ensures the management of litter and that access to public and private utility and drainage services are not impeded.

The Planning Proposal also relates in part to parks and reserves. The likelihood of any adverse environmental impact is low due to the bearing of any relevant Plan of Management. Where a Plan of Management is absent, any associated impacts can be assessed on merit.

9. How has the planning proposal adequately addressed any social and economic effects?

The Planning Proposal will in part affect the use of road reserves. Whilst it may adversely impact on pedestrian flows, it will ultimately create vitality and enhance the overall quality of public recreational spaces in densely urbanised

areas. The extent of the impact of pedestrian flows can be addressed on a merit basis in each case. Noise impacts are also likely to be minimal, as trading hours will be subject to the conditions of approvals and permits and remain consistent with the operating hours of businesses located on land adjacent to road reserves in the *B1 Neighbourhood Centre*, *B3 Commercial Core* and *B4 Mixed Use* zones.

There may be potential for the community to object to the permissibility of '*restaurants or cafes*' in parks and reserves, in particular public recreational spaces adjacent to residential zones. However, the permissibility of any '*restaurants or cafes*' on '*community land*' will ultimately be determined by a Plan of Management, which is subject to additional community consultation. At present the use of '*community land*' for '*restaurants or cafes*' is severely limited to a couple of instances (eg. The Kirribilli Ex-service Community and Bowling Club in Bradfield Park). Additionally, where a Plan of Management is absent, any associated impacts can be assessed on merit.

5.3.4 Section D – State and Commonwealth interests

10. *Is there adequate public infrastructure for the planning proposal?*

The Planning Proposal does not seek to increase the developable yield on any site. It is therefore considered that the Planning Proposal does not increase the demand for public infrastructure.

11. *What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?*

The Planning Proposal has not yet been considered by State or Commonwealth public authorities. Views of the State will be gained through the Gateway Determination process if required.

5.4 PART 4 : MAPPING

The Planning Proposal does not require the replacement of any maps to NSLEP 2013. The Planning Proposal merely seeks to amend the land use table to include '*restaurants or cafes*' as a permissible land use in all areas zoned *RE1 Public Recreation*.

5.5 PART 5: COMMUNITY CONSULTATION

Consultation will be undertaken in accordance with the requirements made by the Gateway Determination and Council's guidelines.

5.6 PART 6: PROJECT TIMELINE

TABLE 3 provides a project timeline having regard to identified milestones and estimating approximately 7 months from submitting the proposal to the DPE to the amending LEP being made.

 Planning Proposal – Restaurants in the RE1 Public Recreation zone

TABLE 3 – Project Timeline							
Milestone	Aug- 2015	Sept 2015	Oct 2015	Nov 2015	Dec 2015	Jan 2016	Feb-2016
1. Request for Gateway Determination sent to DPE							
2. DPE considers Request							
3. Gateway Determination Issued to Council							
4. Public Exhibition Undertaken							
5. Council considers post exhibition report							
6. Submission to DPE requesting making of LEP							
7. Drafting of LEP and making							

ANNEXURE A

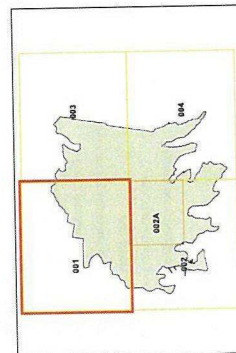
Current Land Zoning Map



Zone

- | | |
|----------------------------|-----|
| Neighbourhood Centre | 541 |
| Commercial Core | 54 |
| Mixed Use | 54 |
| Environmental Conservation | 52 |
| Environmental Living | 52 |
| Light Industrial | 54 |
| Working Waterfront | 54 |
| Low Density Residential | 52 |
| Medium Density Residential | 52 |
| High Density Residential | 52 |
| Public Recreation | 52 |
| Private Recreation | 52 |
| Special Activities | 51 |
| Unfranchised Land | 52 |
| Infrastructure | 51 |
| US | 51 |

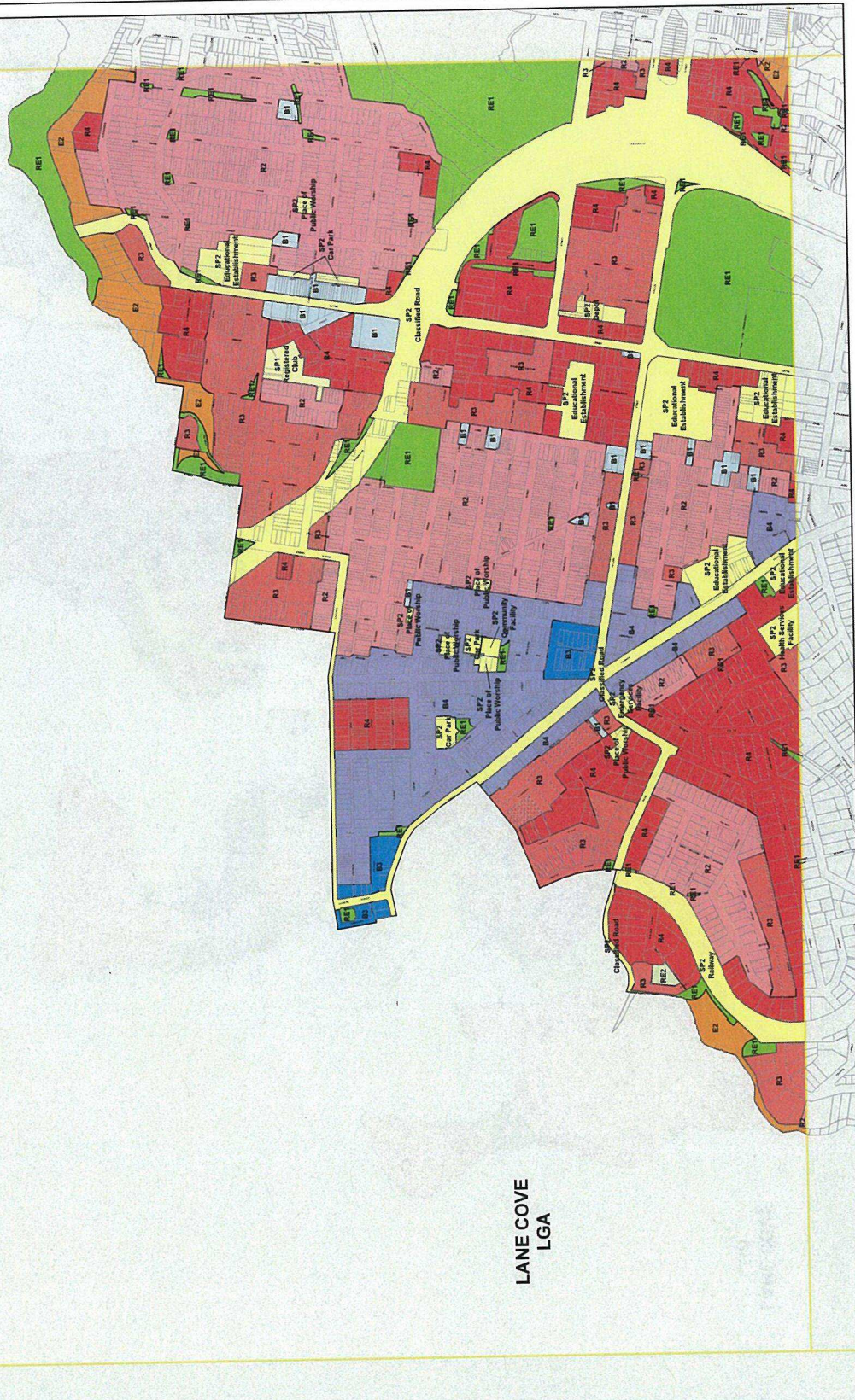
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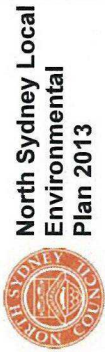


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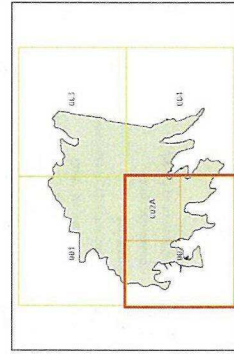
North Sydney Local Environmental Plan 2013

Land Zoning Map - Sheet LZN_002

Zone	
Neighbourhood Centre	B1
Commercial Core	B2
Mixed Use	B3
Environmental Conservation	E1
Environmental Living	E2
Light Industrial	I1
Working Waterfront	I2
Low Density Residential	R1
Medium Density Residential	R2
High Density Residential	R3
Public Recreation	R4
Private Recreation	R5
Special Activities	SP1
Infrastructure	SP2
Unzoned Land	UL

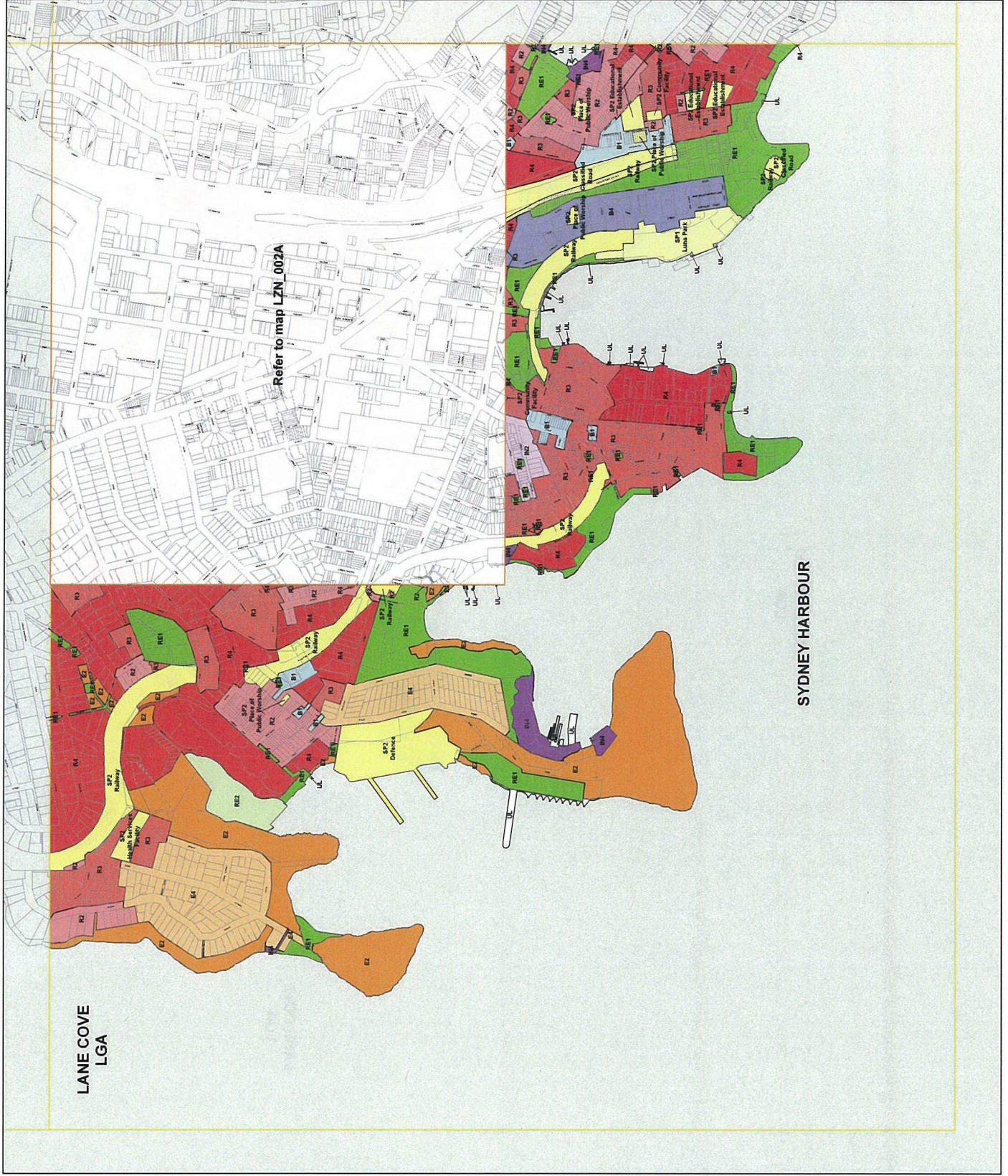
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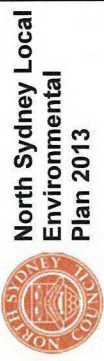
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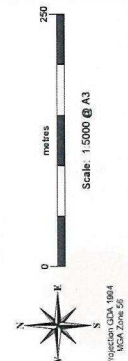
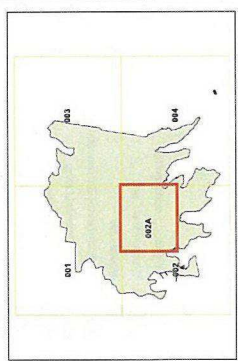




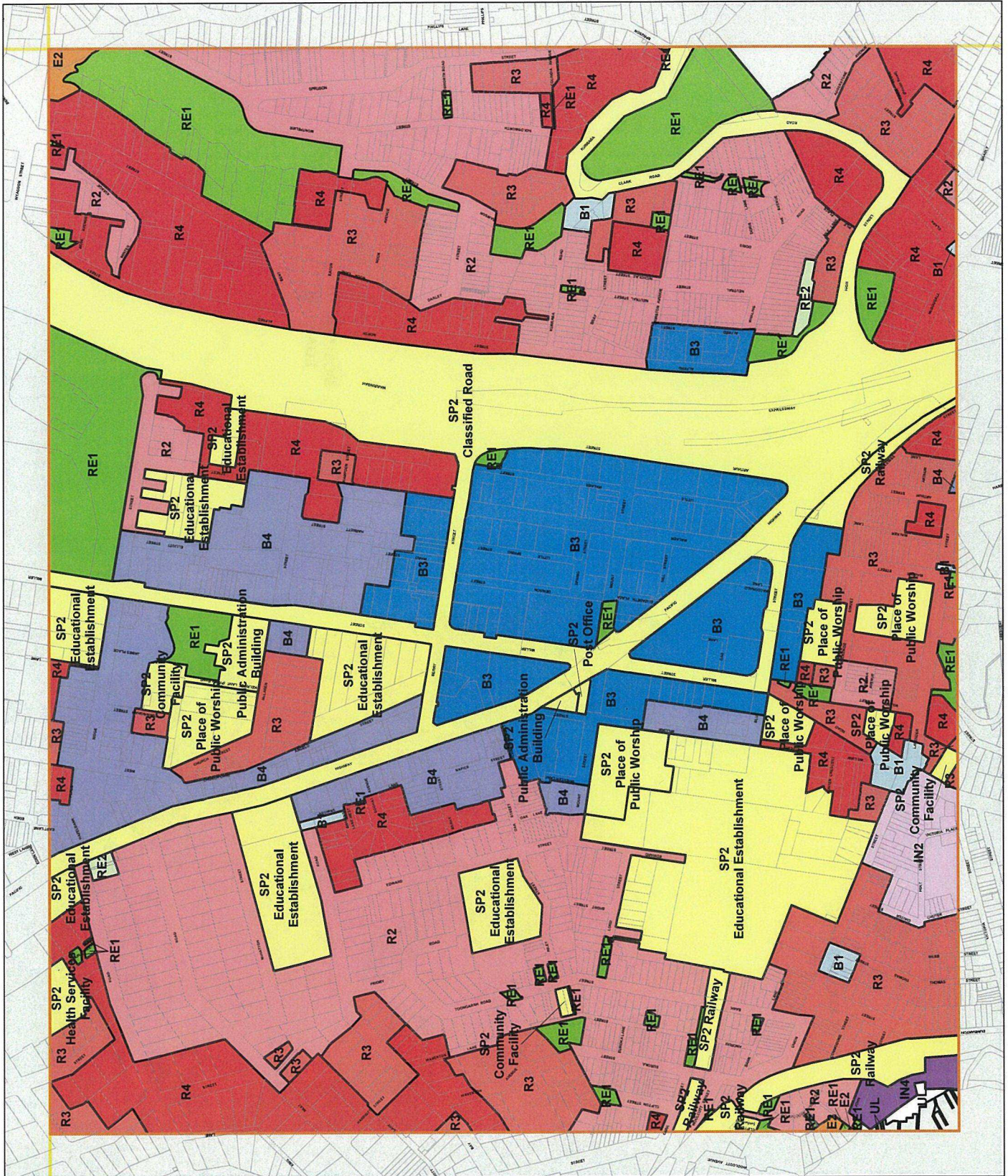
Land Zoning Map - Sheet LZN_002A

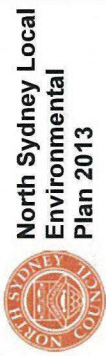
Zone	Description
B1	Neighbourhood Centre
B2	Commercial Core
B4	Environmental Conservation
E1	Environmental Living
E2	Light Industrial
E3	Working Waterfront
E4	Low Density Residential
E5	Medium Density Residential
E6	High Density Residential
E7	Public Recreation
E8	Private Recreation
E9	Special Activities
E10	Infrastructure
E11	Unzoned Land

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Map identification number
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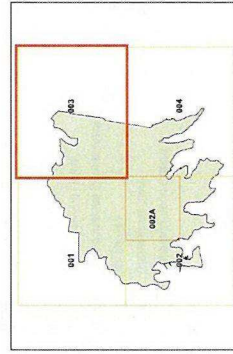
Land Zoning Map - Sheet LZN_003

Zone	
B1	Neighbourhood Centre
B2	Commercial Core
B4	Mixed Use
E2	Environmental Conservation
E4	Environmental Living
R2	Light Industrial
R4	Working Waterfront
R6	Low Density Residential
R8	Medium Density Residential
R10	High Density Residential
RE1	Public Recreation
RE2	Private Recreation
SP1	Special Activities
SP2	Infrastructure
UK	Unzoned Land

Cadastral



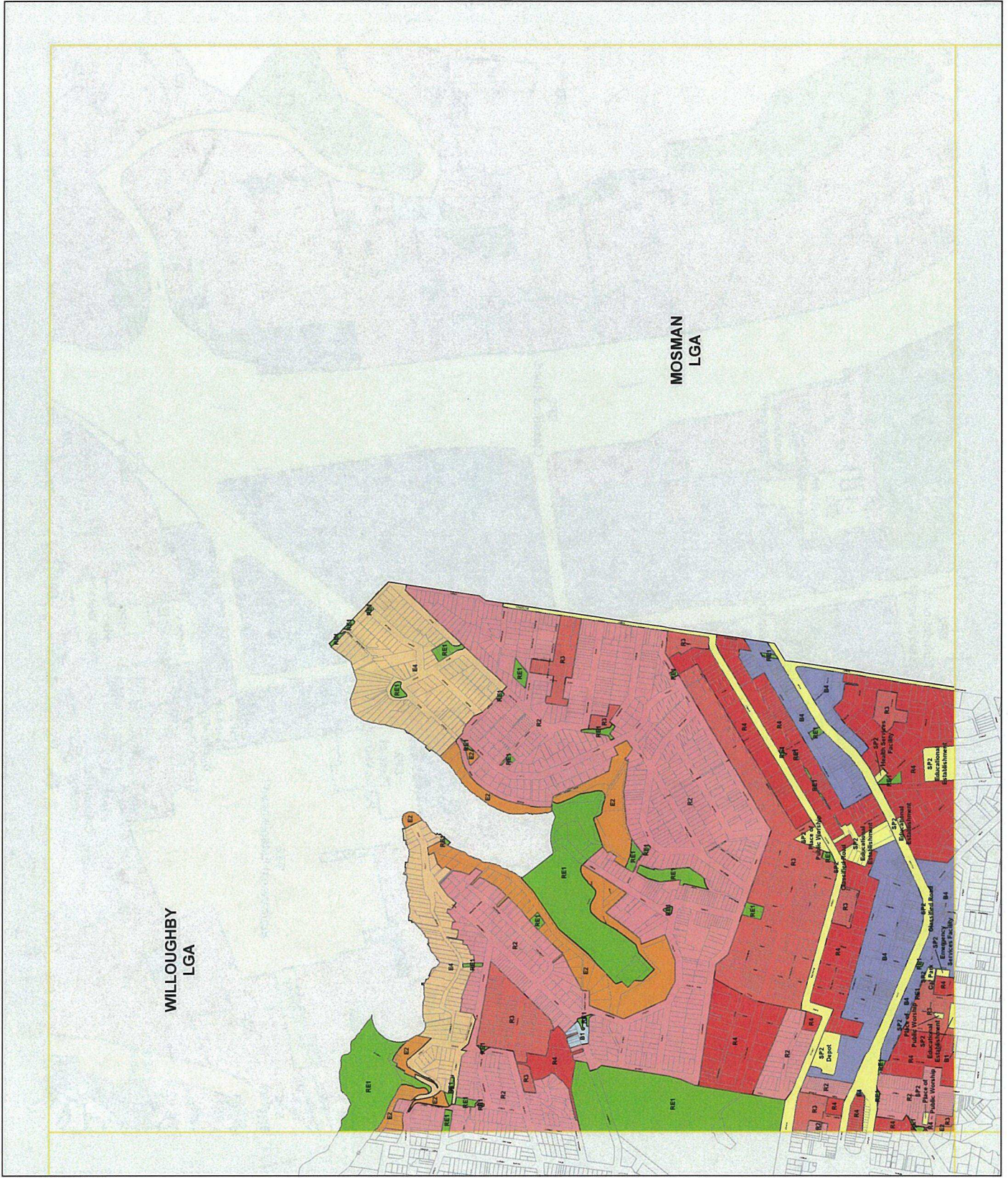
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Scale: 1:10000 @ A3

Projection: GDA 1984
MGA Zone 56

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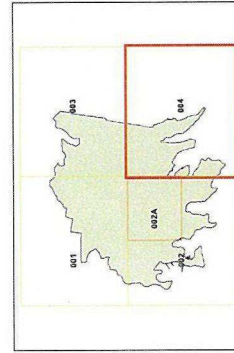
Land Zoning Map - Sheet LZN_004

Zone	
B1	Neighbourhood Centre
B2	Commercial Core
B4	Mixed Use
E2	Environmental Conservation
E4	Environmental Living
N2	Light Industrial
N4	Working Waterfront
R2	Low Density Residential
R3	Medium Density Residential
R4	High Density Residential
RE1	Public Recreation
RE2	Private Recreation
SP1	Special Activities
SP2	Infrastructure
UL	Unzoned Land

Cadastre

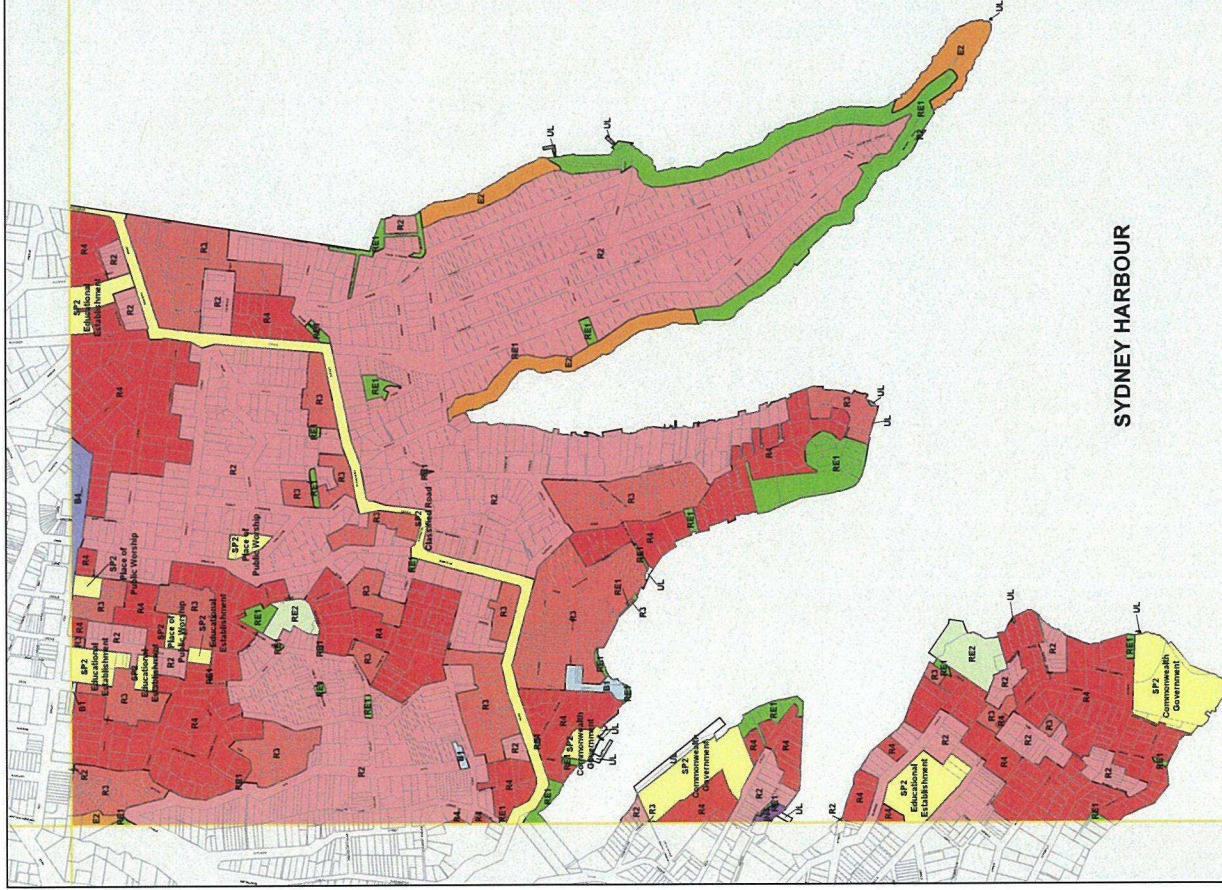


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MGA Zone 56

Map identification number
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MOSMAN
LGA

SYDNEY HARBOUR