

**Report to General Manager**

Attachments:

1. Pre-Gateway Review – Information and Recommendation Report dated 27 April 2016
2. JRPP – Pre-Gateway Review Decision dated 29 June 2016
3. DPE letter dated 14 September 2016

SUBJECT: Planning Proposal - 11 Cowdroy Avenue, Cammeray - Relevant Planning Authority

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EXECUTIVE SUMMARY:

At its meetings on 21 September 2015 and 19 October 2015, Council considered an assessment report in relation to a Planning Proposal for 11 Cowdroy Avenue, Cammeray. The Planning Proposal sought to amend North Sydney Local Environmental Plan 2013 (NSLEP 2013) to permit a second dwelling in the form of a detached dual occupancy at 11 Cowdroy Avenue, Cammeray. Consistent with the recommendations of the report, Council resolved not to support the Planning Proposal proceeding to Gateway Determination.

On 5 January 2016, Council received a letter from the Department of Planning and Environment (DPE) advising that the proponent of the Planning Proposal had lodged a request for a pre-Gateway review with the DPE in response to Council's resolution. Subsequently, the Joint Regional Planning Panel (JRPP) recommended that the site be rezoned as requested, but that such zone (R2 – Low Density Residential) should be extended to the west of the site.

Generally consistent with the advice of the JRPP, the DPE recommends that the Planning Proposal should proceed to Gateway Determination. It has also requested that Council advise the DPE whether it would like to accept or decline the role of Relevant Planning Authority for the Planning Proposal, prior to issuing the Gateway Determination.

This report recommends that whilst the DPE's resolution is contrary to Council's, that Council accept the role of the Relevant Planning Authority to retain control of the plan making process. This would enable Council to have greater control over the content and quality of information provided in the Planning Proposal prior to it being placed on public exhibition. This report also recommends that the existing Planning Proposal be amended by the applicant to address all of the DPE's pre-Gateway Determination requirements and that fees payable, be collected from the applicant.

FINANCIAL IMPLICATIONS:

Nil

Local Government Act 1993: Section 23A Guidelines - Council Decision Making During Merger Proposal Period

The Guidelines have been considered in the preparation of this report and are not applicable.

RECOMMENDATION:

1. **THAT** Council accept the role of the Relevant Planning Authority for the Planning Proposal affecting land at 11 Cowdroy Avenue, Cammeray.
 2. **THAT** Council advise the Department of Planning and Environment that a condition be added to any Gateway Determination issued in relation to the Planning Proposal to include the rezoning of the subject site and neighbouring properties to R2 Low Density Residential.
 3. **THAT** upon receiving Gateway Determination Council seek stage 2 fees to progress the Planning Proposal to public exhibition.
 4. **THAT** once Gateway Determination be issued, Council delegate to the General Manager the approval of site specific DCP controls to be placed on public exhibition at the same time as the Planning Proposal.
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LINK TO DELIVERY PROGRAM

The relationship with the Delivery Program is as follows:

Direction:	2. Our Built Environment
Outcome:	2.2 Improved mix of land use and quality development through design excellence
Direction:	5. Our Civic Leadership
Outcome:	5.1 Council leads the strategic direction of North Sydney 5.4 Community is informed and aware

BACKGROUND

1. Planning Proposal

On 21 September 2015, Council considered an assessment report in relation to a Planning Proposal that seeks to amend North Sydney Local Environmental Plan 2013 (NSLEP 2013) to permit a second dwelling in the form of a ‘dual occupancy (detached)’ at 11 Cowdroy Avenue, Cammeray. In particular, the Planning Proposal sought to amend NSLEP 2013 by either:

1. Amending the zoning of the subject site from *E4 Environmental Living* to *R2 Low Density Residential*;
2. Including an additional clause within *Schedule 1 - Additional Permitted Uses* to permit ‘dual occupancies (detached)’ with consent on the subject site; or
3. Amending the Land Use Table to permit ‘dual occupancies (detached)’ with consent in the *E4 Environmental Living* zone.

The report recommended that Council refuse the Planning Proposal from proceeding to Gateway Determination for the following reasons:

- *Insufficient information has been provided to enable a considered assessment;*
- *Sufficient residential capacity is already provided under NSLEP 2013 without the need to change the land use mix;*
- *The proposal represents an unacceptable precedent in so far that it:*
 - (a) introduces a new residential accommodation type that is currently not permissible anywhere in the Local Government Area (LGA); and*
 - (b) gives the impression to the community that Council is willing to amend its planning controls to legitimise unlawful works or unauthorised uses;*
- *If implemented, the proposal would result in unreasonable amenity impacts for the occupants of the two dwellings on the site; and*
- *If implemented, the proposal cannot comply with the relevant planning controls under NSLEP 2013 relating to dual occupancies.*

Council resolved to defer determining the matter pending an in-house discussion between Councillors, Council staff and the applicant.

On 6 October 2015, an in-house discussion was held where the merits for and against the Planning Proposal were discussed with a focus on the zoning history of the subject site, the character of the surrounding area and potential policy implications for proceeding with the Planning Proposal.

Consistent with the recommendations of the 21 September 2015 report, Council resolved on 19 October 2015 not to support the Planning Proposal proceeding to Gateway Determination for the reasons outlined in the original report.

2. Pre-Gateway Review

On 5 January 2016, Council received a letter from the Department of Planning and Environment (DPE) advising of the proponent's request for a pre-Gateway review and invited Council to provide additional justification for its determination.

Council responded to this letter on 8 February 2016 by reinforcing its original position not to proceed with the Planning Proposal. The letter also noted Council's strong opposition to allowing amendments to its LEP to rectify unlawful activities under past and current planning controls and development consents.

On 29 April 2016, the DPE advised Council that it had completed its assessment of the pre-Gateway review application. The DPE's assessment report (refer to Attachment 1) concluded that the Planning Proposal demonstrated broad strategic and site-specific merit. In particular, the DPE's assessment report recommended:

- the Planning Proposal be referred to the Joint Regional Planning Panel (JRPP) for independent review on whether it should be submitted for Gateway Determination; and
- should the Planning Proposal proceed to Gateway, the DPE's recommended option is to rezone the subject site *R2 Low Density Residential* (consistent with the adjacent lots to the east) and amend *Schedule 1 – Additional Permitted Uses* to permit 'dual occupancies (detached)' with development consent on the site.

On 29 June 2016, the JRPP considered the DPE's request for a review. The Panel recommended the Planning Proposal be submitted for a Gateway Determination, subject to the following recommendations (refer to Attachment 2):

- the subject site be rezoned from *E4 Environmental Living* to *R2 Low Density Residential*;
- the DPE consider extending the *R2 Low Density Residential* zone to adjoining sites to the west between Stratford Street and Cowdroy Avenue (refer to Figure 1); and
- no amendment to *Schedule 1 – Additional Permitted Uses* be made to permit 'dual occupancies (detached)' on the subject site.

3. Pre-Gateway Request

On 19 September 2016, Council received a letter (refer to Attachment 3) advising that the DPE has now recommended that the Planning Proposal proceed to Gateway Determination, subject to the Planning Proposal being updated as follows:

- *the explanation of provisions (Part 2) proposes to:*

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- (i) *rezone the site from E4 Environmental Living to R2 Low Density Residential;*
 - (ii) *amend Schedule 1 – Additional Permitted Uses of NSLEP 2013 to permit with consent dual occupancies (detached); and*
 - *the inclusion of maps to demonstrate the existing Land Use Zoning and proposed Land Use Zoning, showing the site and its surrounding context.*

In addition, the DPE requested that:

Council rezone the neighbouring properties to the west of the subject site (that is, east of Stratford Street) R2 Low Density Residential by revising the Planning Proposal for 11 Cowdroy Avenue, Cammeray, or by lodging a separate Planning Proposal.

The recommended amendments are generally consistent with those outlined in the DPE's initial assessment report and the JRPP's recommendations. With the exception that the DPE has recommended *Schedule 1 – Additional Permitted Uses* be amended to permit 'dual occupancies (detached)' on the subject site, which is inconsistent with the JRPP's recommendations. The JRPP recommended that Schedule 1 not be amended, as:

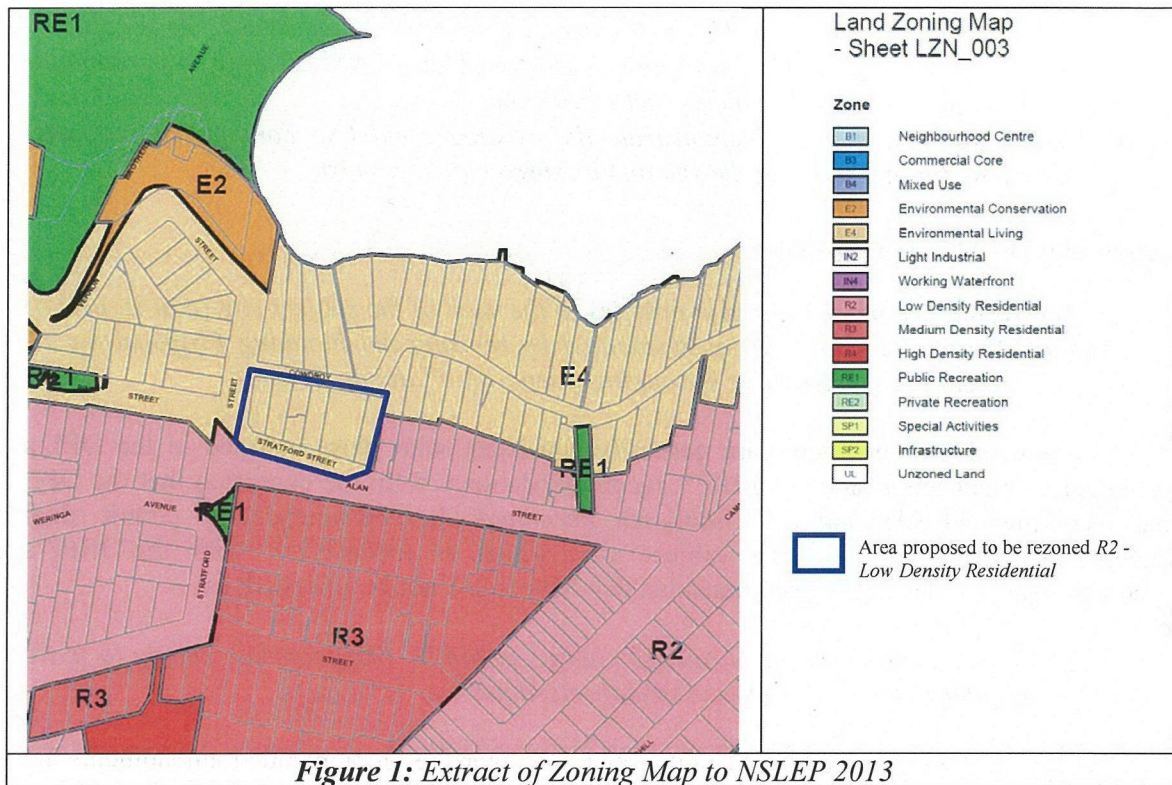
The Panel considers such a one off change would be inappropriate simply to make permissible what is currently an unauthorised use.

It is unclear in the DPE's letter to Council as to whether the recommended amendments are required to be completed before or after the Gateway Determination is issued.

The DPE's letter also requested that Council advise in writing within 28 days of its letter (14 September 2016), if it would agree to be the Relevant Planning Authority (RPA) in this matter.

On 20 September 2016, Council sent a letter to DPE requesting that a minor extension be granted to enable the implications of the request to be adequately considered and formally reported to Council. On 29 September 2016, Council was advised verbally that the DPE had approved Council's the request for a short extension to the timeframes.

This report therefore seeks Council's decision on whether it should accept or decline the role of RPA for the Planning Proposal. It also seeks Council's decision on whether the DPE's recommendation to rezone the neighbouring properties to the west of the subject site should be incorporated within the existing Planning Proposal or undertaken as a stand alone Planning Proposal.



CONSULTATION REQUIREMENTS

If the Gateway Determination is issued, community engagement will be undertaken in accordance with Council's Community Engagement Protocol and the requirements of any Gateway Determination issued in relation to the Planning Proposal.

SUSTAINABILITY STATEMENT

The sustainability implications were considered and reported on during the initiation phase of this project.

DETAIL

1. Determination of the RPA role

Following the issue of a Gateway Determination, the RPA would be responsible for progressing the Planning Proposal through the next stages of the plan making process. This includes finalisation of Planning Proposals, consulting with the community and relevant agencies, considering submissions, finalising assessment of the proposal and, should the plan progress to final stage, request the making of the plan (being amendments to NSLEP 2013). The Gateway Determination merely enables a Planning Proposal to progress to public exhibition.

There are a number of advantages and disadvantages to accepting/declining the role of RPA

that should be considered by Council. These are addressed in the following subsections.

2. Options

1.1 Council accepts the RPA role (Preferred)

1.1.1 Control of the plan making process

If Council resolves to accept the role of RPA, Council would have greater control of the plan making process, including public exhibition, post exhibition report and finalisation of the amendment to the relevant LEP. This is reflective of Council's present role.

1.1.2 Quality of the Planning Proposal

An RPA must be satisfied with the content of a Planning Proposal and the quality of the information provided in support of the proposal. In addition, it must ensure that the information provided is accurate, current and sufficient for issuing a Gateway Determination. If Council resolves to accept the role of RPA, it would have greater control over the content and quality of information provided in the Planning Proposal prior to it being placed on public exhibition.

Council's assessment of the Planning Proposal identified a number of deficiencies with the information submitted and did not provide adequate justification to support the progression of the Planning Proposal. This position was supported by the elected Council. However, it is considered that a proponent of a Planning Proposal is unlikely to amend their Planning Proposal to address Council's primary concerns, as it would be generally detrimental to their case. Should Council be perceived to prevent the progression of the Planning Proposal, the DPE has the power to remove the RPA role from Council and reallocate the role to an alternate body.

1.1.3 Influencing final outcomes

In considering the post-exhibition report, the Council as the RPA would still have the ability to recommend that the Planning Proposal not proceed any further.

Notwithstanding, Council's ability to affect the final outcome is considered limited as the Minister of Planning can overturn Council's decision in making the plan. This occurred when the Planning Proposal for 144-154 Pacific Highway and 18 Berry Street, North Sydney was considered.

1.1.4 Fees

If Council resolves to accept the role of RPA, Council would need to seek stage 2 fees to progress the Planning Proposal to public exhibition.

1.2 Council declines the RPA role

If Council resolves not to accept the role of RPA, the DPE may appoint an alternate RPA to prepare the Planning Proposal and undertake the next stages of the plan making process including exhibition, post exhibition report and finalisation of the amendment to the relevant

LEP. An alternate RPA may include the JRPP, Director General of DPE or any other person or body authorised under the Environmental Planning and Assessment Regulations 2000.

If Council does not accept the role of RPA, it is considered highly likely that the role will be allocated to the JRPP. The JRPP has been nominated as the RPA in all instances where a council has resolved not to accept the role.

Despite not having control of the plan making process or control over the quality of the information provided in the Planning Proposal, Council will still be provided the opportunity to lodge a submission when the Planning Proposal is publically exhibited. This will be in a similar way to Council addressing Development Applications that are determined by the JRPP.

1.3 Previous offers to accept the RPA role

Council has previously considered the question of accepting the role of RPA in relation a Planning Proposal at 18 Berry Street and 144-154 Pacific Highway, North Sydney. The Planning Proposal, which sought to reduce the non-residential floor space ratio (FSR) range requirements across the entire site, had been recommended by the DPE to proceed to Gateway Determination contrary to Council's views. Council subsequently resolved to accept the role of RPA in the matter, despite a recommendation to decline the role.

3. Other matters

Should the Planning Proposal progress and amendments to NSLEP 2013 be made giving effect to the amended Planning Proposal, the applicant would still be required to lodge a Development Application and receive development consent to use the rear studio as a separate dwelling.

Given 'dual occupancies (detached)' are currently not permitted anywhere in the North Sydney Local Government Area, there is potential for the need to introduce site specific controls under North Sydney Development Control Plan 2013 (NSDCP 2013) should a detached dual occupancy be permissible as a result of the Planning Proposal. These controls would relate to minimum setback, site coverage, landscaped area, and private and communal open space requirements for a 'dual occupancy (detached).' Given the one off nature of the Planning Proposal, it would be preferred to include such controls under the relevant Character Statement (Cammeray Neighbourhood).

To add clarity and transparency, any such DCP amendments should be placed on public exhibition at the same time as the Planning Proposal. It is therefore recommended that once Gateway Determination be issued, Council delegate to the General Manager, the approval of site specific DCP controls to be placed on public exhibition at the same time as the Planning Proposal. The coordination of any such DCP amendments with the progression of the Planning Proposal would be better served if Council retained control over the plan making process.

4. The Planning Proposal Amendments

The DPE seeks direction as to whether its recommendation to rezone the neighbouring properties to the west of the subject site to *R2 Low Density Residential* should be incorporated

within the existing Planning Proposal or undertaken as a stand alone Planning Proposal.

If a separate Planning Proposal is to be prepared, Council will be required to expend its own resources to prepare this Planning Proposal. Given that the original Planning Proposal was not initiated or supported by Council, it is considered that the proponent should be responsible for meeting all the requirements necessary to further their own private application.

Alternatively, Council could advise the DPE that a condition be added to any Gateway Determination issued in relation to the Planning Proposal to include the rezoning of the subject site as well as the neighbouring properties. This would require the proponent amend their Planning Proposal to meet all of the DPE's pre-Gateway Determination requests, including any additional studies that may need to be undertaken to meet them.

5. Pre-Gateway Determination Requirements

Should Council resolve to accept the role of RPA, Council would be required to prepare and submit, for Gateway Determination, a Planning Proposal, which meets all the DPE's pre-Gateway Determination requests within 90 days of the DPE's letter (14 September 2016). This includes updating the applicant's Planning Proposal to rezone the subject site as well as neighbouring properties to *R2 Low Density Residential*.

Contrary to the DPE's letter, it is recommended that the applicant be required to prepare a Planning Proposal that meets all of the DPE's pre-Gateway Determination requests and not the RPA. Council's direction is fettered to developing a proposal contrary to its strategic position.

The DPE has indicated to Council verbally, that the Gateway Determination can be conditioned to amend the Planning Proposal. Therefore, if Council resolves to accept the role of RPA, it should advise the DPE that a condition be added to any Gateway Determination issued in relation to the Planning Proposal to include the rezoning of the subject site and neighbouring properties to *R2 Low Density Residential*. This would require the applicant prepare the Planning Proposal. However, the RPA would still be responsible for ensuring the information provided in the Planning Proposal is accurate, current and sufficient for issuing a Gateway Determination.

CONCLUSION

Council has been asked by the DPE if it would like to accept or decline the role of RPA for the Planning Proposal relating to 11 Cowdroy Avenue, Cammeray. It also seeks some direction as to whether its recommendations to rezone the neighbouring properties to the west of the subject site to *R2 Low Density Residential* be incorporated into the existing Planning Proposal or be subject to a separate Planning Proposal.

It is recommended that Council accept the role of RPA to retain control of the plan making process. This would enable Council to have greater control over the content and quality of information provided in the Planning Proposal prior to it being placed on public exhibition. It is also recommended that the existing Planning Proposal be amended by the applicant to address all of the DPE's pre-Gateway Determination requirements.

If Council resolves to accept the role of RPA, it is recommended that:

- Council advise the DPE that a condition be added to any Gateway Determination issued in relation to the Planning Proposal to include the rezoning of the subject site and neighbouring properties to *R2 Low Density Residential*;
 - Upon receiving Gateway Determination, Council seek stage 2 fees to progress the Planning Proposal to public exhibition; and
 - Once Gateway Determination is issued, Council delegate to the General Manager the approval of site specific DCP controls to be placed on public exhibition at the same time as the Planning Proposal.
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